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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SAMEER LAKHANY, *et al.*,

Defendants.

Case No. SACV12-00337 CJC (JPRx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO FIND
DEFENDANT BRIAN PACIOS IN
CONTEMPT**

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1 **I. INTRODUCTION**

2 Brian Pacios (“Pacios” or “Contempt Defendant”) is violating this Court’s
3 order¹ banning him from participating in the mortgage industry and prohibiting
4 him from making misrepresentations about any product or service. Masquerading
5 as a government-affiliated loan modification provider, Pacios and his companies
6 tell consumers they need only submit a few trial mortgage payments to obtain a
7 loan modification. There are, however, no modifications, and consumers’
8 payments never reach their lenders. Pacios simply steals consumers’ loan
9 payments. As a result, consumers lose money, and in many instances, their homes.
10 Accordingly, the FTC seeks civil contempt sanctions against Pacios, including
11 compensatory relief for consumers victimized by Contempt Defendant’s fraudulent
12 scheme. The FTC further requests an opportunity to submit additional evidence of
13 the full amount consumers paid, before the Court determines the final amount of
14 consumer loss.²

15 **II. STATEMENT OF FACTS**

16 **A. The Original Action**

17 In the underlying case, the Court entered the Permanent Injunction on
18 February 28, 2013, resolving charges that Pacios violated the Mortgage Assistance
19 Relief Services Rule (“MARS Rule”), 12 C.F.R. Part 1015.³ Among other things,
20 the Permanent Injunction (1) bans Pacios from working on mortgage assistance
21

22
23 ¹ Permanent Injunction, *FTC v. Lakhany*, No. SACV12-337 (Feb. 28, 2013),
DE152 (“Permanent Injunction”).

24 ² The Court recently granted an *Ex Parte* Application for a Temporary
25 Restraining Order and Preliminary Injunction against Pacios and several other
26 defendants in the related matter *FTC v. Lake* (“the *Lake* Action”), SACV 15-
00585-CJC.

27 ³ First Am. Cmpl., *FTC v. Lakhany*, No. SACV12-337 (Mar. 22, 2012),
28 DE72 ¶18; Stip. for Perm. Inj., *FTC v. Lakhany*, No. SACV12-337, DE148 (Feb.
27, 2013).

1 relief products or services and (2) prohibits him from misrepresenting any fact
2 material to a consumer's decision to buy any good or service.⁴ Pacios also agreed
3 to a judgment of \$1.75 million, of which he still owes over \$1 million.⁵

4 **B. Contempt Defendant's Flagrant Violations of the Court's Order**

5 Pacios violated the Court's ban and misrepresentation prohibitions by selling
6 fraudulent mortgage assistance relief services ("MARS"). As described below,
7 Pacios and his associates claim to provide loan modifications through the entities
8 known as HOPE Services⁶ and HAMP Services⁷ (collectively "HOPE Services").⁸
9 In reality, HOPE Services fails to provide any loan modifications and instead steals
10 consumers' mortgage payments. Because of the control Pacios exerts over HOPE
11 Services and the assistance he provides to HOPE Services' employees, he is
12 responsible not only for the misrepresentations he makes personally, but also for
13 those made by his associates at HOPE Services.

14 **1. HOPE Services Makes Misrepresentations In the Sale of** 15 **MARS**

16 Pacios and his associates at HOPE Services operate a three-phase loan
17 modification scam targeting homeowners facing foreclosure. HOPE Services'

18
19 ⁴ Permanent Injunction §§ I, III.

20 ⁵ *Id.* § VI.A; Rivers ¶5.

21 ⁶ "HOPE Services" is the non-registered d/b/a of C.C. Enterprises. Ostrum
22 ¶100; *id.* ¶198; UPS ¶5. C.C. Enterprises registered two fictitious business names,
23 "Retention Divisions" and "Trust Payment Center." Ostrