

1 JONATHAN COHEN
DC Bar No. 483454; jcohen2@ftc.gov
2 MIRIAM R. LEDERER
DC Bar No. 983730; mlederer@ftc.gov
3 600 Pennsylvania Ave., NW, CC-9528
Washington, D.C. 20580
4 202-326-2551 (Cohen); -2975 (Lederer); -3197 (fax)

FILED
APR 14, 2015
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY MKU
Deputy Clerk, U.S. District Court

5 JOHN D. JACOBS (Local Counsel)
CA Bar No. 134154, jjacobs@ftc.gov
6 Federal Trade Commission
10877 Wilshire Boulevard, Suite 700
7 Los Angeles, CA 90024
310-824-4343; -4380 (fax)

UNDER SEAL

8 Attorneys for Plaintiff Federal Trade Commission

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 FEDERAL TRADE COMMISSION,
12 Plaintiff,

Case No. SACV 15-00585-CJC (JPRx)

13 v.

14 DENNY LAKE (also d/b/a JD United,
15 U.S. Crush, Advocacy Department,
Advocacy Division, Advocacy
16 Program, and Advocacy Agency);
CHAD CALDARONELLO (a/k/a
17 Chad Carlson and Chad Johnson),
individually and as an officer of C.C.
18 Enterprises, Inc.; C.C.
ENTERPRISES, INC. (also d/b/a
19 HOPE Services, Trust Payment
Center, and Retention Divisions);
20 DEREK NELSON (a/k/a Dereck
Wilson), individually and as an officer
21 of D.N. Marketing, Inc.; D.N.
MARKETING, INC. (also d/b/a
22 HAMP Services and Trial Payment
Processing); BRIAN PACIOS (a/k/a
23 Brian Barry and Brian Kelly); JUSTIN
24 MOREIRA (a/k/a Justin Mason, Justin
King, and Justin Smith),

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF *EX PARTE*
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER WITH ASSET FREEZE,
APPOINTMENT OF
TEMPORARY RECEIVER,
LIMITED EXPEDITED
DISCOVERY, AND OTHER
EQUITABLE RELIEF, AND
ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

[LODGED UNDER SEAL]

25 Defendants, and
26 CORTNEY GONSALVES,
27 Relief Defendant.
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIESiv

INTRODUCTION1

BACKGROUND3

 A. The HOPE Defendants and Lake3

 B. The HOPE Defendants’ Aliases5

 C. HOPE Defendant Brian Pacios’ Contempt6

FACTS6

 A. The Scam7

 1. Phase One (HOPE Services)7

 2. Phase Two (HOPE Services)9

 a. The “Counselor” Reiterates Deceptive Claims9

 b. The “Victim” Is Approved9

 c. The HOPE Defendants Send MHA Paperwork11

 3. Phase Three (Advocacy Department)13

 a. Advocacy Department Handles All
 Communications With Lenders14

 b. Advocacy Department Reassures Victims that the
 Modification Is Moving Forward16

 c. Advocacy Department Files Ineffective Complaints16

 4. Lake Works Closely With HOPE Services17

 5. HOPE Services Refuses Refund Requests18

 B. Evidence of Falsity19

 1. Undercover Work19

 2. Declarations of Victims and Their Lenders21

 3. Forensic Accounting22

 4. Declarations of Treasury, HUD and NACA23

ARGUMENT24

I. The FTC Has a Strong Likelihood of Success on the Merits24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- A. The Court Must Consider Both the Likelihood of Success on the Merits and the Balance of the Equities (Including the Public Interest at Stake)24
 - 1. The FTC Need Only Show “Some Chance of Probable Success.”24
 - 2. The Ninth Circuit Requires the Court to Weigh the Public Interest.....24
- B. Corporate Defendants CCE and DNM Are Liable25
- C. Corporate Defendants CCE and DNM Are a Common Enterprise26
- D. The individual HOPE Defendants Are Liable27
 - 1. Chad Caldaronello27
 - 2. Brian Pacios..29
 - 3. Justin Moreira30
 - 4. Derek Nelson.....31
- E. Lake32
 - 1. Knowledge32
 - a. Lake Knows About the Payments33
 - b. Lake Knows There Are No Modifications35
 - 2. Substantial Assistance.....37
- F. Cortney Gonsalves40
- II. The Facts Strongly Favor the Proposed TRO.....41
 - A. The Proposed *Ex Parte* TRO Is Necessary To Prevent Fraud and Provide Effective Redress to Consumers41
 - 1. HOPE Services Is Likely To Disregard a Court Order To Preserve Evidence41
 - 2. Lake Is Also Likely To Disregard a Court Order To Preserve Evidence.....43
 - a. Lake’s Perjury Concerning the Business Practices at Issue Shows a Willingness To Disregard the Law44
 - b. Advocacy Department Refused To Comply With DFI Subpoenas.....46

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- c. Lake’s Efforts to Conceal HOPE Services’ Fraud Establishes His Dishonesty47
- B. A Complete Asset Freeze Is Necessary47
 - 1. The Egregious Facts in This Case Warrant a Complete Asset Freeze47
 - 2. Alternatively, the Court Should Issue a Partial Asset Freeze..52
- C. The Court Should Appoint a Temporary Receiver53
 - 1. E3 Advisors53
 - 2. McNamara Benjamin LLP.....54
 - 3. Robb Evans & Associates.....54
- D. The Proposed TRO’s Other Provisions Are Necessary and Appropriate.....55
 - 1. The Immediate Access to Business Premises.....55
 - 2. Fifth Amendment Considerations.....55
 - 3. Smartphones..56
 - 4. Social Media..57
 - 5. Safes.....57
- CONCLUSION.....57

TABLE OF AUTHORITIES

Published Cases

1

2

3

4 *Abbott Laboratories v. Mead Johnson & Co.*, 971 F.2d 6 (7th Cir. 1992).....25

5 *American Fruit Growers v. United States*, 105 F.2d 722 (9th Cir. 1939)25

6 *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617 (1989)51

7 *CFTC v. Baragos*, 278 F.3d 319 (4th Cir. 2002)27

8 *CFTC v. British American Commodity Options*, 560 F.2d 135 (2d Cir. 1977).....50

9 *CFTC v. Muller*, 570 F.2d 1296 (5th Cir.1978)47

10 *CFTC v. Noble Wealth Data Information Service, Inc.*, 90 F. Supp.2d 676

11 (D. Md. 2000).....27

12 *Delaware Watch Co. v. FTC*, 332 F.2d 745 (2nd Cir. 1964)26

13 *Highland Tank & Mfg. Co. v. First Union Nat’l Bank*,

14 2000 WL 33158611 (Conn. Super. Ct. Nov. 3, 2000).....12

15 *Fisher v. United States*, 425 U.S. 391 (1976)57

16 *FSLIC v. Sahni*, 868 F.2d 1096 (9th Cir. 1989)..... 47-48

17 *FTC v. Affordable Media*, 179 F.3d 1228 (9th Cir. 1999)..... *passim*

18 *FTC v. Am. Standard Credit Systems, Inc.*, 874 F. Supp. 1080

19 (C.D. Cal. 1994).....30

20 *FTC v. Chapman*, 714 F.3d 1211 (10th Cir. 2013)..... 37, 40

21 *FTC v. Consumer Health Benefits Association*,

22 2012 WL 1890242 (E.D.N.Y. May 23, 2012)37

23 *FTC v. Cyberspace.com LLC*, 453 F.3d 1196 (9th Cir. 2006)28

24 *FTC v. Gill*, 265 F.3d 944 (9th Cir. 2001)25

25 *FTC v. Gill*, 265 F.3d 944 (9th Cir. 2001)25

26 *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107 (9th Cir. 1982)..... *passim*

27 *FTC v. IAB Marketing Associates, LP*, 2014 WL 1245263

28 (11th Cir. Mar. 27, 2014).....47

1 *FTC v. International Computer Concepts, Inc.*, 1994 WL 730144
(N.D. Ohio Oct. 24, 1994)49

2 *FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127 (9th Cir. 2010).....26

3 *FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168
4 (9th Cir. 1997)..... 28, 29, 31

5 *FTC v. Stefanichik*, 559 F.3d 924 (9th Cir. 2009)28

6 *FTC v. Southwest Sunsites, Inc.*, 665 F.2d 711 (5th Cir. 1982).....47

7 *FTC v. Thomsen-King & Co.*, 109 F.2d 516 (7th Cir. 1940).....50

8 *FTC v. U.S. Oil & Gas Corp.*, 1987 U.S. Dist.
9 LEXIS 16137 (S.D. Fla. July 10, 1987).....26

10 *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431 (11th Cir. 1984) 53, 55

11 *FTC v. Warner Communic’ns, Inc.*, 742 F.2d 1156 (9th Cir. 1984)24

12 *FTC v. Wealth Educators, Inc.*, No. CV 15-02375
13 (C.D. Cal. Apr. 6, 2015)..... 48, 51

14 *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020
(7th Cir. 1988).....47

15 *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344 (9th Cir. 1989) 24, 25

16 *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*,
17 415 U.S. 423 (1974).....41

18 *Highland Tank & Mfg. Co. v. First Union Nat’l Bank*, No. CV00596531,
19 2000 WL 33158611 (Conn. Super. Ct. Nov. 3, 2000).....12

20 *Hoover v. Wise*, 91 U.S. 308 (1875)33

21 *In re Vuitton et Fils S.A.*, 606 F.2d 1 (2nd Cir. 1979)41

22 *Johnson v. Couturier*, 572 F.3d 1067 (9th Cir. 2009)48

23 *Leone Indus. V. Associated Packaging Inc.*, 795 F. Supp. 117,
24 (D.N.J. 1992).....53

25 *Litton Sys., Inc. v. Am. Tel. & Tel. Co.*, 91 F.R.D. 574
26 (S.D.N.Y. 1981).....46

27 *Lorillard Tobacco Co. v. Canstar (U.S.A.) Inc.*, No. 03 C 4769,
28 2005 WL 3605256, (N.D. Ill. Aug. 24, 2005)46

1 *Mui Ho v. Toyota Motor Corp.*, 931 F. Supp. 2d 987
(N.D. Cal. 2013)..... 38, 49

2 *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)48

3 *Reebok, Int’l Ltd. v. McLaughlin*, 49 F.3d 1387 (9th Cir. 1991).....47

4 *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126,
5 (9th Cir. 2006).....42

6 *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367 (1992).....55

7 *SEC v. Colello*, 139 F.3d 674 (9th Cir. 1998)..... 40-41

8 *SEC v. ETS Payphones, Inc.*, 408 F.3d 727 (11th Cir. 2005).....47

9 *SEC v. High Park Inv. Group, Inc.*, No. 8:05-cv-01090-CJC
10 (C.D. Cal. Nov. 18, 2005).....51

11 *SEC v. Keller Corp.*, 323 F.2d 397 (7th Cir. 1963).....53

12 *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082 (2d Cir.1972)48

13 *SEC v. Petters*, No. 09-1750, 2010 WL 1782235 (D. Minn. Apr. 30, 2010)51

14 *SEC v. Schooler*, 902 F. Supp. 2d 1341 (S.D. Cal. 2012)48

15 *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804 (9th Cir. 1963)24

16 *United States v. First Nat’l City Bank*, 379 U.S. 373 (1965)47

17 *United States v. Jewell*, 532 F.2d 697 (9th Cir. 1976).....37

18 *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172
19 (9th Cir. 1987)..... 24-25

20 *United States v. Dish Network, L.L.C.*, 667 F. Supp. 2d 952, 961
21 (C.D. Ill. 2009).....37

22 *Vuitton v. White*, 945 F.2d 569 (3d Cir. 1991).....42

23 *Wagner v. Dryvit Sys., Inc.*, 208 F.R.D. 606 (D. Neb. 2001)46

24 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)48

25 **Docketed Cases**

26 *FTC v. Lakhany*, No. 8:12-cv-337-CJC (C.D. Cal.) *passim*

27 *FTC v. National Consumer Council*, No. 04-0474-CJC
28 (C.D. Cal. May 3, 2004)51

1 **Statutes**

2 12 U.S.C. § 340150

3 15 U.S.C. § 4525

4 12 U.S.C. § 53 24, 44, 50

5 CAL. BUS. & PROF. CODE § 1790050

6 CAL. BUS. & PROF. CODE § 1791050

7 CAL. BUS. & PROF. CODE § 1791550

8 CAL. COMM. CODE § 3110 12-13

9 **Regulations**

10 12 C.F.R. § 1015.2 15, 26, 32

11 12 C.F.R. § 1015.3 26, 32

12 12 C.F.R. § 1015.5 26, 33, 35

13 12 C.F.R. § 1015.6 32, 37, 40

14 16 C.F.R. § 310.326

15 **Other Authorities**

16 RESTATEMENT (THIRD) OF AGENCY § 5.03 (2006)33

17 S. Rep. No. 103-130 (1993) *reprinted in* U.S.C.C.A.N. 1776 (1994)47

18 Uniform Commercial Code § 3-11012

19

20

21

22

23

24

25

26

27

28

INTRODUCTION

1
2 Approximately two years ago, after the Federal Trade Commission produced
3 overwhelming evidence that Brian Pacios (“Pacios”) illegally telemarketed
4 mortgage relief, this Court banned him from selling mortgage assistance. To say
5 that Pacios ignored this Court’s Order would be an understatement.¹ Using a fake
6 name and new companies, Pacios promptly commenced a new mortgage relief
7 scam. Unfortunately, this new fraud is dramatically worse than his prior scheme,
8 and the need for effective emergency relief is even greater. In short, Pacios and his
9 co-conspirators steal entire mortgage payments from distressed homeowners at the
10 rate of roughly one new victim per day.

11 As explained below, defendants pose as “nonprofit” mortgage relief
12 agencies HOPE and HAMP Services (collectively “HOPE Services”), and dupe
13 homeowners facing foreclosure into believing that they will obtain a loan
14 modification. Defendants claim these homeowners simply need to sign a Making
15 Home Affordable (“MHA”) application and make three monthly trial mortgage
16 payments into their lender’s trust account (sometimes along with a substantial
17 “reinstatement fee”).

18 However, overwhelming evidence proves that consumers never receive loan
19 modifications, nor do their lenders receive their payments. First, notwithstanding
20 the fact that an FTC investigator posed as a nonexistent person with a fabricated
21 home loan, or the fact that her supposedly mortgaged home is actually an empty
22 field in rural Maryland, defendants told her that MHA approved her for a loan
23 modification, guaranteed her a modification, collected her “reinstatement fee,” and
24 cashed it. Ostrum ¶¶41-84.

25
26
27
28 ¹ After this motion becomes public, the Commission will move to hold
Pacios in contempt. Cohen ¶15:10 (draft contempt motion).

1 Second, victims and their lenders confirm the fraud. Specifically, seven
2 consumers identify mortgage payments sent to HOPE Services. In sworn
3 declarations, their lenders deny receiving these payments, or the MHA applications
4 the defendants supposedly submitted. Third, a comprehensive forensic accounting
5 shows that HOPE Services received approximately \$1.9 million in victims'
6 mortgage payments, but none went to consumers' lenders. George ¶¶12, 17-19.
7 Rather, hundreds of thousands went to the defendants directly or paid for country
8 club dues, casino junkets, helicopter rides, and sports memorabilia. *Id.* ¶41-47.
9 Finally, declarations from the Departments of Housing and Urban Development
10 (“HUD”) and Treasury refute defendants' claims of government affiliation.

11 Many victims make multiple monthly payments despite increasingly dire
12 foreclosure warnings, hearing notices, and even sale dates. As explained below,
13 this happens because of Defendant Denny Lake, who runs “Advocacy
14 Department.” Under the guise of finalizing their modifications, the Advocacy
15 Department assures victims that foreclosure warnings need not alarm them and that
16 their modification is progressing. The Advocacy Department also promises to
17 communicate with their lender on their behalf (when direct communication
18 between the homeowner and lender would reveal the fraud). Accordingly, Lake
19 helps keep victims' monthly mortgage payments coming—payments he knows
20 HOPE Services illegally induced.

21 Significantly, there are approximately 432 victims who lost mortgage
22 payments or reinstatement fees to the defendants from approximately March 1,
23 2014 through mid-February, 2015.² *Id.* ¶12. Because victims usually lose one or
24 more entire mortgage payments, the average loss per victim is more than \$4,300.
25 *Id.* ¶13. Furthermore, these losses cause substantial indirect injuries. For instance,

26
27
28 ² It is unlikely Defendants voluntarily halted their fraud in February, so there
are likely at least 485 victims now.

1 threatened foreclosure affects others who reside in the home, not merely the
2 mortgagor. Many victims are already in severe financial distress, and few easily
3 recover. Some have lost their homes, and some have declared bankruptcy.
4 Clemens ¶21; Monrreal ¶12; Wofford ¶36. Even victims who retain their homes
5 suffer both out-of-pocket losses as well as penalties, interest, and credit damage
6 associated with their missed payments. An *ex parte* TRO, asset freeze, and
7 temporary receiver are necessary to stop further damage, preserve evidence, and
8 secure assets needed to help redress victims.

9 **BACKGROUND**

10 **A. The HOPE Defendants and Lake**

11 Six interconnected persons and entities (collectively, the “HOPE
12 Defendants”) perpetrate the loan modification scam with the assistance of Denny
13 Lake (doing business as “Advocacy Department”). Stated concisely, by promising
14 loan modifications, the HOPE Defendants induce victims to send them mortgage
15 payments made payable to Fictitious Business Names (“FBNs”) that the HOPE
16 Defendants control. Ostrum ¶104:50 at 573.³ They then cash victims’ checks, and
17 steal the money. *See infra* at 13. Through this conduct, the HOPE Defendants
18 violate the FTC Act, the Telemarketing Sales Rule (“TSR”), and the Mortgage
19 Assistance Relief Services (“MARS”) Rule (including its advance fee ban). *See*
20 *infra* at 26-27, 33-34. Regarding Lake, this motion focuses on the substantial
21 assistance he provides the HOPE Defendants with respect to their violations of the
22 MARS Rule’s advance fee ban. *See infra* at 38-41.

23 Significantly, the HOPE Defendants constitute a common enterprise. *See*
24 *infra* at 27-28. In particular, the HOPE Defendants began operating through C.C.

25
26
27
28 ³ “Ostrum ¶104:50 at 573” refers to FTC Investigator Crystal Ostrum’s
Declaration, Paragraph 104, Attachment 50, at Page 573.

1 Enterprises, Inc. (“CCE”) (d/b/a “HOPE Services”).⁴ Ostrum ¶14; *id.* ¶137:139 at
 2 2687. However, in late 2014, HOPE Services began winding down operations and
 3 opened a nearly identical business (“HAMP Services”) nearby. *Id.* ¶14.
 4 Specifically, the HOPE Defendants moved to new offices, changed maildrops,
 5 switched phone numbers, assumed a new legal identity (from CCE to D.N.
 6 Marketing, Inc. (“DNM”)),⁵ changed FBNs (from “Trust Payment Center” to
 7 “Trial Payment Processing”), changed aliases (for instance, Chad Caldaronello
 8 switched from “Chad Carlson” to “Chad Johnson”),⁶ and Lake’s “Advocacy
 9 Department” became “Advocacy Agency.” *Id.* ¶76:30 at 349. Despite this
 10 rebranding, there is no material difference between HOPE and HAMP Services.⁷

11 In fact, largely the same controlpersons operate both entities,⁸ which have
 12 largely the same employees. *Id.* ¶204:116 at 1601, 1606. Although they occupied
 13 separate offices, they maintained both locations for nearly four months. *Id.*
 14 ¶200:115 at 1437; *id.* ¶186:109 at 1090. At least for a period, the HOPE
 15 Defendants took calls at both locations.⁹ They also use (or used) the same vendors
 16 to perpetrate the fraud.¹⁰

17
 18 ⁴ CCE is a California corporation that HOPE Defendant Chad Caldaronello
 19 owns. Ostrum ¶100:46. Caldaronello is its only officer. *Id.* Additionally, CCE
 20 registered two FBNs with Orange County: Retention Divisions and Trust Payment
 Center. *Id.* ¶105:51 at 576; *id.* ¶104:50 at 573.

21 ⁵ DNM is a California corporation that Defendant Derek Nelson owns.
 Ostrum ¶101:47 at 566. Nelson is its President. *Id.* ¶101:47 at 566. Additionally,
 22 DNM registered the “Trial Payment Processing” FBN. *Id.* ¶107:53 at 582.

23 ⁶ Cardaronello still uses “Chad Carlson” when dealing with victims who
 interacted with Carlson/HOPE Services rather than “Chad Johnson”/“HAMP
 24 Services.” As recently as last week, Cardaronello left a victim a voicemail using
 the “Carlson” alias and referencing “HOPE Services.” Ostrum ¶137:94 at
 25 Voicemail from Chad Carlson Folder.

26 ⁷ Scams like this one “rebrand” to avoid detection.

27 ⁸ *See infra* at 28-33. The only substantial difference is the addition of Derek
 Nelson, D.N. Marketing’s owner and President. Ostrum ¶204:116 at 1601, 1606.

28 ⁹ Ostrum ¶203:141 at 2695-97. Additionally, although both entities use (or
 used) separate maildrops, they continued receiving victims’ checks at both

1 Most important, both HOPE and HAMP have essentially identical business
2 operations, including the same sales pitch, the same business process, and the same
3 means of stealing homeowners' mortgage payments. Accordingly, except where
4 the context requires greater specificity, we refer to the HOPE Defendants CCE
5 (d/b/a HOPE Services), Chad Caldaronello, DNM (d/b/a HAMP Services), Derek
6 Nelson, Brian Pacios, and Justin Moreira) collectively as "HOPE Services."

7 **B. The HOPE Defendants' Aliases**

8 Importantly, the individual HOPE Defendants use aliases to hide their
9 identities.¹¹ *See infra* at 27 n.84, 29 n.89, 30 n.97, 100 n.31 (discussing evidence
10 establishing that the HOPE Defendants use aliases). Below, except where the
11 context requires otherwise, we refer to the HOPE Defendants by their real names.
12

13
14
15 locations through at least February. Ostrum ¶274. Furthermore, they attempted to
16 use a CCE credit card to pay for phone service at the new (DNM) location, Ostrum
17 ¶275:141 at 2697 (the transaction failed, and the HOPE Defendants ultimately used
18 another card, *see id.*), and they gave CCE's address to the phone company, *id.*
19 1608. Additionally, the HOPE Defendants used a CCE card to pay for insurance
20 DNM needed to lease new offices. Ostrum ¶275:142 at 3000.

21 ¹⁰ For instance, CCE regularly paid lead generator NJL. George ¶34;
22 Ostrum ¶171:97 at 973-75. DNM now regularly pays NJL. George ¶34.
23 Likewise, CCE regularly paid "Automated Mailers," George ¶29, apparently to
24 mail the marketing that induces calls. DNM now regularly pays Automated
25 Mailers, George ¶29. Furthermore, CCE regularly paid The Loan Post, George
26 ¶38, which sells loan modification software, Ostrum ¶172:98 at 977. Now, DNM
27 pays The Loan Post. George ¶38. Finally, both CCE and DNM use the same
28 telephone service provider. Ostrum ¶201:116 at 1600, 1605; George ¶36.

¹¹ Chad Cardaronello uses "Chad Carlson" and "Chad Johnson." Brian
Pacios uses "Brian Barry" and "Brian Kelly." Justin Moreira uses Justin Mason,
Smith, and King. Derek Nelson uses Dereck Wilson. *See infra* at 27-31. Notably,
other HOPE Services' employees also use aliases that appear in documents
attached hereto. For instance, Alan Chance uses "Alan Pearson." Ostrum ¶158.
Chance's fiancé, Olivia MacRae, works for HOPE Services using "Olivia Brown."
Ostrum ¶165; *see also infra* at 7 n.21. Moreira's fiancé, Natalie Peters, works for
HOPE Services as "Natalie Martin" and "Natalie Moore." Ostrum ¶163. Alex
Martin uses "Alex Taylor." Ostrum ¶167. Finally, Michael Paquette uses "Mike
Richards" and "Mike Lewis." Ostrum ¶160.

C. HOPE Defendant Brian Pacios' Contempt

Pacios is in contempt of an earlier order this Court issued. Specifically, the Commission sued Sameer Lakhany and other parties, alleging that they perpetrated foreclosure relief scams (“the *Lakhany Action*”).¹² The Court issued a TRO against the defendants and appointed a Temporary Receiver.¹³ When the Temporary Receiver arrived at an office associated with Lakhany, he found a telemarketing “boiler room” that Pacios managed.¹⁴ The FTC subsequently amended its complaint to include Pacios.¹⁵ In a 2013 Final Order resolving the action against Pacios, the Court permanently enjoined him from selling any sort of mortgage relief services.¹⁶ After this motion becomes public, the Commission will move to hold Pacios in contempt. Cohen ¶15:10 (attaching draft contempt motion).

FACTS

Defendants operate a loan modification scam in three phases. First, HOPE Services preliminarily approves the homeowner for a loan modification. Second, it represents that, if the homeowner makes three trial mortgage payments into his lender’s trust account, he will receive a loan modification. Third, Advocacy Department helps ensure that victims continue making these payments. However, overwhelming evidence establishes that victims do not receive the promised

¹² See Complaint, *FTC v. Lakhany*, No. 8:12-cv-337-CJC (C.D. Cal. Mar. 5, 2012).

¹³ See TRO, *FTC v. Lakhany*, No. 8:12-cv-337-CJC (C.D. Cal. Mar. 7, 2012).

¹⁴ See Preliminary Report of Temporary Receiver, *FTC v. Lakhany*, No. 8:12-cv-337-CJC (C.D. Cal. Mar. 19, 2012) at 7.

¹⁵ See First Amended Complaint, *FTC v. Lakhany*, No. 8:12-cv-337-CJC (C.D. Cal. Mar. 22, 2012).

¹⁶ See Final Order, *FTC v. Lakhany*, No. 8:12-cv-337-CJC (C.D. Cal. Mar. 22, 2012) at 8-9. The Court also entered a \$1.75 million judgment against Pacios, for his victims’ benefit, *see id.* at 13, of which Pacios still owes approximately \$1.2 million. *See Rivers* ¶5.

1 modifications, their lenders never receive their payments, and homeowners do not
2 receive refunds. Instead, Defendants simply steal the money.

3 **A. The Scam**

4 **1. Phase One (HOPE Services)**

5 In the first phase, HOPE Services generally sends mailers to induce victims
6 to call an intake representative.¹⁷ These mailers imply that HOPE Services is
7 affiliated with, or approved by, the government.¹⁸ HOPE Services claims that the
8 homeowner may be eligible for a new “government” loan program, and they
9 should “[c]all . . . to see how much the government sponsored loan program can
10 save you[.]” *See, e.g.*, Wofford ¶3:1. Consumers regularly report that this implied
11 government association helped induced them to call HOPE Services. *See, e.g.*,
12 Clemens ¶2.

13 When the homeowner calls, an intake representative explains that HOPE
14 Services¹⁹ is a “nonprofit”²⁰ that “works directly” with three government agencies²¹

15
16 ¹⁷ Some victims report receiving unsolicited calls. Ostrum ¶16.

17 ¹⁸ *See, e.g.* Cannizzo ¶3:1; Young ¶3:1; Wofford ¶3:1. The mailers vary
18 slightly; however, one typical format contains what looks like an official
19 government seal, similar to the one found on the back of the one-dollar bill. *See,*
20 *e.g.*, Wofford ¶3:1 at 11.

21 ¹⁹ As discussed *supra* at 3-5, HOPE Services became HAMP Services in late
22 2014. Significantly, legitimate government programs use both “HOPE” and
23 “HAMP.” For instance, the government’s MHA program website references the
24 word “HOPE,” encouraging distressed homeowners to call the “Homeowner’s
25 HOPE™ Hotline,” which is 888-995-HOPE. Ostrum ¶181:105 at 1061. “HAMP”
26 is the acronym for the “Home Affordable Modification Program,” which the MHA
27 website discusses. Ostrum ¶181:105 at 1061. Based on the impression HOPE
28 Services creates, consumers often believe it is associated with the government.
Cannizzo ¶6; Young ¶4; Clemens ¶4; Robinson ¶3; Harris ¶4; Ferriero ¶3; Huggins
¶3; Martin ¶3:1 at 5.

²⁰ Cannizzo ¶6; Harris ¶4; Clemens ¶6; Robinson ¶3; Martin ¶3. Of course,
neither DNM nor CCE is a nonprofit. Ostrum ¶233:125 at 2445-2447; Ostrum
¶235:126 at 2462. Nor does either entity function as one.

²¹ Ostrum ¶47:7 at 138; *see also infra* at 19-21 (regarding the undercover
call). She later reiterated that HOPE Services “works directly” with “government
agencies.” Ostrum ¶47:7 at 138. As noted *supra* at 6 n.11, Olivia MacRae uses

1 offering programs for homeowners whose “lender[s] [aren’t] giving them any
 2 help.”²² Specifically, if the caller qualifies, HOPE Services claims it will submit
 3 his loan modification applications to MHA, HUD, and the Neighborhood
 4 Assistance Corporation of America (“NACA”). Ostrum ¶47:7 at 138. The
 5 representative emphasizes that HOPE Services routinely works with the
 6 homeowner’s lender or has special connections.²³ Purportedly due to the nature of
 7 these government programs²⁴ and HOPE Services’ expertise, HOPE Services
 8 claims a high success rate.²⁵

9 After the initial pitch, the representative provides “good news”— the
 10 homeowner has “met the initial guidelines.” Ostrum ¶49:7 at 148. Accordingly,
 11 the representative provides him with a supposed “eligibility number.”²⁶ She then
 12 requests documentation relevant to a genuine loan modification, such as mortgage
 13 statements, payment records, foreclosure paperwork, paystubs, and utility bills.
 14 Ostrum ¶49:7 at 148; Ostrum ¶56:13 at 208. The back-and-forth regarding the
 15 necessary documentation occurs over several calls, during which the representative
 16 develops a rapport and trust with the consumer. Ostrum ¶45:7; *id.* ¶53:10; *id.*
 17 ¶55:12. Once the consumer provides sufficient information, HOPE Services
 18 informs him that a “mortgage counselor” will take charge of his file. Ostrum
 19 ¶53:10 at 184.

20
 21 “Olivia Brown.”

22 ²² Ostrum ¶46:7 at 137. Notably, the mailers reference the homeowner’s
 23 lender by name and encourage the homeowner to call if the lender has already
 “[d]eclined modification[.]” Cannizzo ¶3:1 at 7.

24 ²³ Cannizzo ¶7; Clemens ¶6; Monrreal ¶4.

25 ²⁴ Caldaronello explained that HOPE Services goes “through a government
 26 channel that offer[s] . . . better programs than what a bank will offer initially.”
 Ostrum ¶265:132 at 2634.

27 ²⁵ *See also* Clemens ¶6; Monrreal ¶4.

28 ²⁶ Wofford ¶6 (“[Pacios] said that if I got an eligibility number, than that
 meant I was going to get a loan modification.”).

1 **2. Phase Two (HOPE Services)**

2 **a. The “Counselor” Reiterates Deceptive Claims.**

3 In this phase, the homeowner and the purported HOPE Services mortgage
4 counselor speak repeatedly over roughly a week. During this period, the
5 “counselor” obtains additional financial information²⁷ and sometimes a “hardship
6 letter” the homeowner prepares. Ostrum ¶63:20 at 249; *id.* ¶56:13 at 208. The
7 representative also uses mortgage jargon that distressed homeowners likely have
8 heard before, lending credence to the charade. Ostrum ¶73:28 at 318. Notably, the
9 “counselor” continues to reference “government” programs and directs victims to
10 their websites. Ostrum ¶56:13 at 200. Additionally, he stresses his expertise. In
11 fact, one counselor (Alan Chance)²⁸ falsely told an FTC investigator **nine times**
12 that he used to work at ██████████.²⁹ Next, the counselor discourages the
13 victim from involving anyone else (such as attorneys or lender representatives).
14 Ostrum ¶68:23 at 280-281; Ostrum ¶63:20 at 254. Finally, he confirms that HOPE
15 Services has submitted the homeowner’s application to the three agencies (MHA,
16 HUD and NACA). Ostrum ¶60:17 at 233.

17 **b. The Victim Is “Approved.”**

18 A few days later, HOPE Services calls with good news: MHA has approved
19 the homeowner’s modification request and provided specific terms to HOPE
20 Services. Ostrum ¶75:30 at 344-49. The counselor then relays the terms, which
21 are always very favorable.³⁰ For our undercover investigator, HOPE Services

22 _____
23 ²⁷ Ostrum ¶56:13 at 208; *see also* Cannizzo ¶9; Monrreal ¶5; Harris ¶3;
24 Young ¶4; Wofford ¶6.

25 ²⁸ As noted *supra* at 6 n.11, Alan Chance uses “Alan Pearson.”

26 ²⁹ Ostrum ¶56:13 at 206; *id.* at 204; *id.* ¶75:30 at 345; *id.* at 360; *id.* at 377;
27 *id.* ¶63:20 at 251; *id.* ¶66:23 at 283; *id.* ¶73:28 at 318; *id.* at 328. ██████████
28 has, or had, no such employee. Ostrum ¶276; *see also id.* ¶154:82 at 938.

29 ³⁰ Cannizzo ¶¶11-13 (“[HOPE Services] told me that Nationstar had agreed
30 to modify my mortgage to a fixed rate of 2.85% for 30 years. . . . To finalize my
loan modification, [HOPE Services] told me that I needed to sign some paperwork

1 claimed to have obtained an MHA proposal with a substantially reduced interest
 2 rate (3.125% from 5.75%), Ostrum ¶75:30 at 345; *id.* ¶45:7 at 145, and
 3 significantly lowered monthly payments (\$1,147.61 from \$1,487.78), *id.* ¶75:30 at
 4 346; *id.* ¶45:7 at 144-45. The terms also involved a “reinstatement fee”
 5 (\$1,759.06). *Id.* ¶75:30 at 346-347; *id.* ¶79:30 at 347. HOPE Services then
 6 explained that this “reinstatement fee” was due on February 6, with her monthly
 7 trial mortgage payments of \$1,487.78 due on March 6, April 6, and May 6.³¹
 8 Ostrum ¶79:30 at 374. The counselor next stated that HOPE Services would send
 9 MHA paperwork overnight, which the homeowner should sign and return as soon
 10 as possible. Ostrum ¶76:30 at 348, 368.

11 Additionally, the counselor emphasizes several critical points. First, and
 12 most important, the lender can still foreclose until the homeowner signs the
 13 paperwork and makes the first payment. Ostrum ¶67:23 at 276. Thus, victims are
 14 encouraged to make the first payment promptly to halt foreclosure, *see, e.g.*,
 15 Wofford ¶16, and to make all trial payments because doing so secures the proposed
 16 modification.³² Second, the counselor explains that the trial payments must go to
 17

18 and submit three monthly trial payments of \$2,231.07. After making these three
 19 payments, my loan modification would be final.”); Wofford ¶11 (“[Pacios] told me
 20 that the lender approved my modification at a 2% fixed interest rate with a 40-year
 21 term.”).

21 ³¹ Significantly, legitimate government programs use a trial payment
 22 process, so homeowners researching loan modification will not necessarily notice
 23 anything suspicious about what HOPE Services proposes. *See*
 24 www.makinghomeaffordable.gov/learn-more/trial-period/Pages/default.aspx
 25 (viewed Apr. 11, 2015) (regarding trial payments).

24 ³² Ostrum ¶75:30 at 356 (“[B]y making those payments on time, accepting
 25 the terms, signing the documents that enables you to receive the modification 90
 26 [to 120] days from now as a permanent one[.]”). Additionally, in a recorded call, a
 27 consumer asked Pacios: “So if I make the payments, I’m guaranteed to be
 28 approved for . . . [the] modification[.]” Pacios responded: “Oh, absolutely. And
 that’s why you’re making your trial payments in the beginning and reinstating the
 loan[.]” Ostrum ¶261:131 at 2617. In fact, after our investigator expressed
 concern that she could “still lose [her] house” because the modification was not
 finished, Chance emphatically denied it. Ostrum ¶75:30 at 351-52. Indeed, on yet

1 the lender's trust account. *See, e.g.,* Robinson ¶4; Cannizzo ¶14. In the
 2 undercover investigator's case, for example, Chance instructed her to make
 3 payments "to ██████████'s trust account."³³ HOPE Services claims this is
 4 "for [the homeowner's] protection" against unscrupulous lenders that might accept
 5 the trial payments, but renege on the promised modification.³⁴ As HOPE Services
 6 also explains, "the trust account is called Trial Payment Processing."³⁵ Finally, the
 7 counselor provides a purported "banking allocation number." Ostrum ¶79:30 at
 8 366.

9 **c. The HOPE Defendants Send MHA Paperwork.**

10 Next, HOPE Services overnights a package of paperwork to the victim. This
 11 package includes part of a genuine MHA application³⁶ that HOPE Services has

13 another call, our investigator asked Chance: "[D]o have a modification now—or I
 14 don't?" Chance responded: "**Yes, you do, yeah.** That's what you—yeah, that's
 15 what you signed and made a payment for, **that's correct.**" Ostrum ¶89:38 at 446-
 16 447 (emphasis added); *see also infra* at 35 (discussing the Advocacy Department's
 position—inconsistent with HOPE Services—that HOPE Services' "clients" still
 need to finalize their modifications).

17 ³³ Ostrum ¶76:30 at 357. As HOPE Defendant Caldaronello explained with
 18 respect to one consumer, "[e]very payment that he made does go into the trust
 account." Ostrum ¶263:132 at 2631.

19 ³⁴ Ostrum ¶77:30 at 358. HOPE Services "counselor" Chance later
 20 reiterated: "[T]he trust account's just there for your protection so the bank can't
 cancel you out for the program and then take the money and run[.]" Ostrum
 ¶77:30 at 360.

21 ³⁵ Ostrum ¶79:30 at 365; Ferriero ¶7. HOPE Services also used "Trust
 22 Payment Center." *See, e.g.,* Robinson ¶7; Harris ¶7; Wells Fargo ¶6:12-14;
 Ostrum ¶104:50 at 573, or "Retention Divisions," Ostrum ¶105:51 at 576; Huggins
 23 ¶5. "Retention Divisions" apparently worked because lenders sometimes have
 "Home Retention" departments that work with distressed homeowners.

24 ³⁶ Ostrum ¶80:31 at 384-89. Anyone can download the paperwork from the
 25 MHA website. *See id.* ¶272:137 at 2675-81. Notably, HOPE Services omits the
 26 form's final page. *Compare* Robinson ¶6:1 at 5-11 *with* Ostrum ¶272:137 at 2675-
 27 81. That page warns consumers to "BEWARE OF FORECLOSURE RESCUE
 SCAMS," and "never make your mortgage payments to anyone other than your
 28 mortgage company without their approval." Ostrum ¶272:137 at 2681. One
 consumer noticed the discrepancy and, consequently, did not make payments. *See*
 Cannizzo ¶¶18-20.

1 pre-filled-in with financial information the victims provided, so they simply need
 2 to sign and return it.³⁷ The HOPE Services paperwork also includes
 3 correspondence summarizing the new loan terms and a clear payment schedule.
 4 *Id.* Critically, HOPE Services instructs the homeowner to send “certified funds
 5 only”—either a cashier’s check or money order³⁸—by “FedEx or UPS Next Day
 6 Air”³⁹ to a California address.⁴⁰

7 Most important, HOPE Services instructs homeowners to make their draft
 8 payable to “[Fictitious Business Name]/[Consumer’s Lender].”⁴¹ For instance,
 9 HOPE Services instructed a Wells Fargo mortgagor to make her checks payable to
 10 “Trust Payment Center/Wells Fargo.” Clemens 1st ¶9:2 at 7. CCE registered the
 11 “Trust Payment Center” FBN, and DNM registered the “Trust Payment
 12 Processing” FBN. *See supra* at 4 n.4, 4 n.5. In this way, HOPE Services implies
 13 that the payment goes to the lender, but HOPE Services can negotiate it.⁴²

15 ³⁷ Robinson ¶6:1 at 5-10; Huggins ¶5:2 at 7-12; Ostrum ¶80:31 at 384-89.
 16 Sometimes, HOPE Services does not pre-fill the forms, but instead instructs the
 17 victim to return them blank, but signed (Advocacy Department will complete them
 18 later). Wofford ¶16 (“[Pacios] told me that once they received my paperwork,
 19 someone named Denny Lake in the Advocacy Department would interview me.
 [Pacios] also told me not to worry about all of the blank parts . . . because Denny
 would fill those out for me based on his interview with me; all I needed to do was
 sign my name to the documents.”); *see also infra* at 33-34 (Lake’s role).

20 ³⁸ Ostrum ¶80:31 at 382. These are more difficult for consumers to trace
 21 than personal checks. Likewise, stop payment orders on cashier’s checks or
 money orders are difficult or impossible.

22 ³⁹ *Id.* This reduces the likelihood that the Postal Inspector becomes
 23 involved.

24 ⁴⁰ *See, e.g.,* Young ¶2:2 at 5.

25 ⁴¹ *See, e.g.,* Cannizzo ¶15:2 at 12; Young ¶8:4 at 11.

26 ⁴² Under U.C.C. § 3-110(d), many banks will cash a draft payable to “Trust
 Payment Center/Wells Fargo” with only a signature from the FBN’s registrant.
 27 *See, e.g.,* Cal. Code § 3110(d) (“If an instrument payable to two or more persons
 alternatively is ambiguous as to whether it is payable to the persons alternatively,
 the instrument is payable to the persons alternatively.”); *Highland Tank & Mfg.*
 28 *Co. v. First Union Nat’l Bank*, No. CV00596531, 2000 WL 33158611, *10 (Conn.
 Super. Ct. Nov. 3, 2000) (analyzing check payable to “Bartis Equipment/Highland

1 Our undercover investigator recently received correspondence from HOPE
 2 Services that is largely the same. It begins: “Enclosed is the proposed
 3 modification agreement through the Making Homes Affordable program.” Ostrum
 4 ¶80:31 at 382; Martin ¶6:2 at 6. Thus, this version also reinforces HOPE Services’
 5 message—there is an “agreement,” and if the homeowner makes the payments, he
 6 will receive a loan modification. The correspondence directs our investigator to
 7 make checks payable to “Trial Payment Processing,” and identifies her apparent
 8 lender, [REDACTED], as the loan’s servicer. Ostrum ¶80:31 at 382.

9 3. Phase Three (Advocacy Department)

10 After congratulating the victim on his purported MHA approval, HOPE
 11 Services claims that Advocacy Department will begin working with him.
 12 Defendant Lake controls Advocacy Department⁴³ (and does identical business as
 13 “JD United,”⁴⁴ “U.S. Crush,” and “Advocacy Agency”).⁴⁵ Lake identifies himself

14
 15 Tank” under U.C.C. § 3.110(d)).

16 ⁴³ Lake previously served as “ADR Director” for the Kassas Law Firm
 17 (“Kassas”). *See* Ostrum ¶129:62. A state court placed Kassas into a receivership
 18 in 2011 after the Attorney General produced substantial evidence that it was
 19 illegally marketing so-called “mass joinder” suits to distressed homeowners. *See*
 20 *id.* Additionally, Lake is currently the “Senior Legal Analyst” for The Law Offices
 21 of Frank Barilla. *See* Ostrum ¶179:104 at 1054. There, he runs the firm’s
 22 “Consumer Advocacy Department.” *See id.* Last year, the California Bar
 23 suspended Barilla for involvement with loan modification-related fraud. Ostrum
 24 ¶178:104 at 1055-56. Finally, Lake is also associated with another pseudo-legal
 25 entity, Colleagues in Law. Colleagues in Law uses the same location as Advocacy
 26 Department and sells a foreclosure rescue program “developed by [its] Advocacy
 27 Department lead Case Analyst.” Penttila ¶7:6 at 79; *id.* ¶9:8 at 82; Ostrum
 28 ¶177:103 at 1026. In a Colleagues in Law podcast, Lake identifies himself as the
 “Program Director” and asserts that “if we can’t win [against your lender], no one
 can.” Ostrum ¶177:103 at 1040. Colleagues in Law has a second Orange County
 location in Costa Mesa, Ostrum ¶177:103 at 103, in the same office complex as
 N2X Media, Inc., Ostrum ¶271:136 at 2673; Ostrum ¶171:97 (Nicholas Long
 operates both N2X Media and NJL Marketing), the lead generator HOPE Services
 uses, *see supra* at 5 n.10.

⁴⁴ Lake registered “JD United” as an FBN for himself, and also for “US
 CRUSH.” Ostrum ¶103:49 at 572; *id.* ¶106:52 at 579. U.S. Crush is Lake’s punk
 band. Ostrum ¶151:79 at 914. When spotted outside Advocacy Department’s
 offices, Lake’s vehicle had a “US CRUSH” bumper-sticker. Stahl ¶21:11 at 19.

1 to consumers as a “Sr. Case Analyst,” and, in that capacity, he directs other
2 Advocacy Department employees. Harris ¶11:4 at 22; *id.* ¶21:12 at 53.

3 As described below, the Advocacy Department performs three critical
4 functions: (1) handling all communications with the lender on the consumer’s
5 behalf; (2) reassuring consumers that their modification is on track; and (3) filing
6 worthless complaints with government agencies or lenders. Most important, these
7 actions cause the consumer to continue to making purported trial mortgage
8 payments rather than discovering the fraud.

9 **a. Advocacy Department Handles All Communications**
10 **With Lenders.**

11 Once the consumer makes his first payment, both HOPE Services and
12 Advocacy Department instruct him that Advocacy Department will handle all
13 communication with the lender.⁴⁶ Advocacy Department describes the purpose of
14 these communications as helping consumers either improve upon their existing
15

16 Notably, JD United registered the domain name (“advocacydepartment.org”) from
17 which Advocacy Department sends emails. Ostrum ¶174:100 at 1004-06. In fact,
18 in a lawsuit one victim filed against HOPE Services, Advocacy Department, and
19 others, Lake filed a sworn answer on behalf of Advocacy Department and JD
20 United. Ostrum ¶125:60 at 686-96.

21 ⁴⁵ Ostrum ¶¶ 76:30 at 349, 103:49 at 572; 106:52 at 579-81; Clemens 1st
22 ¶12:3 at 16. We refer to Lake’s DBAs collectively as “Advocacy Department,”
23 which is the name victims most commonly report. Ostrum ¶20. In the FTC
24 undercover call, HOPE Services referred our investigator to the “Advocacy
25 Agency.” *See, e.g.*, Ostrum ¶76:30 at 349.

26 ⁴⁶ Ostrum ¶78:30 at 361 (Advocacy Department will be “handling all
27 communication” with your lender.”); Wofford ¶14; *see also* Young ¶9 (“The
28 Advocacy Department responded to my concerns about the modification by telling
me that they were speaking to my lender, and that I shouldn’t worry as they had
completed many modifications.”). In fact, HOPE Services “loan counselor”
Chance explained to our investigator that Advocacy Department employee
Malcolm Turner “will handle all communication [with ██████████].” Turner
is an Advocacy Department employee, Wilson ¶ 6, who worked at Kassas with
Lake, *see supra* at 13 n.43. Furthermore, in the *Elias* Action, *see infra* at 36, the
plaintiff named Turner individually (along with other Lake associates), and Turner
submitted a sworn answer along with Lake. Ostrum ¶125:60 at 686-96.

1 modification or finalize it.⁴⁷ In fact, by interposing itself between homeowners and
 2 their lenders, Advocacy Department filters information that would expose HOPE
 3 Services' fraud.⁴⁸

4 Advocacy Department begins by calling consumers "on behalf of" HOPE
 5 Services. Ostrum ¶85:36 at 421. Lake also sends consumers a standard initial
 6 email⁴⁹ emphasizing that the consumer should forward lender communications "to
 7 [him] FIRST"⁵⁰ before responding so he can "interpret" them.⁵¹ Indeed, Advocacy
 8 Department obtains "third party authorizations" from consumers to ensure that it
 9 can communicate directly with lenders. Clemens ¶12:3 at 16.

10 _____
 11
 12 ⁴⁷ Ostrum ¶ (claiming that Advocacy Department "work[s] together [with
 13 the lender] to finalize the modification" (as opposed to enhancing an already-final
 14 modification). For instance, HOPE Services initially informed our investigator
 15 that Advocacy Department's work was "sugar on top" of the existing modification.
 16 Ostrum ¶76:30 at 351. Two weeks later, however, HOPE Services told our
 17 investigator that Advocacy Department was "there to finalize your modification
 18 terms." Ostrum ¶89:38 at 446. In fact, in an undercover call from an agent posing
 19 as a homeowner's friend, HOPE Defendant Caldaronello asserted that "the [lender]
 20 and the Advocacy Department work together to finalize the modification." Ostrum
 21 ¶262:132 at 2626.

18 ⁴⁸ To diffuse any skepticism that might arise if she did speak with her lender,
 19 HOPE Services "counselor" Chance emphasized that "Malcolm [Turner of
 20 Advocacy Department] is speaking with the department at Bank of America that
 21 you do not speak to, and visa-versa And the left hand does not talk to the
 22 right hand, okay?" Ostrum ¶89:38 at 446. In fact, Chance later conveyed a
 23 "reminder" from Advocacy Department that, if she heard from Bank of America,
 24 "just write down their information or forward their information over to us[.]"
 25 Ostrum ¶262:132 at 2696.

22 ⁴⁹ See, e.g., Wofford ¶20:7 at 46 (Lake email); Harris ¶12:5 at 31-33;
 23 Pentilla ¶11:10 at 192-94 (same email from another Advocacy Department
 24 employee).

24 ⁵⁰ See, e.g., Wofford ¶20:7 at 46 (Lake's capitalization); Harris ¶12:5 at 32.
 25 Not coincidentally, this violates the MARS Rule, which prohibits Lake from
 26 representing "expressly or by implication" that consumers "cannot or should not
 27 contact or communicate with his or her lender[.]" 12 C.F.R. § 1015.3(a).

27 ⁵¹ Similarly, when our investigator asked who should respond to "voicemails
 28 from [REDACTED]" a Lake employee told her: "[W]e're going to take care of
 everything from now on. Whatever call[s] you get, whatever documents you
 receive, they will all come to our office." Ostrum ¶86:37 at 435.

1 these letters would accomplish anything at all⁵⁶—let alone somehow finalize a
2 modification that never existed.⁵⁷

3 **4. Lake Works Closely With HOPE Services.**

4 Lake works closely with HOPE Services,⁵⁸ which pays him more than
5 \$22,000 per month.⁵⁹ Additionally, both HOPE Services and Lake share access to
6 homeowners' files⁶⁰ through The Loan Post, a cloud-based application designed to
7 support MARS providers.⁶¹ The application enables employees at one location
8 (such as Advocacy Department) to place information in a client file visible at
9 another location (such as HOPE Services), or vice-versa.⁶² This close relationship
10

11 homeowner's file for "modification, special forbearance, partial claim and any/all
12 other programs." Clemens 3d ¶5:3 at 16.

13 ⁵⁵ "Too [sic] make matters worse we just received correspondence that our
14 mortgage payment was going to be increased because we don't have hazard
15 insurance. ARE YOU FRICKIN KIDDING ME???" Harris ¶11:4 at 24.

16 ⁵⁶ *See, e.g.*, Harris ¶25 ("None of the letters Denny Lake wrote or
17 instructions he gave had any effect.").

18 ⁵⁷ The FTC is aware of one victim who obtained a modification, but not the
19 one HOPE Services promised. In that case, Advocacy Department provided
20 minimal assistance. Robinson ¶10. Additionally, he could not have received the
21 one HOPE Services promised because the application he returned to HOPE
22 Services never reached his lender, Wells Fargo. *Id.* ¶6; Wells Fargo ¶14. Most
23 important, the homeowner lost the \$8,050.05 in trial mortgage payments made
24 payable to "Trust Payment Center/Wells Fargo." Robinson ¶7; Wells Fargo ¶14.

25 ⁵⁸ In fact, consumers sometimes misidentify him as a "HOPE Services
26 employee." *See* Monrreal ¶7.

27 ⁵⁹ George ¶28. The checks are payable to a Lake d/b/a, JD United. *See*
28 *supra* at 14 n.45.

⁶⁰ *See* Ostrum ¶76:30 at 353, 357.

⁶¹ HOPE Services makes regular payments to The Loan Post, which markets
its software to the loan modification industry generally and "3d party advocates"
specifically. Ostrum ¶172:98 at 988.

⁶² Ostrum ¶172:98 at 980. In fact, during the undercover call in which HOPE
Services' "counselor" Chance announced that our investigator would receive a
modification, Chance was reading to her off a screen. *See* Ostrum ¶75:30 at 354
("I'm just waiting for my system to go the next page here."); *id.* ¶75:30 at 356
("I'm sorry, I was just switching over here to the next screen.").

1 is corroborated by the fact that there were ninety-two calls between Lake's
2 personal phone and Pacios' personal phone from March through November 2014.⁶³

3 Most important, the FTC's undercover call established that HOPE Services
4 receives information regarding a homeowner's proposed trial payments from
5 Advocacy Department before HOPE Services relays that information to the
6 homeowner. Specifically, HOPE Services identified Malcolm Turner (an
7 Advocacy Department employee) as the person who "has been responsible . . . for
8 all documents with the bank, the agencies, and everything."⁶⁴ According to
9 Turner, whatever agency had supposedly approved our investigator's application
10 required that she make payments to [REDACTED]'s trust account. Ostrum
11 ¶76:30 at 357. Thus, HOPE Services attributed the fraud's key enabling feature
12 (payments to a supposed lender trust account) to an Advocacy Department
13 employee.

14 **5. HOPE Services Refuses Refund Requests.**

15 As explained *supra* at 10-11, HOPE Services informs homeowners that it
16 deposits their payments into a "trust account" to prevent the lender from taking
17 them without accepting the modification. Consumers understood that their
18 payments would reach their lender or be refunded⁶⁵ (which makes sense, because
19 no consumer would send trial mortgage payments otherwise). Accordingly, when
20 victims realize that their lenders have not received their payments, they usually
21

22
23
24
25 ⁶³ Ostrum ¶217:120. Of those, fifty-two lasted more than thirty seconds. *Id.*

26 ⁶⁴ Ostrum ¶76:30 at 352. In fact, before our investigator spoke with
27 Advocacy Department, HOPE Services also told her that Advocacy Department
28 had already determined she should file complaints with the "Attorney General,
[the] banking commission . . . and the State Senate[.]" Ostrum ¶76:30 at 349.

⁶⁵ Clemens ¶6; Cannizzo ¶15; Harris ¶6.

1 demand refunds. However, HOPE Services almost never refunds victims'
2 money,⁶⁶ and usually it simply stops taking their calls.⁶⁷

3 In our investigator's case, after she made her reinstatement payment, she
4 informed HOPE Services that her husband's parents unexpectedly paid their
5 arrearage and resolved the issues with their lender. Ostrum ¶¶93:42 at 510. HOPE
6 Services' "counselor" responded that this development "sucks." Ostrum ¶¶93:42 at
7 513. However, he did promise the lender would release her payment from the trust
8 following an elaborate process necessary to avoid "big trouble" with "the banking
9 commission." Ostrum ¶¶96:44 at 541. Later, Pacios assured her that "the funds
10 would be sent back out [to her] by certified mail and certified funds as they're
11 received." Ostrum ¶¶97:45 at 553. Suffice it to say, the refund never came.
12 Ostrum ¶¶98.

13 **B. Evidence of Falsity**

14 Four lines of evidence each establish that HOPE Services is a fraud: (1)
15 undercover work; (2) declarations from victims and their lenders; (3) a forensic
16 accounting; and (4) declarations from the Treasury Department, HUD, and NACA.

17 **1. Undercover Work**

18 Posing as Ann Garcia, the wife of a financially distressed [REDACTED]
19 mortgagor Carlos Garcia, an FTC investigator sought a loan modification from
20 HOPE Services.⁶⁸ Over the course of approximately two weeks, Ann Garcia had
21

22
23 ⁶⁶ Out of 432 victims, the FTC identified two who apparently obtained
24 refunds. Ostrum ¶¶25.

25 ⁶⁷ Clemens ¶¶20; Young ¶¶9; Harris ¶¶31.

26 ⁶⁸ Ostrum ¶¶43. DNM's owner Nelson gave the investigator HOPE Services'
27 number. Specifically, before posing as Ann Garcia, she posed as a representative
28 working for the company that currently leases a maildrop to DNM. She called the
number DNM owner Nelson provided, but reached Pacios' voicemail. Ostrum
¶¶37-38:1 at 87, 92. She then called another number for Nelson and left a message
that he returned. Ostrum ¶¶39:138 at 2685. The investigator told Nelson that the
mailbox lessor had received angry consumer complaints, and she asked him what

1 multiple calls with HOPE Services representatives who collected financial
 2 information from Garcia.⁶⁹ She also submitted various documents⁷⁰ including,
 3 among other things, her lender’s foreclosure notice, a mortgage statement, a bank
 4 record showing her last mortgage payment, her utility bill, and her husband’s
 5 paystubs. Ostrum ¶52:9 at 163-77; ¶54:11 at 187; ¶57:14 at 214-16.

6 As recounted above, HOPE Services approved Garcia’s request for a loan
 7 modification. *See supra* at 9-10. After Garcia received her paperwork from HOPE
 8 Services, she submitted an MHA application along with her “reinstatement fee”—
 9 \$1,759.06 in four money orders sent overnight via FedEx and payable to “Trial
 10 Payment Processing” (as HOPE Services directed).⁷¹ The money orders cleared
 11 the next day and bank surveillance video shows Cortney Gonsalves (Pacios’
 12 girlfriend) depositing them into a DNM account.⁷²

13 HOPE Services’ “approval” of Garcia’s loan modification is remarkable in
 14 multiple respects, including that Garcia’s purportedly mortgaged home (6012
 15 Windsong Way, Mr. Airy, MD) is actually an empty field.⁷³ Additionally, neither
 16 Ann nor Carlos Garcia is a real person. Ostrum ¶41. Carlos Garcia’s loan,
 17 mortgage statements, and foreclosure paperwork are all fake, as are his paystubs
 18 (in fact, the company where he supposedly works does not exist). *Id.* Indeed,
 19
 20

21
 22 number she should give to such consumers. Ostrum ¶40:3 at 109. Nelson
 23 provided a number belonging to DNM. *Id.* ¶40:3 at 110; *id.* 203:116 at 1608.

24 ⁶⁹ Ostrum ¶48:7 at 144-47; ¶66:23 at 269-73.

25 ⁷⁰ Ostrum ¶¶ 52:9 at 162-77; 54:11 at 187; 57:14 at 213-16; 64:21 at 257-58.

26 ⁷¹ Ostrum ¶80:31 at 381-92; Ostrum ¶81:32 at 393-406.

27 ⁷² Ostrum ¶84:35 at 414-17; Ostrum ¶219:94 at ATM Surveillance Videos
 28 Folder.

⁷³ Ostrum ¶41:4 at 114 (Google image). The address appeared on several
 documents Garcia submitted, including her mortgage statement, foreclosure notice,
 utility bill, and her husband’s paystubs. *See supra* at 20.

1 when Ann Garcia returned the MHA paperwork HOPE Services sent, she omitted
2 one of the pages (and HOPE Services never asked for the missing page). *Id.* ¶81.

3 Even the slightest actual underwriting would have revealed the ruse—no
4 genuine government program, lender, or MARS provider could have “approved”
5 Garcia for anything. In reality, the undercover effort proceeded unnoticed because
6 HOPE Services does not actually perform any legitimate work.

7 **2. Declarations of Victims and Their Lenders**

8 Additionally, victims and their lenders offer sworn testimony establishing
9 the fraud. Specifically, with consent from seven homeowners who made payments
10 to HOPE Services, the Commission contacted their lenders or servicers (Wells
11 Fargo, Selene Financial, BSI, and PNC). Each confirmed that it had not received
12 the victims’ payments⁷⁴ or any MHA applications during the period after the
13 victims returned their paperwork to HOPE Services.⁷⁵

14 In fact, Wells Fargo (the lender for four of the seven mortgagors) had
15 previously received copies of HOPE Services’ materials from one victim’s
16 attorney and warned the victim not to make further payments. Wells Fargo ¶¶4,
17 12-15; Hicks ¶4:1 at 1-2; *id.* ¶5:2 at 13. As a Wells Fargo Vice-President explains,
18 “based on [his] experience with loan modification scams, [his] experience in the
19 mortgage industry, and [his] work experience for Wells Fargo,” the HOPE
20 Services “loan modification offer was obviously a scam[.]” Wells Fargo ¶5. He
21 identifies several reasons: (1) HOPE Services’ communication directs the
22

23
24 ⁷⁴ Notably, the lenders also suffer losses, because they were entitled to the
25 mortgage payments their mortgagors attempted to make.

26 ⁷⁵ *Compare* Young ¶8:4 at 11 *with* Wells Fargo ¶12:3 at 16; Clemens ¶10
27 *with* Wells Fargo ¶15:6 at 20-22; *compare* Monreal ¶6:3 at 7 *with* Wells Fargo
28 ¶13:4 at 17; *compare* Robinson ¶7:2 at 13 and ¶9:4 at 16-17 *with* Wells Fargo
¶14:5 at 18-19; *compare* Harris ¶7:2 at 10 *with* Bliss ¶¶3-6:1-3 at 3-5; *compare*
Wilson ¶¶4-5:1 at B *with* Lachicotte ¶¶3-4:1 at 3-5; *compare* Wofford ¶15:5 at 29-
30 *with* Yeary ¶¶2-3:1-2 at 3-4 *and* Pue ¶2.

1 mortgagor “to remit payments to an address in Lake Forest, California” not
2 associated with Wells Fargo; (2) the fact that HOPE Services material directs
3 mortgagors to make payments payable to “Trust Payment Center/Wells Fargo,”
4 and “[r]equests that payments be sent to locations or parties not associated with
5 Wells Fargo are strong indicators of fraud”; (3) “[t]he specific terms of the loan
6 modification proposal are implausibly favorable, which also suggests fraud”; and
7 (4) the instruction “that payments be sent via methods other than the United States
8 Postal Service is atypical, as is the instruction that payments be sent via cashier’s
9 check or money order (as opposed to personal checks, which Wells Fargo accepts,
10 and against which stop payments are more easily applied).” *Id.* ¶¶5-6, 8-9.

11 Significantly, Wells Fargo also explains that the HOPE Services communication
12 “directs [the mortgagor] to remit a reinstatement fee immediately (and prior to the
13 apparent finalization of the loan modification), but Wells Fargo does not collect
14 reinstatement fees before a loan modification is finalized. Attempts to collect
15 improper advance fees also indicate fraud.” *Id.* ¶7.

16 **3. Forensic Accounting**

17 The HOPE Defendants’ own bank records also demonstrate the falsity of
18 their claims. The FTC assembled bank account records for CCE and DNM, into
19 which HOPE Services deposited approximately \$1.9 million worth of victims’
20 mortgage payments from approximately March 1, 2014 through this January.⁷⁶
21 There is no evidence that any material sum (let alone \$1.9 million) was transferred
22 to lenders, or to other accounts for which the Commission’s forensic accountant
23 lacks records.⁷⁷ In short, mortgage payments went from victims to HOPE
24

25
26 ⁷⁶ George ¶12. The financial records are replete with payments to the HOPE
27 Defendants, enormous cash withdrawals, travel expenses, and personal charges.
28 George ¶¶41-50.

⁷⁷ *Id.* ¶¶17-19. There are several payments to Capital One that appear to be
primarily credit card payments (totaling less than \$3,500). *Id.* ¶18. There are also

1 Services, but no payments went from HOPE Services to lenders. This is pure and
2 simple theft.

3 **4. Declarations of Treasury, HUD and NACA**

4 As discussed above, *see supra* at 8, HOPE Services claims to “work[]
5 directly with three government agencies”: “MHA,” “HUD,” and “NACA.”
6 Ostrum ¶47:7 at 138. Each organization’s testimony proves this claim is false.
7 Treasury operates the MHA website (MHA is “not an agency” at all, but a
8 “program administered by Treasury as part of the federal government’s larger
9 effort to aid distressed homeowners”). Treasury ¶12. Treasury reviewed HOPE
10 Services’ mailers and confirmed that it has “no relationship with whatever persons
11 or entities are distributing these materials.” *Id.* ¶8. Additionally, although HUD
12 approves certain housing counseling agencies, none of the HOPE Services entities
13 appears on HUD’s list of approved agencies in California.⁷⁸ HUD ¶¶4-5.

14 NACA is “not a government agency” at all, but a nonprofit “advocacy and
15 homeownership organization.” NACA ¶2. NACA does not “provide[] loan
16 modifications” itself. *Id.* ¶5. Although NACA helps homeowners obtain
17 modifications, it does not receive documentation from anyone other than “the
18 homeowner, the lender, or the lender’s servicer.” *Id.* ¶4. Additionally, it “has not
19 authorized any third party to use its name for any commercial purpose
20 whatsoever.” *Id.* ¶7. As NACA’s National Director put it, the use of NACA’s
21 name in a telemarketing scam is “grossly offensive.” *Id.* ¶8.

22
23 few payments to a bank, but two appear to be transfers to Gonsalves and Moreira,
24 and the third is less than \$6000. *Id.* ¶19.

25 ⁷⁸ HOPE Services also represents that it will submit loan modification
26 applications to government agencies. *See supra* at 8. However, both Treasury and
27 HUD confirm that loan modification applications are submitted to lenders directly,
28 not to government agencies. *See* Treasury ¶9 (“[A]pplications for assistance under
MHA programs are submitted to the homeowner’s financial institution.” Treasury
does not receive or review such applications.”); HUD ¶ 8 (“[A]ny representation is
false to the extent it conveys that loan modification applications are routinely
accepted by HUD.”).

ARGUMENT

I. The FTC Has a Strong Likelihood of Success on the Merits.

A. The Court Must Consider Both the Likelihood of Success on the Merits and the Balance of the Equities (Including the Public Interest at Stake).

1. The FTC Need Only Show “Some Chance of Probable Success.”

“Pursuant to 15 U.S.C. § 53(b), the district court is required (i) to weigh equities; and (ii) to consider the FTC’s likelihood of ultimate success before entering a preliminary injunction.” *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346 (9th Cir. 1989). Regarding the obligation to consider “the FTC’s likelihood of ultimate success,” *id.* at 346, in a statutory enforcement action, the Court “need[] only find some chance of probable success,” *Odessa Union*, 833 F.2d at 176. Significantly, the FTC meets this standard when a defendant is “attempting to continue [his] fraudulent activities through another business,” *see World Wide Factors*, 882 F.2d at 347, which is exactly what Pacios is doing here.

2. The Ninth Circuit Requires the Court to Weigh the Public Interest.

When balancing the equities, the Court must “balanc[e] . . . **both** public and private interests.” *Id.* at 347 (emphasis added). Critically, the public interest includes the ability to provide consumers “effective relief.” *Id.* In fact, when a “court balances the hardships of the public interest against a private interest, the public interest should receive greater weight.”⁷⁹ *Id.* (citation omitted); *see also FTC v. Warner Communic’ns, Inc.*, 742 F.2d 1156, 1165 (9th Cir. 1984) (“[P]ublic

⁷⁹ Notably, although courts have “considerable discretion” when fashioning preliminary relief, that discretion “is neither arbitrary nor unlimited; . . . a departure from [equitable] principles is justified only where the practicalities of the problem with which the court is faced require it.” *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963). There is nothing about the facts presented that justifies deviating from the equitable principles that govern the Court’s discretion when fashioning preliminary relief.

1 equities receive far greater weight.”). In a statutory enforcement action, “[h]arm to
2 the public interest” and “irreparable injury” are presumed. *World Wide Factors*,
3 882 F.2d at 347. Likewise, irreparable injury “must be presumed.”⁸⁰ *Id.* Finally,
4 the Court’s “weigh[ing] of the equities” must occur with respect “to each element
5 of preliminary relief sought[.]” *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6,
6 17 (7th Cir. 1992).

7 **B. Corporate Defendants CCE and DNM Are Liable.**

8 The evidence above establishes the FTC’s likelihood of success on the
9 merits. CCE and DNM are violating Section 5 of the FTC Act, which prohibits
10 “unfair or deceptive acts or practices[.]” 15 U.S.C. § 45(a)(1). A
11 misrepresentation violates Section 5 if it is material and likely to mislead
12 consumers acting reasonably under the circumstances. *FTC v. Gill*, 265 F.3d 944,
13 950 (9th Cir. 2001). HOPE Services’ basic claim—that consumers will obtain loan
14 modifications if they make trial mortgage payments—is a lie. The evidence
15 establishes, among other things: victims’ trial payments never reach their lenders,
16 their loan modification applications are not submitted to “agencies” as advertised,
17 and MHA (which does not exist) has not approved anyone for anything. *See supra*
18 at 23. Simply put, HOPE Services steals the payments. *See supra* at 19-23. The
19 promise of a loan modification is obviously material to a homeowner shopping for
20 a loan modification. Furthermore, HOPE Services’ claims are likely to mislead,
21 particularly because HOPE Services poses as a nonprofit, implies government
22 approval, and uses a process that mimics real programs. *See supra* at 10 n. 31.
23 Accordingly, HOPE Services is violating the FTC Act.

24
25
26 ⁸⁰ *See also United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172,
27 175 (9th Cir. 1987) (“No specific or immediate showing of the precise way in
28 which the violation of the law will result in public harm is required.”); *Am. Fruit*
Growers v. United States, 105 F.2d 722, 725 (9th Cir. 1939) (finding the absence
of facts “show[ing] irreparable injury” irrelevant because, under the statutory
scheme, Congress concluded that a violation “would cause irreparable injury”).

1 These same misrepresentations violate both the TSR and the MARS Rule.
2 *See* 16 C.F.R. Part 310; 12 C.F.R. § 1015. The TSR prohibits deceptive
3 telemarketing acts and practices. 16 C.F.R. § 310.33. The MARS Rule prohibits
4 certain deceptive practices and requires providers to make certain disclosures and
5 prohibits certain representations. *See* 12 C.F.R. §§ 1015.3-1015.4. HOPE
6 Services violates numerous additional TSR and MARS Rule anti-fraud provisions,
7 *see* 16 C.F.R. § 310.3; 12 C.F.R. § 1015.3, including the MARS Rule’s advance fee
8 ban, *see id.* at 12 C.F.R. § 1015.5(a).

9 **C. Corporate Defendants CCE and DNM Are a Common Enterprise.**

10 To determine whether a common enterprise exists, “the pattern and frame-
11 work of the whole enterprise must be taken into consideration.” *Delaware Watch*
12 *Co. v. FTC*, 332 F.2d 745, 746 (2nd Cir. 1964) (quotation omitted), *cited by FTC v.*
13 *J.K. Pub’s, Inc.*, 99 F. Supp. 2d 1176, 1201-02 (C.D. Cal. 2000). Here, the
14 “pattern and framework” reveal that CCE and DNM are effectively the same
15 business. Although almost everything superficial changed when the HOPE
16 Defendants transitioned from CCE (d/b/a HOPE Services) to DNM (d/b/a HAMP
17 Services) (including locations, mail drops, FBNs, and aliases), nothing important
18 changed: the people and the scam remained the same.⁸¹ *See supra* at 3-5; *see also*
19 *FTC v. U.S. Oil & Gas Corp.*, No. 83-1702, 1987 U.S. Dist. LEXIS 16137 (S.D.
20 Fla. July 10, 1987) (noting that “product continuity” and “work force continuity”
21 are features that may make one corporation liable for the acts of another). Thus,
22 CCE and DNM are a common enterprise and are jointly and severally liable for the
23 injury the enterprise caused.⁸² *See, e.g., FTC v. Network Servs. Depot, Inc.*, 617
24 F.3d 1127, 1143 (9th Cir. 2010) (finding common enterprise when “the companies
25

26
27 ⁸¹ Additionally, both CCE and DNM use (or used) identical vendors. *See*
supra at 5 n.10.

28 ⁸² *See, e.g., FTC v. J.K. Pub’s*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000).

1 were beneficiaries of and participants in a shared business scheme”).⁸³ As
 2 discussed below, the individual HOPE Defendants control CCE and DNM and
 3 therefore are also jointly and severally liable for the injuries they caused.

4 **D. The Individual HOPE Defendants Are Liable.**

5 **1. Chad Caldaronello**

6 Chad Caldaronello (a/k/a Chad Carlson and Chad Johnson)⁸⁴ is liable for
 7 both injunctive relief and restitution. An injunction against Caldaronello (as an

8
 9 ⁸³ See also *CFTC v. Noble Wealth Data Info. Serv., Inc.*, 90 F. Supp. 2d 676,
 10 690 (D. Md. 2000) (where two firms were formed as successors to a predecessor,
 11 and where they were all operated by the same individuals and used the same
 12 marketing materials, all three firms were jointly and severally liable as a “common
 13 enterprise”), *aff’d in part and vacated in part on other grounds, sub nom., CFTC v.*
 14 *Baragos*, 278 F.3d 319 (4th Cir. 2002).

15 ⁸⁴ It is beyond question that “Chad Carlson” and “Chad Johnson” are Chad
 16 Caldaronello. “Chad Carlson” called at least one consumer from Caldaronello’s
 17 personal cellphone. Ostrum ¶137:94 at Voicemail From Chad Carlson Folder.
 18 Additionally, when settling the *Elias* Action on behalf of himself and CCE,
 19 Caldaronello (represented by counsel) accepted a partial final judgment against
 20 “Defendants Chad Carlson a/k/a Chad Caldaronello.” Ostrum ¶127:60 at 712. In
 21 fact, when he applied for a maildrop that CCE used, Caldaronello gave his real
 22 name, personal number, and identification—along with an email address beginning
 23 “ccarlson@.” Delaei ¶2:1 at 4; Ostrum ¶268. Additionally, although “Chad
 24 Carlson” had a telephone number assigned to him at CCE’s offices, Caldaronello
 25 did not (although Caldaronello owns CCE). Furthermore, CCE periodically paid
 26 Chad Caldaronello, but never paid “Chad Carlson.” George ¶¶ 15, 22.
 27 Caldaronello also gave his real name when responding to a regulatory inquiry
 28 prompted by a victim who had spoken only to “Chad Carlson” at HOPE Services.
 Ostrum ¶137:139 at 2687.

22 Notably, when “HOPE Services” became “HAMP Services,” the HOPE
 23 Defendants adopted new aliases, and “Chad Carlson” became “Chad Johnson.”
 24 “Chad Johnson” is listed as the contact at the maildrop DNM (d/b/a “HAMP
 25 Services”) rents. Ostrum ¶196:112 at 1276. In fact, although Caldaronello has an
 26 office at the DNM location HAMP Services uses, Ostrum ¶66:93 at Social Media
 27 Video Folder, and he even helped lease the space, Ostrum ¶191:109 at 1189, only
 28 “Chad Johnson” has a telephone line there—Caldaronello does not, Ostrum
 ¶203:116 at 1606. Furthermore, DNM’s owner identified “Chad Johnson” as one
 of HAMP Services’ two “compliance department” managers (“Brian Kelly,” *i.e.*,
 Brian Pacios, was the other). See *infra* at 29 n.94. Unsurprisingly, D.N. Marketing
 does not pay a “Chad Johnson,” but it does pay Caldaronello. George ¶¶ 15, 22.
 Finally, an FTC investigator identified a vehicle registered in his real name parked
 outside DNM’s offices, Stahl ¶9:4 at 10; Ostrum ¶114:58 at 617, and Caldaronello

1 individual defendant) is proper if he participated directly in HOPE Services’
 2 unlawful acts or had authority to control them.⁸⁵ Caldaronello satisfies both
 3 standards. First, Caldaronello personally made misrepresentations.⁸⁶ Second,
 4 Caldaronello exerts control over HOPE Services. Among other things, he: (1) is
 5 CCE’s CEO and owner, Ostrum ¶100:46 at 562; Ostrum ¶229:124 at 2430; (2)
 6 signed CCE’s lease, *id.* ¶200:115 at 1435; (3) registered two FBNs to CCE,
 7 Ostrum ¶104:50 at 573; Ostrum ¶105:51 at 576; (4) helped DNM obtain a lease, *id.*
 8 ¶191:109 at 1189;⁸⁷ (5) opened at least one CCE bank account, Ostrum ¶229:124 at
 9 2429-30, (6) signs CCE’s checks, *id.* ¶254:134 at 2665; (7) opened two HOPE
 10 Services maildrops, *id.* ¶198:113 at 1324; *id.* ¶199:114 at 1334; (8) responds to
 11 consumer complaints, *see, e.g.*, Clemens ¶¶17-19; Hicks ¶¶9-12; (9) responded to a
 12 regulatory inquiry regarding CCE and “HOPE Services,” Ostrum ¶137:139 at
 13 2687; (10) accepted service of a lawsuit on CCE’s behalf outside its offices, *id.*
 14 ¶124:60 at 709; and (11) serves as one of two HAMP Services “compliance
 15 department” managers (Pacios was the other), *id.* ¶96:44 at 543.

16 Additionally, Cardaronello is liable for restitution if he had awareness of
 17 HOPE Services’ misrepresentations (which he plainly did because he made so
 18 many himself).⁸⁸ Furthermore, given the breadth of his participation in the
 19 fraudulent claims and the scam overall, it is impossible that he was unaware of
 20 HOPE Services’ misconduct. Accordingly, Caldaronello is liable for both
 21 injunctive and monetary relief. *See Publishing Clearing*, 104 F.3d at 1170-71.

22
 23 maintains an office there, Ostrum ¶167:94 at Social Media Video Folder.

24 ⁸⁵ *See, e.g., FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009); *FTC v.*
Publishing Clearing House, Inc., 104 F.3d 1168, 1170-71 (9th Cir. 1997).

25 ⁸⁶ Ostrum ¶262:132 at 2631, 2633, 2626; Clemens ¶¶4-11; Harris ¶8;
 26 Ferriero ¶5; Ostrum ¶262:132 at 2635 (Caldaronello claiming HOPE Services is a
 “nonprofit”).

27 ⁸⁷ *See* Ostrum ¶191:109 at 1189.

28 ⁸⁸ *See, e.g., Stefanchik*, 559 F.3d at 931; *FTC v. Cyberspace.com LLC*, 453
 F.3d 1196, 1202 (9th Cir. 2006); *Affordable Media*, 179 F.3d at 1231.

1 **2. Brian Pacios**

2 Pacios is similarly liable for both injunctive relief and restitution.⁸⁹ With
3 respect to injunctive relief, Pacios participates directly in the fraud by making
4 misrepresentations to consumers.⁹⁰ Pacios also exerts authority over HOPE
5 Services.⁹¹ Among other things, Pacios: (1) handles refund requests;⁹² (2)
6 responded to a mortgage fraud-related subpoena, Penttila ¶1 at 5-7; (3) used CCE's
7 bank account for personal expenses, Ostrum ¶253:134 at 2665-67; Ostrum
8 ¶244:128 at 2552; (4) arranged for DNM's current lease, *id.* ¶190:109 at 1150-
9 1197; (5); communicates regularly with DNM's office lessor;⁹³ (6) makes deposits
10 into DNM's account, *id.* ¶219:94 at ATM Surveillance Videos Folder; and (7)
11 serves as a "compliance department" manager.⁹⁴ With respect to restitution,
12

13
14 ⁸⁹ Pacios used "Brian Barry" at CCE and now uses "Brian Kelly" at DNM.
15 "Brian Barry" had a CCE telephone line and "Brian Kelly" has one at DNM, but
16 Pacios has (or had) no number at either office. Ostrum ¶204:116 at 1601, 1606. In
17 fact, "Brian Barry" set up HOPE Services' phone system and provided a contact
18 number to the phone company [REDACTED] Ostrum ¶202:116 at 1604. Pacios
19 provided the same number [REDACTED] on personal auto loan documents
20 (executed under oath) in which he identified his employer as CCE. Ostrum
21 ¶205:133 at 2648; Ostrum ¶216:120 at 1734 (personal cellphone billing
22 information in Pacios' name, identifying the "[REDACTED] number).
23 Additionally, although Pacios receives compensation through his girlfriend, Relief
24 Defendant Gonsalves, *see infra* at 40-41, the HOPE Services enterprise does not
25 pay "Brian Barry" or "Brian Kelly." George ¶15. Finally, an investigator
26 identified a vehicle registered in Pacios' real name parked outside DNM's (HAMP
27 Services') office. Stahl ¶8:3 at 9; Ostrum ¶113:58 at 611.

28 ⁹⁰ See Ostrum ¶97:45 at 552-53; Harris ¶¶ 5-6; Wofford ¶¶ 5-12; Monreal
¶¶ 4-6; Robinson ¶¶3-6.

⁹¹ Pacios also coordinates closely with other key players. From March
through November, 2014, Pacios used his personal phone to call Caldaronello 922
times, Moreira 192 times, and Lake ninety-two times. Ostrum ¶217.

⁹² Hicks ¶7. In fact, when the FTC's undercover investigator demanded that
HAMP Services refund her "reinstatement fee," HAMP directed her to Pacios
(who promised a refund the investigator never received). Ostrum ¶98.

⁹³ Pacios called DNM's lessor eighteen times. Ostrum ¶217.

⁹⁴ D.N. Marketing's owner identified Pacios as one of two managers of
HAMP Services' compliance department, Ostrum ¶98:45 at 553, and Pacios

1 Pacios’ very substantial involvement makes it clear he knew about HOPE
2 Services’ wrongdoing.

3 3. Justin Moreira

4 Moreira is liable for injunctive relief because he is HOPE Services’
5 “operations manager,” Ostrum ¶192:110 at 1203—a position that requires
6 control.⁹⁵ Moriera is identified as Trust Payment Center’s “manager.” Ostrum
7 ¶199:114 at 1334. Additionally, Moreira has his own key to a mailbox that HOPE
8 Services uses to receive victims’ checks, and he sometimes collects checks without
9 Caldaronello (who has the other key). Delaei ¶5.

10 Moreira is also liable for restitution because knows about HOPE Services’
11 misconduct or, at minimum, because he “had an awareness of a high probability of
12 fraud along with an intentional avoidance of the truth.” *Affordable Media*, 179
13 F.3d at 1234. Moreira is HOPE Services’ operations manager who works on-site.⁹⁶
14 Both Moreira’s use of aliases⁹⁷ and his involvement with Pacios’ prior
15

16 himself reiterated that claim.

17 ⁹⁵ Notably, the control question addresses control over the deceptive acts, not
18 control over an entity’s legal or financial affairs. *See, e.g., FTC v. Am. Standard*
19 *Credit Sys., Inc.*, 874 F. Supp. 1080, 1087 (C.D. Cal. 1994). Thus, although a
20 business’s operations manager is unlikely to have overall legal or financial control,
21 an operations manager has day-to-day control over the practices actually at issue.
22 Furthermore, in addition to his office manager position, Moreira likely derives
23 authority from his role as Pacios’ close childhood friend. Ostrum ¶145:74 at 821.
24 Pacios trusts Moreira enough to transfer \$550,000 to him as an alleged “gift,” and
25 Pacios and Moreira speak on the phone frequently in addition to the fact that they
26 work in the same office. Ostrum ¶145; *supra* at 29 n.91.

27 ⁹⁶ Stahl ¶10:5 at 11; Ostrum ¶192:110 at 1203; Ostrum ¶199:114 at 1334;
28 Ostrum ¶200:115 at 1482.

⁹⁷ Like his co-conspirators, Moreira conceals his identity with aliases (Justin
King, Justin Mason, and Justin Smith). Specifically, on a form authorizing
Moreira to collect victims’ checks from a maildrop, he provided his real name and
identification along with a “jking@” (Justin King) email address. Ostrum
¶199:114 at 1334. Additionally, both DNM and CCE pay Justin Moreira, but
neither pays Justin King, Smith, or Mason. George ¶¶15, 23. Finally, Moreira had
an office at CCE, Ostrum ¶200:115 at 1589, and an investigator identified a vehicle
registered to Moreira parked outside DNM’s offices, Stahl ¶10:5 at 11; Ostrum

1 telemarketing scam⁹⁸ also evidence his knowledge. In fact, with respect to Pacios’
 2 prior scam, Moreira collaborated with Pacios, was deposed in the action
 3 concerning the scam, and knew that the receiver entered Pacios’ prior location.⁹⁹
 4 Because Pacios is again telemarketing, any reasonable person in Moreira’s position
 5 would know fraud is very likely. In short, Moreira knows about the fraud, but
 6 even assuming, *arguendo*, that he does not, Moreira is still liable for redress
 7 because he knows fraud is likely and would have to be willfully blind not to notice
 8 it. *See Affordable Media*, 179 F.3d at 1234.

9 **4. Derek Nelson**

10 Nelson is liable for injunctive relief because he is DNM’s owner and
 11 President.¹⁰⁰ Ostrum ¶101:47 at 564. Additionally, Nelson signed DNM’s lease,
 12 Ostrum ¶186:109 at 1090, registered its FBN, Ostrum ¶107:53 at 582, opened its
 13 bank account, Ostrum ¶233:125 at 2449, and rented its maildrop.¹⁰¹ Accordingly,
 14 his signatory power and officer role establish his liability for injunctive relief. *See*,
 15 *e.g.*, *Publishing Clearing*, 104 F.3d at 1170 (“Martin’s assumption of the role of
 16 president of PCH and her authority to sign documents on behalf of the corporation
 17 demonstrate that she had the requisite control over the corporation.”).

18 Nelson is also liable for restitution because he has “an awareness of a high
 19 probability of fraud along with an intentional avoidance of the truth.” *Affordable*
 20 *Media*, 179 F.3d at 1234. Because he both leased an office for DNM and rented a

21
 22 ¶115:58 at 619.

23 ⁹⁸ Ostrum ¶145:74 at 830-31.

24 ⁹⁹ *Id.* ¶145:74 at 83-31.

25 ¹⁰⁰ Derek Nelson uses “Dereck Wilson.” “Dereck Wilson” has a phone
 26 number assigned at DNM, but does not receive compensation. Ostrum ¶203:116 at
 1606; George ¶15. However, Derek Nelson does. George ¶22.

27 ¹⁰¹ Ostrum ¶196:112 at 1271. Additionally, Nelson is physically present at
 28 DNM’s offices and, in fact, HAMP Services transferred our investigator to
 someone identifying himself as “Derek” during an undercover call she made there.
 Ostrum ¶96:44 at 534-35.

1 maildrop, he knew DNM did not receive mail at its office. Furthermore, Nelson
 2 registered the “Trial Payment Processing” FBN, meaning he knew DNM did
 3 business under another name. Nelson also opened DNM’s bank account and
 4 included the “Trial Payment Processing” d/b/a on bank account applications,
 5 Ostrum ¶222:122 at 2324, meaning he knew that DNM could cash checks made
 6 payable to “Trial Payment Processing.” Nelson either understands what the
 7 company he owns does, or he intentionally avoids learning what it does. Either
 8 way, Nelson is liable for restitution. *Affordable Media*, 179 F.3d at 1234.

9 **E. Lake**

10 The facts establish that Lake substantially assists HOPE Services in
 11 violation of the MARS Rule.¹⁰² *See* 12 C.F.R. § 1015.6. As described below, the
 12 evidence establishes that Lake (1) knows or consciously avoids knowing that
 13 HOPE Services violates the MARS Rule’s advance fee ban, but (2) substantially
 14 assists HOPE Services’ collection of improper advance fees anyway.¹⁰³ *See id.*

15 **1. Knowledge**

16 Lake knows (or consciously avoids knowing) that HOPE Services violates
 17 the MARS Rule. A MARS provider (such as HOPE Services) may not “[r]equest
 18 or receive payment of any fee or other consideration until the consumer has
 19 executed a written agreement between the consumer and the consumer’s dwelling
 20 loan holder or servicer[.]” 12 C.F.R. § 1015.5(a). Lake and his Advocacy
 21 Department know (or consciously avoid knowing) that HOPE Services violates
 22 this provision because (1) Lake knows HOPE Services’ victims have paid “fee[s]
 23

24 ¹⁰² Notably, Advocacy Department also violates the MARS Rule itself for
 25 multiple reasons, including that none of its communications with victims (such as
 26 the third party authorization, or Lake’s introductory email) contain the MARS
 27 Rule’s mandatory disclosures. *See* 12 C.F.R. § 1015.4(b).

28 ¹⁰³ HOPE Services is a “MARS Provider” because it markets or provides
 loan modification or foreclosure rescue services to consumers. *See* 12 C.F.R. §
 1015.2.

1 or other consideration, although (2) they do not have “written [modification]
2 agreement[s]” with their lenders.

3 **a. Lake Knows About the Payments**

4 Several facts establish that Lake knows (or consciously avoids knowing) that
5 HOPE Services’ victims make payments. To begin, Lake told at least one
6 consumer that her modification would become permanent after she made her trial
7 payments. Wofford ¶19 (“Denny . . . told me that after I made my three trial
8 payments, they would make my modification permanent.”). Similarly, a Lake
9 employee called a victim “asking that [she] make the third and final trial payment
10 so that I could get a permanent loan modification.”¹⁰⁴ Wofford ¶33.

11 Even when Lake dodged questions about the trial payments, his
12 communications still establish that he knew about them. For instance, consumer
13 Katrina Harris asked Lake several questions after she had made her third and final
14 trial payment, including whether she should continue making payments “to the
15 Trust as we have for the past three months,” and whether she should pay the new
16 amount (that HOPE Services told her to pay into the trust), or a different amount.
17 Harris ¶19:10 at 47. Lake responded: “The Advocacy Department does not have
18 anything to do with the payments so I am not sure what the arrangement was for
19 that. Typically three trial payments are made into the trust, but you would need to
20 speak with HOPE about that.” *Id.* Even assuming Lake’s denial of knowledge
21 was accurate,¹⁰⁵ it still reveals that he knows consumers are making payments. In

22
23 ¹⁰⁴ Subject to exceptions not relevant here, knowledge of a fact that an agent
24 (such as one of Lake’s employees) knows or has reason to know is imputed to the
25 principal if knowledge of the fact is material to the agent’s duties to the
26 principal[.]” RESTATEMENT (THIRD) OF AGENCY § 5.03 (2006); *see also Hoover v.*
27 *Wise*, 91 U.S. 308, 310 (1875) (“The general doctrine, that the knowledge of an
28 agent is the knowledge of the principal, cannot be doubted.”). Because Lake is a
MARS provider affiliated with another MARS provider (HOPE Services),
knowledge concerning HOPE Services’ gross MARS Rule violations is necessarily
material to Lake.

¹⁰⁵ It wasn’t. As discussed *supra*, at 17-18, Advocacy Department is more

1 fact, when Harris later learned she had been cheated, she contacted Lake and asked
2 for a refund. Harris ¶26. Lake told her “to discuss it with [Pacios],” *id.*, further
3 demonstrating that Lake knew about the payments.¹⁰⁶

4 Lake employee Steve Navidad’s struggle to explain the payments to the
5 FTC’s undercover investigator also illustrates Advocacy Department’s knowledge.
6 Specifically, when the investigator raised an issue about the payments, Navidad
7 stammered and deflected the issue back to HOPE Services: “No, I—I—I
8 understand. But, no I mean, look, you can call Alan [Chance at HOPE Services]
9 and have him explain that process. Unfortunately, I—look, I don’t have
10 information relating to, you know, the payments you have and what you made and
11 whatnot.” Yet, when the investigator suggested that perhaps she “shouldn’t send
12 any [trial] payments” until Advocacy Department finished its work, Navidad knew
13 how to respond: “[Y]ou need to **keep doing what you’re doing** with [HOPE
14 Services], okay?” Ostrum ¶92:41 at 475 (emphasis added). Simply put, Navidad
15
16
17
18
19
20
21

22
23 involved with the payments than Lake admits.

24 ¹⁰⁶ As did his employees. For instance, an Advocacy Department employee
25 left a victim a voicemail stating: “[Y]ou did receive a pre-qualification or
26 eligibility notice and . . . you made . . . all three trial payments already. But . . . we
27 need documents to get this through final review.” Wofford ¶18:6 at 36; *see also*
28 Ostrum ¶258:129 at 2607 (“CONSUMER: . . . [I’m] wondering what happened
to the \$2,844 that I sent off. ADVOCACY : Don’t know. I’ll have to have Brian
Barry or Chad . . . contact you on that.”). Another Lake employee, Jenny Fryman,
also told our investigator to “contact [HOPE] Services about [your payment].
They are the ones handling the payment.” Ostrum ¶86:37 at 429.

1 knows about the payments —and, in fact, he told our investigator to keep making
2 them.¹⁰⁷

3 **b. Lake Knows There Are No Modifications**

4 Lake knows (or is consciously indifferent) that homeowners are making
5 these payments although there are no “written [modification] agreement[s]
6 between” HOPE Services’ victims and their lenders. 12 C.F.R. § 1015.5(a). Most
7 significantly, Lake’s entire undertaking is designed to help homeowners obtain or
8 finalize modifications, which necessarily means he understands that they do not
9 have “a written agreement” with their lender already. The correspondence Lake
10 prepares for homeowners to send to their lenders and public officials demanding
11 help obtaining a modification makes no sense if he believed they already had one.
12 *See supra* at 17. In fact, two different Lake employees spoke with the FTC’s
13 undercover investigator, and both confirmed that there was work left to do for her
14 to obtain a modification.¹⁰⁸

15 Additionally, as explained above, HOPE Services informs consumers that
16 they will obtain a modification if they make trial payments. However, Advocacy
17 Department informs the same consumers that the modification needs to be
18 “finalized” (and, thus, is not yet complete). For instance, in the email Lake
19 generally sends to new “clients,” he explains that Advocacy Department’s goal is
20

21
22 ¹⁰⁷ Additionally, a victim’s lawsuit against HOPE Services and Advocacy
23 Department (“the *Elias* Action”) further corroborates that Lake knew consumers
24 made payments. *See infra* at 36. The *Elias* Complaint alleged that the plaintiff
25 “paid a total of \$47,888.84 to Defendants for mortgage modification services,” but
26 [p]ayments that were made were never deposited for Chase bank,” and Chase did
27 not receive the money. Ostrum ¶123:60 at 642. The *Elias* Action Complaint
28 actually attached copies of the checks the homeowner sent to “Trust Payment
Center/Chase”—which further confirms Lake’s knowledge that HOPE Services’
“clients” made payments. In fact, in Lake’s sworn Answer, he asserts that the
plaintiff contacted him demanding a refund “of funds allegedly paid,” but Lake
told him “to contact HOPE Services to discuss.” Ostrum ¶125:60 at 688.

¹⁰⁸ Ostrum ¶87:37 at 433; Ostrum ¶92:41 at 473-74.

1 to send complaints “like buckshot” to the lender, government agencies, and public
2 officials, which will then cause the consumer’s “file [to be] escalated into the
3 [lender’s] executive office where we will end up in a fair and transparent
4 negotiation.” Harris ¶12:5 at 31; Wofford ¶20:7 at 46. This makes no sense if
5 Lake believed that HOPE Services had already obtained a written loan
6 modification.

7 Moreover, Lake and his employees claim to communicate with victims’
8 lenders and, in fact, execute “third party authorizations” to make this
9 communication possible. *See supra* at 16-17; *see also* Young ¶9 (Advocacy
10 Department told me “they were speaking to my lender”). Significantly, one victim
11 sued both HOPE Services and Advocacy Department (“the *Elias* Action”). In
12 Lake’s sworn *Elias* Action Answer, he represented that he communicated with the
13 plaintiff’s lender. Ostrum ¶125:60 at 687. Because HOPE Services is not
14 obtaining modifications, any communication with victims’ lenders would disclose
15 that HOPE Services’ “clients” do not have modifications. Lake and his employees
16 could not communicate with lenders on behalf of hundreds of victims yet fail to
17 discover this fact.

18 Finally, two consumers directly told Lake that their foreclosure process was
19 continuing. For instance, Harris told him that she found a foreclosure notice
20 attached to her door. Harris ¶20:11 at 46-47. Lake responded by offering to “put
21 together talking points for court so that you can show just cause as to why they
22 should put this proceeding on hold to let negotiations be completed.” *Id.*
23 Likewise, on behalf of consumer Keely Clemens, Lake attempted to negotiate an
24 occupied conveyance (leaving Clemens in the home as a renter) and then deed *in*
25 *lieu* (“cash for keys”). Clemens 3d ¶8:6 at 27; *id.* ¶10:8 at 35. Lake’s
26 communications with Harris and Clemens show he knew they did not have
27 modifications. Simply put, Lake knows that HOPE Services violates the advance
28

1 fee ban because the “clients” it sends him are making payments, but do not already
2 have loan modifications.¹⁰⁹

3 2. Substantial Assistance

4 As one court explained with respect to the identical Telemarketing Sales
5 Rule (“TSR”) “assisting and facilitating provision,¹¹⁰ “[t]he threshold for what
6 constitutes ‘substantial assistance’ is low: ‘there must be a connection between the
7 assistance provided and the resulting violations of the core provisions of the
8 TSR.’” *FTC v. Consumer Health Benefits Ass’n*, No. 10 CIV. 3551 ILG RLM,
9 2012 WL 1890242, at *6 (E.D.N.Y. May 23, 2012) (quoting *United States v. Dish*
10 *Network, L.L.C.*, 667 F. Supp. 2d 952, 961 (C.D. Ill. 2009)). Significantly,
11 although there must be a connection, no “direct connection” to the
12 misrepresentations made to consumers is required. *FTC v. Chapman*, 714 F.3d
13 1211, 1216 (10th Cir. 2013) (TSR decision). As *Chapman* explained, anything
14

15
16 ¹⁰⁹ Significantly, although Lake had actual knowledge of HOPE Services’
17 gross violation of the advance fee ban, Lake is liable even if he acted only with
18 “conscious disregard” regarding HOPE Services’ practices. *See* 12 C.F.R. §
19 1015.6 (covering those who “know[] or consciously avoid knowing”); *see also*
20 *United States v. Jewell*, 532 F.2d 697, 704 (9th Cir. 1976) (defining “willful
21 blindness” as “a mental state in which the defendant is aware that the fact in
22 question is highly probable but consciously avoids enlightenment”). At very
23 minimum, Lake knew it was “highly probable” that HOPE Services violated the
24 advance fee ban, yet—assuming he lacked actual knowledge—he avoided even the
25 slightest inquiry that would have triggered even louder alarms. To provide one of
26 many possible examples, Lake knew HOPE Services switched from “HOPE” to
27 “HAMP,” that “Chad Carlson” became “Chad Johnson,” and so forth (Lake had to
28 know this to avoid confusing consumers, who spoke only with, for example, “Chad
Carlson” or “Chad Johnson,” but never both). Ostrum ¶36. Whatever reason
HOPE Services might have given Lake for this change, Lake either knew HOPE
Services’ representatives’ actual names or he “consciously avoid[ed]” learning
them. In fact, given the ninety-two calls between Lake’s personal cellphone and
Pacios’ personal cellphone from March through November 2014, *see supra* at 18,
Lake very likely knew Pacios’ real name. If Lake knew Pacios’ real name and
simply typed it into Google, the first hit would be an article entitled: “FTC
Cracking Down on Mortgage Relief Scammers.” Ostrum ¶132:63 at 786.

¹¹⁰ There is no published authority concerning the MARS Rule’s “assisting
and facilitating” provision.

1 more than “casual or incidental” assistance qualifies. *Id.* Thus, ““cleaning a
2 telemarketer’s office, delivering lunches to the telemarketer’s premises, or
3 engaging in some other activity with little or no relation to the conduct that violates
4 the Rule would not be enough to support liability as an assistor or facilitator.”” *Id.*
5 (quoting FTC guidance).

6 By helping ensure that victims keep making payments to HOPE Services,
7 Lake provided vastly more than “casual and incidental” support. Most important,
8 Lake serves as an intermediary between the homeowner and the lender. *See supra*
9 at 15-16. Any significant communication from the lender to the homeowner would
10 disclose that the homeowner does not have a loan modification (and that the lender
11 has not received the trial payments or even the homeowner’s application). Despite
12 reviewing dozens of complaints and speaking directly with more than thirty
13 victims, the FTC was unable to uncover any instance in which Advocacy
14 Department disclosed to a homeowner that his lender had not received his trial
15 payments or his MHA application.¹¹¹ By filtering lender communications before
16 they reach homeowners, Lake prevents them from protecting themselves. In this
17 critical respect, Lake substantially assists HOPE Services.

18 Additionally, Lake provides substantial assistance by helping “explain
19 away” facts that might have caused victims to question HOPE Services sooner, and
20 he reinforces the false impression that their modifications are moving forward.
21 For instance, in mid-April 2014, HOPE Defendant Caldaronello informed
22 homeowner Keely Clemens that she “was approved for a HAMP loan
23 modification.” Clemens ¶7. Clemens paid a reinstatement fee (\$1,244.15) and her
24 first trial payment (\$1,428.50) in late April. *Id.* ¶¶8-10. Per HOPE Services’
25

26
27 ¹¹¹ Ostrum ¶36. Fraud by omission is still fraud. *See, e.g., Mui Ho v. Toyota*
28 *Motor Corp.*, 931 F. Supp. 2d 987, 999 (N.D. Cal. 2013) (identifying elements of
fraud by omission claim under California law).

1 instructions, Clemens sent a cashiers' check covering both payments payable to
2 "Trust Payment Center/Wells Fargo." Wells Fargo ¶15:6 at 20-21. Clemens later
3 made her second trial payment as well (another \$1,428.50). *Id.* However—despite
4 the purported approval and more than \$4,000 in payments—Clemens' home
5 remained scheduled for sale.

6 Critically, in late May, Advocacy Department informed Clemens that "[t]he
7 sale date of your house was postponed in order to keep moving forward with your
8 request for mortgage assistance." Clemens 3d ¶6:4 at 22. While the process was
9 supposedly "moving forward," Clemens made her final payment of \$1,428.50
10 (again, payable to "Trust Payment Center/Wells Fargo"). Clemens ¶8; Wells
11 Fargo ¶15:6 at 22. After the payment, Caldaronello congratulated Clemens and
12 confirmed that her modification was "set in stone." Clemens ¶14.

13 Clemens lost her home. Clemens ¶21. Wells Fargo never received the
14 MHA application HOPE Services supposedly submitted or any of her payments.
15 Wells Fargo ¶15:6. Had Advocacy Department not falsely reassured Clemens that
16 the process was "moving forward" (rather than disclosing the HOPE Services
17 scam), it is unlikely Clemens would have made another payment instead of
18 exploring other measures to save her home.

19 Homeowner Katrina Harris presents another example. Harris' home was
20 was in foreclosure. On August 5, 2014, Lake informed Harris that her lender was
21 "willing to review [her] for all assistance programs." Harris ¶14:6 at 34. A few
22 days later, she made her final trial payment (payable to "Trust Payment
23 Center/BSI"). Harris ¶16:2 at 10. It is illogical (if not unbelievable) that any
24 consumer would continue making HOPE Services' payments after learning HOPE
25 Services was a fraud. Again, however, despite an extensive review, the FTC has
26 been unable to uncover any instance in which Lake (or anyone at Advocacy
27 Department) disclosed to a homeowner what had actually happened. Ostrum ¶36.
28

1 Finally, even if one assumed that Lake merely provides “advocacy services”
 2 (such as letters) that HOPE Services markets, that still constitutes “substantial
 3 assistance.” As the Tenth Circuit held, the standard is satisfied when a third party
 4 “provid[es] the services and products [deceptively] marketed to consumers.”
 5 *Chapman*, 714 F.3d at 1217. In short, Lake knows HOPE Services collects
 6 improper advance fees, but he substantially helps HOPE Services collect those fees
 7 anyway, rendering him liable under the MARS Rule’s “assisting and facilitating”
 8 provision. *See* 12 C.F.R. § 1015.6.

9 **F. Cortney Gonsalves**

10 Gonsalves is liable as a relief defendant because she (1) “received ill-gotten
 11 funds” and (2) “does not have a legitimate claim to those funds.” *SEC v. Colello*,
 12 139 F.3d 674, 677 (9th Cir. 1998). Gonsalves is Pacios’ wife or girlfriend, and she
 13 resides at Pacios’ address.¹¹² Significantly, Pacios owes the FTC (and his earlier
 14 victims) approximately \$1.19 million (plus interest) from the underlying case (also
 15 involving foreclosure relief scams).¹¹³ To impair collection, HOPE Services
 16 compensates Pacios more than \$18,500 per month through payments to
 17 Gonsalves.¹¹⁴ Thus, Gonsalves received ill-gotten funds.

18
 19
 20 ¹¹² *See* Ostrum ¶210:119 at 1698-99. An insurance invoice identifies
 21 Gonsalves as “married” and sharing Pacios’ address. *See id.*

22 ¹¹³ Rivers ¶5; *see also* Final Order, *FTC v. Lakhany*, No. 8:12-cv-337 (Feb.
 23 28, 2013) at 13.

24 ¹¹⁴ George ¶20. HOPE Services also pays the landlord who owns the home
 25 where Pacios and Gonsalves reside together. Ostrum ¶254:134 at 2665-67; *id.*
 26 ¶210:119; George ¶32. Their finances are intertwined in other respects. For
 27 instance, as of early last year, Pacios leased two vehicles: a 2014 Jeep Wrangler,
 28 and a 2014 Jeep Grand Cherokee. ¶194:111 at 1240; *id.* ¶195:111 at 1256. Pacios
 executed the leases, Ostrum ¶194:111 at 1239; *id.* ¶195:111 at 1255, but Gonsalves
 made most of the payments. Ostrum ¶194:111 at 1243-53. Notably, in early
 March 2014, Pacios made a payment from a Wells Fargo account ending in 1575,
 and less than three weeks later, Gonsalves made the next payment from the same
 account. Ostrum ¶194:111 at 28, 27.

1 However, Gonsalves has no legitimate claim to those funds. She has no
2 phone line assigned at either office, there are apparently no social media posts of
3 her (or by her) at either office, her name appears on no business or legal
4 documents, and no victims report speaking with anyone named “Cortney.” *See*
5 Ostrum ¶¶36; 203. Her only known activity appears to be depositing victims’
6 checks. Ostrum ¶¶219:94 at ATM Surveillance Videos Folder. Thus, Gonsalves is
7 liable as a relief defendant. *Coello*, 139 F.3d at 677.

8 **II. The Facts Strongly Favor the Proposed TRO.**

9 As discussed above, *see supra* at 25-26, the Ninth Circuit requires the Court
10 to balance public and private interests. Given the strength of the evidence and the
11 substantial injury Defendants caused, the public interest is especially great. As a
12 result, four types of emergency relief are required: (1) an *ex parte* TRO; (2) an
13 asset freeze; (3) the appointment of temporary receiver; and (4) other limited
14 ancillary measures designed to preserve assets and locate evidence. As explained
15 in detail below, the proposed TRO balances the substantial public interests at stake
16 with reasonable due process concerns.

17 **A. The Proposed *Ex Parte* TRO Is Necessary To Prevent Fraud and** 18 **Provide Effective Redress to Consumers.**

19 **1. HOPE Services Is Likely To Disregard a Court Order To** 20 **Preserve Evidence.**

21 As the Supreme Court has explained, “[*e*]x parte temporary restraining
22 orders are no doubt necessary in some circumstances,” although they should not
23 exceed what is necessary “to serv[e] their underlying purpose of preserving the
24 status quo and preventing irreparable harm.” *Granny Goose Foods, Inc. v.*
25 *Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974); *see also In re Vuitton et Fils*
26 *S.A.*, 606 F.2d 1, 4 (2nd Cir. 1979) (noting that *ex parte* relief is particularly
27 appropriate “when it is the sole method of preserving a state of affairs in which the
28 court can provide effective final relief”). *Ex parte* relief is necessary where
defendants would “disregard[] a direct court order . . . within the time it would take

1 for a hearing.” *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th
2 Cir. 2006).

3 In this instance, the evidence that HOPE Services would disregard a court
4 order to preserve evidence is overwhelming. First, and most important, Pacios is
5 one of HOPE Services’ controlpersons, *see supra* at 29-30, and he is grossly
6 violating a Court order already. In 2013, the Court ordered Pacios to cease his
7 widespread loan modification fraud.¹¹⁵ Pacios paid the Court’s order no heed.
8 There is no reason to believe he will afford more respect to an order that HOPE
9 Services preserve evidence.¹¹⁶ Pacios’ egregious contempt, standing alone, is a
10 more than sufficient basis to support *ex parte* relief. *See, e.g., Vuitton v. White*,
11 945 F.2d 569, 575–76 (3d Cir. 1991) (finding court abused its discretion by failing
12 to issue *ex parte* TRO; plaintiff’s showing included evidence that defendants
13 violated a previous court order regarding the same issue).

14 Second, HOPE Services has already proven its unwillingness to comply with
15 mandatory discovery obligations. Specifically, when the Washington Department
16 of Financial Institutions (“DFI”), subpoenaed HOPE Services regarding the precise
17 conduct at issue here, HOPE Services responded with outright lies.¹¹⁷ In particular,
18 through a sworn response from “Brian Barry”: (1) Pacios denied providing “loan
19 modification services” to Washington residents;¹¹⁸ (2) Pacios asserted that Trust
20

21
22 ¹¹⁵ Final Order, *FTC v. Lakhany*, No. 8:12-cv-337 (Feb. 28, 2013), DE152 at
23 8-9; *see also* Cohen ¶15:9 (forthcoming contempt motion).

24 ¹¹⁶ Notably, one of Pacios’ earlier entities (National Relief Group) was
25 subject to three cease and desist orders, all of which concerned loan modification
26 fraud, and all of which Pacios’ ignored. Savitt ¶¶ 12:M at 9-14, 13:N at 23-24,
27 14:O at 25-28; *see also* Memo., *FTC v. Lakhany*, No. 8:12-cv-337 (Mar. 22, 2012),
28 DE71 at 14.

¹¹⁷ Penttila ¶2:1 at 5-6. DFI sent the subpoena to HOPE Services’ FBN,
“Trust Payment Center.” *See id.*

¹¹⁸ Six Washington residents sent checks to “Trust Payment Center” before
Pacios’ response to DFI. Young ¶7:2 at 5; Clemens ¶10; Williams ¶¶5-8 at 4-7.

1 Payment Center had only one “current or former employee[.]” (whose alias he
2 provided, rather than his real name),¹¹⁹ *id.*; and (3) Pacios denied that “Trust
3 Payment Center” “[did] business under any other name,”¹²⁰ *id.* Simply put, if
4 HOPE Services will lie under oath with respect to a lawful discovery request
5 concerning its business practices, there is every reason to conclude it will not
6 respect a court order to preserve evidence regarding those same practices.

7 Third, HOPE Services engages in substantial efforts to evade detection. As
8 discussed above, its employees use numerous aliases, it changed physical
9 locations, it shifted to a new legal entity, it changes FBNs periodically, and it uses
10 maildrops to hide its real location. *See supra* at 3-5. There is no legitimate
11 purpose for this subterfuge, and an enterprise that goes to great lengths to hide
12 itself is unlikely to comply with discovery obligations intended for law-abiding
13 civil litigants.

14 Finally, the HOPE Services scam is outright theft, as opposed to a technical
15 regulatory violation. It is unreasonable to expect that people willing to simply
16 steal homeowners’ mortgage payments will comply with a court order to preserve
17 evidence. Accordingly, *ex parte* relief is necessary.

19 **2. Lake Is Also Likely To Disregard a Court Order To** 20 **Preserve Evidence.**

21 As described below, Lake is also unlikely to comply with a Court order to
22 preserve evidence. Lake has already perjured himself twice with respect to the
23 practices at issue here. Moreover, Advocacy Department also refused to comply
24

25
26 ¹¹⁹ HOPE Services has approximately ten employees. Ostrum ¶¶231:125 at
27 2541.

28 ¹²⁰ It does business under CCE and HOPE Services. *See supra* at 4 n.4;
Ostrum ¶¶137:139 at 2687.

1 with DFI subpoenas. Finally, Lake's active effort to conceal HOPE Services'
2 fraud demonstrates substantial risk that he will disregard a court order.

3 **a. Lake's Perjury Concerning the Business Practices at**
4 **Issue Shows a Willingness To Disregard the Law.**

5 Lake perjured himself twice to help hide the fraud described above. First, as
6 discussed above, DFI issued a subpoena to "JD United." Penttila ¶4:3 at 69-71.
7 Among other things, DFI asked: "Are you currently or have you ever provided or
8 offered to provide loan modification services . . . for properties or consumers
9 located in Washington?" *Id.* at 69. On August 22, 2104, Lake denied having done
10 so in his sworn response. *Id.* However, in May 2014, Advocacy Department
11 began working with Clemens—a Washington resident with a Washington
12 property—ostensibly to help her "keep moving forward with [her] request for
13 mortgage assistance." Clemens 3d ¶6:4 at 22. In fact, Advocacy Department
14 prepared its standard package of letters demanding a modification for her.¹²¹ *Id.* at
15 ¶5:3 at 15-21.

16 Significantly, Clemens was not Lake's only Washington "client." Advocacy
17 Department also worked with Washington resident Talon Young. Young explains
18 that Advocacy Department "responded to my concerns about the modification by
19 telling me they were speaking to my lender, and that I shouldn't worry[.]" Young
20 ¶5. If, as the evidence suggests, Advocacy Department contacts every victim who
21 makes a payment to HOPE Services, then Lake provided loan modification
22 assistance to at least four additional Washington residents before denying exactly
23 that under oath in response to a DFI subpoena. Clemens 3d ¶¶ 5-8; Young ¶7:2 at
24

25 ¹²¹ In fact, throughout the summer and into September, Lake communicated
26 with Clemens. On August 6, her situation deteriorated, Lake exchanged emails
27 with her under a subject line reading: "Eviction Proceedings ██████████
28 ██████████, WA ██████████." Clemens 3d ¶7:5 at 25. He communicated
with Clemens about her foreclosure on many occasions, including August 18,
2014—just four days before he denied under oath working with Washington
homeowners. Clemens 3d ¶8:6 at 27; Penttila ¶4:3 at 69.

1 5; *id.* ¶9; Williams ¶¶5-8 at 4-7 (attaching victim checks prior to the subpoena
 2 return referencing properties (or drawn from banks) in Oak Harbor, Bremerton,
 3 Marysville, and Federal Way, Washington).

4 Furthermore, in his sworn discovery response, Lake also denied to DFI that
 5 JD United did “business under any other name such as a registered trade name or
 6 fictitious name.” Penttila ¶4:3 at 69. This response directly contradicts Lake’s
 7 (also sworn) assertion in the *Elias* Action Answer, in which he asserted that “JD
 8 United[] is a prior dba of Advocacy Department.”¹²²

9 Second, Lake perjured himself on his entity’s FBN registration. Initially,
 10 Lake accurately registered JD United as his FBN. Ostrum ¶103:49 at 572.
 11 Subsequently, however, he attempted to conceal his name by re-registering “JD
 12 United” to “U.S. Crush.” Ostrum ¶106:52 at 579. As noted above, U.S. Crush is
 13 actually Lake’s punk band. *See supra* at 14 n.44. However, in his Orange County
 14 filing, Lake falsely identified “U.S. Crush” as a California corporation.¹²³ Lake
 15 also represents that he is the “President” of that nonexistent corporation.¹²⁴ Ostrum
 16 ¶106:52 at 579.

17 **b. Advocacy Department Refused To Comply With DFI**
 18 **Subpoenas.**

19 DFI ultimately sent Lake two subpoenas, both of which Lake failed to
 20 comply with. Penttila ¶¶4-5. For instance, Lake refused to answer questions about
 21 JD United’s principals and employees. He also refused to identify his own title. In
 22 addition, Lake refused to answer DFI’s request that Lake explain what he meant

23 ¹²² Ostrum ¶125:60 at 687. Additionally, in an filing with Orange County,
 24 Lake registered “JD United” as an FBN of “U.S. Crush,” an alleged California
 25 corporation. *See supra* at 13 n.44.

26 ¹²³ The California Secretary of State confirms there is no such legal entity.
 Ostrum ¶110:56 at 589-93.

27 ¹²⁴ Lake also misstated material facts in his verified *Elias* Action Answer.
 Specifically, Lake’s sworn Answer denies the plaintiff’s allegation that “J.D.
 28 United” and “Advocacy Department” “do not appear to be incorporated entities.”
 Ostrum ¶125:60 at 688.

1 when he described JD United as a “third party processing center,” or that he
 2 describe employees’ duties “while performing [] third-party processing services.”
 3 Penttila ¶5:4 at 72-25. Lake’s refusal to provide even rudimentary information in
 4 response to subpoenas from a regulatory agency investigating the conduct at issue
 5 here underscores his unwillingness to comply with basic discovery procedures.
 6 *See, e.g., Lorillard Tobacco Co. v. Canstar (U.S.A.) Inc.*, No. 03 C 4769, 2005 WL
 7 3605256, at *2 (N.D. Ill. Aug. 24, 2005) (considering defendant’s “fail[ure] to
 8 answer discovery requests” as evidence supporting issuance of an *ex parte* TRO).

9 **c. Lake’s Effort To Conceal HOPE Services’ Fraud**
 10 **Establishes His Dishonesty.**

11 Finally, Lake very likely knows HOPE Services lies to homeowners about
 12 alleged loan modifications, but conceals that information from the victims—
 13 thereby perpetuating the fraud.¹²⁵ Normal civil discovery assumes the parties will
 14 act honestly,¹²⁶ as do orders enforcing civil discovery procedures. Because Lake
 15 has acted consistently to conceal fraud, there is no reason to believe an order to do
 16 the opposite will succeed.¹²⁷

17
 18
 19
 20
 21 ¹²⁵ *See supra* at 14-15, 37-40.

22 ¹²⁶ Routine civil discovery requires “absolute honesty.” *See, e.g., Wagner v.*
 23 *Dryvit Sys., Inc.*, 208 F.R.D. 606, 609 (D. Neb. 2001) (“Our adversarial system of
 24 civil justice rests upon access [to all evidence], including that in the control of
 25 adverse parties. This, of course, requires the absolute honesty of each party in
 26 answering discovery requests and complying with discovery orders.”) (citing
 27 *Litton Sys., Inc. v. Am. Tel. & Tel. Co.*, 91 F.R.D. 574, 576 (S.D.N.Y. 1981)).

28 ¹²⁷ Although it might be possible, in theory, to use coercive sanctions after-
 the-fact to compel Lake to help locate information that disappears or reconstruct
 deleted data, forcing the FTC and a potential Temporary Receiver to litigate their
 way to this evidence wastes resources and disserves judicial economy. More
 important, there will be no way to know whether the FTC and the Temporary
 Receiver have recovered all of the relevant evidence.

1 **B. A Complete Asset Freeze Is Necessary.**

2 **1. The Egregious Facts in This Case Warrant a Complete**
 3 **Asset Freeze.**

4 An asset freeze is appropriate where, as here, it is necessary to preserve the
 5 possibility of restitution for victimized consumers.¹²⁸ *FTC v. Southwest Sunsites,*
 6 *Inc.*, 665 F.2d 711, 717-19 (5th Cir. 1982); *see also SEC v. ETS Payphones, Inc.*,
 7 408 F.3d 727, 734 (11th Cir. 2005) (“[T]he asset freeze is justified as a means of
 8 preserving funds for the equitable remedy of disgorgement.”). As the Ninth
 9 Circuit explained, “[o]bviously, the public interest in preserving the illicit proceeds
 10 . . . for restitution to the victims is great.” *FTC v. Affordable Media*, 179 F.3d
 11 1228, 1236 (9th Cir. 1999). In fact, one Court of Appeals has held that, when the
 12 evidence shows “it [i]s probable that the FTC [will] prevail . . . [on] the merits,”
 13 the court “ha[s] a duty” to ensure that assets are available to repay victims.” *FTC*
 14 *v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1031 (7th Cir. 1988).

15 “The FTC’s burden of proof in the asset-freeze context is relatively light.”
 16 *FTC v. IAB Mktg. Assocs., LP*, No. 12-61830-Civ, 2013 WL 5278216 (S.D. Fla.
 17 2013), *aff’d*, No. 12-16265, 2014 WL 1245263, at *4 (11th Cir. Mar. 27, 2014).
 18 “There does not need to be evidence that assets will likely be dissipated in order to
 19 impose an asset freeze.” *Id.* Rather, where—as in an FTC enforcement action—
 20 the law presumes irreparable harm, *see supra* at 26, the FTC need only establish “a
 21 possibility of dissipation of assets” (as opposed to a “likelihood” of dissipation).
 22 *FSLIC v. Sahni*, 868 F.2d 1096, 1097 (9th Cir. 1989); *id.* (“The district court’s

23
 24
 25 ¹²⁸ The Court has authority to issue an asset freeze. *See, e.g., Singer, Inc.*,
 26 668 F.2d at 113 (finding the district court authorized to issue an asset freeze in
 27 13(b) case). This authority includes the power to direct financial institutions to
 28 freeze assets. *See, e.g., United States v. First Nat’l City Bank*, 379 U.S. 373, 385
 (1965); *Reebok, Int’l Ltd. v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1991). In
 fact, a Senate report notes that Section 13 of the FTC Act allows the Commission
 to “go to court *ex parte* to obtain an order freezing assets[.]” S. Rep. No. 103-130,
 at 15-16 (1993), *as reprinted in* 1994 U.S.C.C.A.N. 1776, 1790-91.

1 substitution of a ‘likelihood’ of dissipation—as opposed to its ‘possibility’—[was
 2 error] as the standard placed an unnecessarily heavy burden on FSLIC.”); Cohen
 3 ¶16:10, Order, *FTC v. Wealth Educators, Inc.*, No. CV 15-02375 (C.D. Cal. Apr. 6,
 4 2015) at 9 (“[W]hen a government agency is a movant, the mere ‘possibility’ (as
 5 opposed to likelihood) of dissipation of assets is sufficient to justify a freeze.”)
 6 (citing *Sahni*, 868 F.2d at 1097).¹²⁹

7
 8
 9 ¹²⁹ There is a second line of authority pursuant to which a private party that
 10 must establish irreparable harm correspondingly must show a “likelihood” of
 11 dissipation, *see Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009)—
 12 although the difference is academic because the evidence here establishes that
 13 dissipation is likely. However, “possibility” of dissipation rather than “likelihood”
 14 is the correct standard because *Johnson* limited *Sahni* in a private context where
 15 the court could not presume “irreparable harm.” As *Johnson* explained, it altered
 16 the standard specifically due to a subsequent Supreme Court case involving private
 17 litigants. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)
 18 (requiring “plaintiffs seeking preliminary relief to demonstrate that irreparable
 19 injury is likely”) (Court’s emphasis); *Johnson*, 572 F.3d at 1085 n.11 (limiting
 20 *Sahni* “because *Winter* requires a likelihood of irreparable harm”). Thus,
 21 *Johnson*’s statement regarding *Sahni* is inapplicable where, as in FTC statutory
 22 enforcement, irreparable harm is presumed. *See supra* at 25; *but see SEC v.*
 23 *Schooler*, 902 F. Supp. 2d 1341, 1359-60 (S.D. Cal. 2012) (following *Johnson*
 24 rather than *Sahni* in an SEC enforcement action based on district court decisions,
 25 and without considering the “irreparable harm” presumption). Notably, when
 26 *Sahni* identified the “possibility” standard as the correct one, it specifically relied
 27 upon Ninth Circuit FTC authority that *Johnson* did not mention:

20 We have previously held, in an analogous situation involving the
 21 FTC, that an asset freeze may issue without such a heightened
 22 showing of likely irreparable harm; indeed, when “the public interest
 23 is involved in a proceeding of this nature, [the district court’s]
 24 equitable powers assume an even broader and more flexible character
 25 than when only a private controversy is at stake.” *FTC v. H.N.*
 26 *Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir.1982) (quoting *Porter v.*
 27 *Warner Holding Co.*, 328 U.S. 395, 398 (1946)).

28 *Sahni*, 868 F.2d at 1097. The Ninth Circuit further noted that, in other statutory
 enforcement cases, “courts have consistently concluded that an asset freeze in
 similar contexts does not require that the court find that dissipation is likely.” *Id.*
 (citing *CFTC v. Muller*, 570 F.2d 1296, 1300-01 (5th Cir.1978); *SEC v. Manor*
Nursing Centers, Inc., 458 F.2d 1082, 1106 (2d Cir.1972)). Regardless, the
 evidence here satisfies either standard because, as discussed below, it is highly
 probable that Defendants will dissipate assets unless the Court freezes them.

1 Several facts show that HOPE Services will dissipate assets. Most
2 important, fraud permeates HOPE Services. Fraudulent activities “lead to the
3 conclusion that, absent a freeze, [defendants] would either dispose of, or conceal,
4 or send abroad, all of the moneys that they have obtained[.]”¹³⁰ *Singer*, 668 F.2d at
5 1113. Furthermore, HOPE Services goes to great lengths to hide itself, *see supra*
6 at 3-5, which makes tracing its assets more difficult. It also suggests the HOPE
7 Defendants will try to conceal or dissipate assets. Additionally, HOPE Services is
8 rapidly dissipating assets already, as victims’ money flows out of its accounts as
9 quickly as it arrives. *George* ¶¶ 16:C-17:D. Moreover, CCE and DMN assets go
10 quickly to personal expenses such as sports memorabilia and travel.¹³¹ *Id.* ¶¶ 41-
11 47. Finally, the HOPE Defendants withdrew approximately \$500,000 from CCE
12 and DNM accounts from March 2014-February 2015. *Id.* ¶49.

13 Like HOPE Services, fraud permeates Lake’s Advocacy Department, which
14 actively hides evidence of HOPE Services’ wrongdoing from victims. *See Singer*,
15 668 F.2d at 1113 (asset freeze appropriate when fraud permeates business); *see*
16 *also Mui Ho*, 931 F. Supp. 2d at 999 (N.D. Cal. 2013) (elements of fraud by
17 omission). Equally important, Lake structured Advocacy Department so no victim
18 interacts with a legal entity holding any assets. “Advocacy Department” is not a
19
20

21 ¹³⁰ *See also Manor Nursing*, 458 F.2d at 1106 (“Because of the fraudulent
22 nature of appellants’ violations, the court could not be assured that appellants
23 would not waste their assets prior to refunding public investors’ money.”); *FTC v.*
24 *Int’l Computer Concepts, Inc.*, No. 5:94CV1678, 1994 WL 730144, *16 -17 (N.D.
25 Ohio Oct. 24, 1994) (“Where, as in this case, business operations are permeated by
26 fraud, there is a strong likelihood that assets may be dissipated during the
pendency of the legal proceedings. Mindful of this, courts have ordered the
freezing of assets solely on the basis of pervasive fraudulent activities[.]”) (citations omitted).

27 ¹³¹ Additionally, Pacios routinely gambles at high-end Las Vegas casinos.
28 *Ostrum* ¶252. Pacios spends significant money on high-end gambling trips to
Vegas despite owing victims from his last scam roughly \$1.2 million. *See id.*;
Rivers ¶5.

1 recognized legal entity (or even a registered Orange County d/b/a).¹³² Although
 2 Advocacy Department is associated with JD United, JD United’s operative FBN
 3 registration states that its trade name belongs to alleged California corporation U.S.
 4 Crush. Ostrum ¶106:53 at 579. But U.S. Crush is Lake’s punk band, not a
 5 California corporation. Ostrum ¶151:79 at 914; *id.* ¶110:56 at 589-93. Thus,
 6 Advocacy Department has no legal existence (and, thus, no assets). JD United is
 7 operated by another “company” that also does not exist (and, therefore, also holds
 8 no assets). Accordingly, because Advocacy Department is not a legal entity, this is
 9 not a circumstance in which the Court could order a board of directors not to
 10 dissipate assets, or in which the Court could order an uninvolved principal or
 11 partner to retain assets. If Lake learns about this case before the Court freezes his
 12 assets, he will continue to do what he can to keep those assets secure from his
 13 victims.¹³³

14 “A court of equity is under no duty ‘to protect illegitimate profits[.]’” *CFTC*
 15 *v. British Am. Commodity Options*, 560 F.2d 135, 143 (2d Cir. 1977) (quoting *FTC*
 16 *v. Thomsen-King & Co.*, 109 F.2d 516, 519 (7th Cir. 1940)). In fact, courts often
 17
 18

19
 20 ¹³² Ostrum ¶175:101 at 1009. Lake is required to register “Advocacy
 21 Department” with Orange County. *See* CAL. BUS. & PROF. CODE §§ 17910, 17915.
 22 The requirement exists “to protect those dealing with individuals . . . doing
 23 business under fictitious names. . . . The filing of an [FBN] certificate is designed
 24 to make available to the public the identities of persons doing business under the
 25 fictitious name.” *Id.* § 17900(a)(1). Because Lake violates this law, consumers
 26 who deal with “Advocacy Department” have no way to learn that Advocacy
 27 Department is Lake’s alter ego.

28 ¹³³ We cannot provide detailed information about Lake’s finances because he
 has merged his business and personal financial affairs, and the Right to Financial
 Privacy Act (“RFPA”), 12 U.S.C. § 3401, likely prevents the FTC from obtaining
 information from financial institutions concerning Lake without notifying him.
 Although there are exceptions to RFPA, none apply to Lake’s muddled situation
 clearly enough to give the FTC comfort. However, as discussed above, the mere
 fact that Lake is operating a business that has no legal existence is compelling
 evidence that Lake is attempting to hide assets.

1 prohibit defendants from using ill-gotten gains to fund their defense.¹³⁴ *See, e.g.,*
2 *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 618 (1989) (“A
3 defendant has no Sixth Amendment right to spend **another person’s money** for
4 services rendered by an attorney[.]”) (emphasis added). Money the individual
5 Defendants hold belongs to the homeowners they victimized, and these victims
6 should not have to pay for Defendants’ legal bills, living expenses, gambling, and
7 sports memorabilia. This Court has frozen individual defendants’ assets before,¹³⁵
8 including in *FTC v. National Consumer Council*, a debt relief case involving facts
9 less egregious than the ones presented here (material nondisclosure and
10 misrepresentations as opposed to outright theft).¹³⁶ Accordingly, a full asset freeze
11 is appropriate.¹³⁷

15 ¹³⁴ Similarly, courts often prevent defendants from using ill-gotten gains for
16 living expenses. *See, e.g., SEC v. Petters*, No. 09-1750, 2010 WL 1782235, *2 (D.
17 Minn. Apr. 30, 2010) (“The Court reiterates that living expense payments from
18 funds preserved for [] victims cannot be justified[.]”).

18 ¹³⁵ *See* Amended TRO, *SEC v. High Park Inv. Group, Inc.*, No. 8:05-cv-
19 01090-CJC (C.D. Cal. Nov. 18, 2005), DE17 at 6 (freezing assets of individual
20 defendant Edward Showalter “with an allowance for necessary and reasonable
21 living expenses to be granted only upon good cause shown by application to the
22 Court with notice to and an opportunity for the Commission to be heard).

21 ¹³⁶ *See* TRO, *FTC v. National Consumer Council*, No. 04-0474-CJC (C.D.
22 Cal. May 3, 2004) at 2-4 and 10-12; Cohen ¶14:8 (attaching order). Indeed, one
23 week ago, another court in this District cited *National Consumer Council* to
24 impose an *ex parte* asset freeze against individual defendants who perpetrated
25 extremely serious MARS Rule violations—but still less egregious than simply
26 stealing mortgage payments. Order, *FTC v. Wealth Educators, Inc.*, No. CV 15-
27 02375 (C.D. Cal. Apr. 6, 2015) at 1-5 (describing facts); *id.* at 9 (citing *National*
28 *Consumer Council*); Cohen ¶16:10 (attaching order).

26 ¹³⁷ The FTC has prepared an otherwise identical draft Proposed TRO
27 containing a partial (50%) asset freeze, and can file it immediately at the Court’s
28 request. Additionally, although the asset freeze is not limited to specific accounts,
the FTC made a substantial effort to locate specific account numbers, and the
Proposed TRO specifies known accounts by the financial institution and the last
four digits of the account number. *See* Proposed TRO at 7-8.

1 **2. Alternatively, the Court Should Issue a Partial Asset**
2 **Freeze.**

3 Alternatively, the Court should, at a minimum, preserve a portion of the
4 individual defendants' assets to compensate victims. To accomplish this, the
5 Commission has prepared an alternative Proposed TRO that would freeze only
6 50% of individual defendants' personal accounts. The partial freeze would leave
7 them with resources to hire counsel at reasonable rates and pay reasonable living
8 expenses. Additionally, the alternative Proposed TRO forces the FTC (and
9 potential Temporary Receiver) to respond to any request for additional funds on an
10 extremely expedited basis.¹³⁸

11
12
13
14
15
16
17
18
19
20
21
22 ¹³⁸ For several reasons, the Court should completely freeze corporate
23 accounts (and accounts Lake uses for business) regardless of how it treats personal
24 accounts. Initially, at least the DNM and CCE accounts are unlikely to have
25 considerable assets, because HOPE Services dissipates those assets quickly. *See*
26 *supra* at 49. Additionally, due process interests (such as concern regarding
27 representation) are reduced with respect to corporate and quasi-corporate entities.
28 Finally, because HOPE Services is a common enterprise including both the
individuals and the entities, and because Lake and Advocacy Department are
literally the same, the corporate and quasi-corporate entities will receive a defense
through the individuals. As such, the balancing of interests is different with
respect to these entities, and a total asset freeze is appropriate.

1 **C. The Court Should Appoint a Temporary Receiver.**

2 The FTC proposes three well-qualified receiver candidates—any one of
3 which could assume control of HOPE Services and Advocacy Department to
4 preserve evidence and assets.¹³⁹

5 **1. E3 Advisors**

6 E3 Advisors (“E3”) is a California-based consulting firm with extensive
7 experience as a court-appointed equity receiver in SEC cases. Cohen ¶3:1. E3 has
8 never worked in an FTC matter. Cohen ¶6. E3’s staff includes a mortgage banker
9 who worked at a California-based residential mortgage lender, and had
10 responsibility for loan processing and underwriting. Cohen ¶4:2 at 15. E3’s rates
11 range from \$67.50 to \$265.50/hour. Cohen ¶5:3.

12 E3 proposes to use Dean Zipser of Umberg Zipser LLP as counsel to the
13 Temporary Receiver. Umberg Zipser is based in Orange County and Dean Zipser
14 specializes in complex litigation. Cohen ¶7. Umberg Zipser would charge a
15 blended rate of \$475/hour for partners and a blended rate of \$325/hour for
16 associates. Cohen ¶7.

17
18
19 ¹³⁹ Under Section 13(b) of the FTC Act, the Court has wide latitude pursuant
20 to fashion temporary relief that furthers the statutory purpose. *Singer*, 668 F.2d at
21 1112-13. Among many things, this power includes the appointment of a temporary
22 receiver. *See, e.g., FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432 (11th Cir.
23 1984) (holding that the court has inherent power “to grant ancillary relief,
24 including freezing assets and appointing a Receiver, as an incident to its express
25 statutory authority to issue a permanent injunction under Section 13”) (per curiam).
26 Appointing a receiver is appropriate where, as here, there is “fraud, or the
27 imminent danger of property being lost, injured, diminished in value or
28 squandered, and where legal remedies are inadequate.” *Leone Indus. V. Associated
Packaging Inc.*, 795 F. Supp. 117, 120 (D.N.J. 1992). In fact, when a corporate
defendant deceives consumers to enrich itself, “it is likely that, in the absence of
the appointment of a receiver to maintain the status quo,” “the corporate assets will
be subject to diversion and waste,” to victims’ detriment. *SEC v. First Fin. Group*,
645 F.2d 429, 438 (5th Cir. 1981); *see also SEC v. Keller Corp.*, 323 F.2d 397, 403
(7th Cir. 1963) (“It is hardly conceivable that the trial court should have permitted
those who were enjoined from fraudulent misconduct to continue in control of [the
company’s] affairs for the benefit of those shown to have been defrauded.”).

2. McNamara Benjamin LLP

1
2 McNamara Benjamin LLP (“McNamara”) is a California-based law firm
3 specializing in equity receiverships. Cohen ¶4. McNamara has extensive
4 experience working in FTC matters. *See id.* at 43-48. The Court previously
5 appointed him to serve as Receiver in the litigation involving Pacios’ earlier
6 mortgage scam, *see id.* at 39, and a California court appointed McNamara to serve
7 as Receiver in an earlier scam involving Lake, *see* at 13 n.43. Accordingly,
8 McNamara has already interviewed, and interacted with, both Pacios and Lake.
9 McNamara’s rates range from \$60 to \$375/hour. *See id.* at 41.

10 McNamara proposes to use one of its attorneys, Daniel Benjamin, as counsel
11 to the Receiver. Cohen ¶9. Daniel Benjamin specializes in complex civil litigation
12 and has extensive experience representing federal equity receivers. *See id.* Mr.
13 Benjamin’s rate is \$378/hour. *See id.*

3. Robb Evans & Associates

14 Robb Evans & Associates LLC (“Robb Evans”) is a California-based
15 consulting firm specializing in equity receiverships. *See id.* ¶10:5 at 49. Robb
16 Evans has extensive experience working on FTC matters, *see id.* at ¶12:7, and
17 extensive experience before this Court, *see id.* Its experience includes serving as
18 the receiver in seven matters involving loan modification or mortgage relief fraud,
19 including five that also involved the FTC. *See id.* at ¶10:5 at 49. Robb Evans’
20 rates range from \$99 to \$342/hour. *See id.* at 50.

21 Robb Evans is likely to use either Gary Karis of McKenna, Long & Aldridge
22 LLP (“McKenna”) or Craig Wheelen of Frandzel, Robins, Bloom and Csato L.C.
23 (“Frandzel”) as counsel to the Temporary Receiver. Both have local offices and
24 extensive experience representing equity receivers. Mr. Caris’ anticipated rate is
25 \$598/hour, and Mr. Wheelen’s anticipated rate is \$405/hour. *See id.* at ¶13.
26
27
28

1 **D. The Proposed TRO's Other Provisions Are Necessary and**
 2 **Appropriate.**

3 **1. Immediate Access to Business Premises**

4 The Proposed TRO authorizes the Temporary Receiver to immediately
 5 access the Defendants' business premises.¹⁴⁰ Although the Proposed TRO requires
 6 the Temporary Receiver to afford the FTC and Defendants reasonable access to
 7 Defendants' business premises as well, it also provides that only "[t]he Temporary
 8 Receiver shall have the discretion to determine the time, manner, and reasonable
 9 conditions of such access." Proposed TRO § XVII. Thus, if the Temporary
 10 Receiver allows FTC representatives to join the immediate access, the Temporary
 11 Receiver will control the FTC's conduct during that access. Additionally, if the
 12 Temporary Receiver permits the FTC to image Receivership data during the
 13 immediate access (or at any other time), the Proposed TRO mandates that the
 14 Temporary Receiver supervise the FTC including, among other things, taking steps
 15 "to ensure the integrity of the data." *Id.* The Temporary Receiver must also keep a
 16 copy of anything the FTC images, and provide it to Defendants upon request.¹⁴¹

17 **2. Fifth Amendment Considerations**

18 Requiring individual Defendants to produce documents (such as bank
 19 records) that third parties have created almost certainly does not implicate the Fifth
 20

21
 22 ¹⁴⁰ Proposed TRO § XVII; *see also generally* *U.S. Oil & Gas*, 748 F.2d at
 23 1434 ("The court's authority to issue an immediate access stems from its inherent
 24 equitable authority to issue preliminary relief in order to effectuate permanent
 25 relief.").

26 ¹⁴¹ Although the Proposed TRO contains no other provisions authorizing
 27 expedited discovery from Defendants, two existing orders permit certain discovery.
 28 *See* Final Order, *FTC v. Lakhany*, No. 8:12-cv-337 (C.D. Cal. Feb. 28, 2013),
 DE152 at 22-23 (concerning Pacios and related parties); Final Order, *FTC v.*
Lakhany, No. 8:12-cv-337 (C.D. Cal. Feb. 28, 2013), DE150 at 21-22 (concerning
 Assurity Law Group and related parties). The Court should not (and cannot)
 modify these Orders without further proceedings. *See generally* *Rufo v. Inmates of*
Suffolk Cnty. Jail, 502 U.S. 367, 384 (1992) (order modification standard).

1 Amendment.¹⁴² Out of an abundance of caution, however, the Proposed TRO does
2 not require individual Defendants to produce any information. However, it does
3 permit the FTC and the Temporary Receiver to take discovery from third parties
4 (such as financial institutions and credit reporting agencies) regarding assets.

5 3. Smartphones

6 The HOPE Defendants use their personal cellphones to conduct HOPE
7 Services' business.¹⁴³ Accordingly, the Proposed TRO provides that if they
8 possess a smartphone or tablet on business (Receivership) premises, the Temporary
9 Receiver may image the device, although he must return it to them within two
10 business days (along with a copy of the imaged data).¹⁴⁴

12 ¹⁴² See, e.g., *Fisher v. United States*, 425 U.S. 391, 411 (1976) (holding that
13 it does not violate the Fifth Amendment to compel a third party to produce
14 documents made by a third party, about the defendant, even if the papers on their
15 face might incriminate the defendant); *Singer*, 668 F.2d at 1114 (holding that
16 compelling a defendant to produce documents created by third parties may or may
17 not amount to authentication, and if it does, would not necessarily be a violation of
18 the Fifth Amendment; moreover, if defendant believes there is a Fifth Amendment
19 concern, the burden is on defendant to make a showing to that effect for the court
20 to evaluate) (citing *Fisher*, 425 U.S. 391).

21 ¹⁴³ For instance, Pacios his iPhone to send an email arranging for DNM's
22 office lease, Ostrum ¶190:109 at 1158, and used his personal phone to call the
23 office space lessor eighteen times, Ostrum ¶217. Pacios also gave DNM's
24 telephone service provider his personal cell number. Ostrum ¶202:116 at 1604.
25 Caldaronello listed his personal cellphone on a Postal Service form required to
26 lease a mailbox CCE used, Dalaie ¶2:1 at 4; Ostrum ¶198:113 at 1324, he provided
27 it to another business that leased a second mailbox to CCE, Ostrum ¶119:114 at
28 1334 (Caldaronello's personal number appears a business card bearing another
entity's name), he listed his personal cellphone as CCE's number on application
materials he completed to obtain office space for CCE, Ostrum 200:115 at 1426,
and he provided his personal cellphone as the business number for CCE or "Trust
Payment Center" on account application materials he submitted to two different
financial institutions, Ostrum ¶231:125 at 2450-2452, Ostrum ¶235:126 at 2462-
2463. Nelson provided his personal cellphone to DNM's office lessor as DNM's
business number. Ostrum ¶188:109 at 1141. HOPE Services also provided
Moreira's personal cellphone to a maildrop lessor, Ostrum ¶199:114 at 1334, and
to an office space lessor. Ostrum ¶200:115 at 1482.

¹⁴⁴ See Proposed TRO § XX(D). The Temporary Receiver may request that
the FTC image the device subject to his supervision. *See id.*

1 **4. Social Media**

2 There is very substantial evidence that individual Defendants and other
 3 HOPE Services employees record information relevant to business activities and
 4 assets on social media.¹⁴⁵ For instance, Moreira posted an image himself showing
 5 off a Rolex, Ostrum ¶141:70 at 800, and an image of himself in front of a new
 6 vehicle, *id.* ¶144:73 at 809. The Proposed TRO does not require Defendants or
 7 HOPE Services employees to produce any social media, but it does prohibit them
 8 from deleting or destroying any social media material during the Order's
 9 pendency.

10 **5. Safes**

11 Caldaronello purchased a large safe with corporate funds and installed it on
 12 (or in) his garage floor. Ostrum ¶206:117 at 1612. Additionally, HOPE Services
 13 apparently used corporate funds to purchase at least one additional safe. Ostrum
 14 ¶225:123 at 2418. The Proposed TRO does not require Defendants to produce
 15 anything contained within a safe purchased with corporate funds but located in a
 16 residence. However, to preserve assets and evidence, the Proposed TRO prohibits
 17 Defendants from accessing or removing the contents of any safe purchased with
 18 corporate funds during the Proposed TRO's pendency. *See* Proposed TRO §
 19 XX(E).

20 **CONCLUSION**

21 For the aforementioned reasons, the Court the FTC requests that the Court
 22 grant the proposed TRO.
 23

24 _____
 25 ¹⁴⁵ *See, e.g.*, Ostrum ¶156:83 at 946 (sports memorabilia hanging in office);
 26 Ostrum ¶141:70 at 800 (photo of Moreira's Rolex); Ostrum ¶167:94 at Social
 27 Media Video Folder (video depicting Caldaronello and Nelson in the office);
 28 Ostrum ¶143:72 at 808 (Moreira posting about company potluck). The FTC may
 still seek social media information under the existing Final Orders, to the extent
 appropriate. *See* Proposed TRO XX(A).

Respectfully submitted,

Dated: 4/13/15



JONATHAN COHEN
DC Bar No. 483454; jcohen2@ftc.gov
MIRIAM R. LEDERER
DC Bar No. 983730; mlederer@ftc.gov
Federal Trade Commission
600 Pennsylvania Ave., NW, CC-9528
Washington, DC 20580
202-326-2551 (Cohen); -2975 (Lederer);
-3197 (facsimile)

JOHN D. JACOBS (Local Counsel)
CA Bar No. 134154, jjacobs@ftc.gov
Federal Trade Commission
10877 Wilshire Boulevard, Suite 700
Los Angeles, CA 90024
310-824-4343; -4380 (facsimile)

Attorneys for Plaintiff Federal Trade Commission

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28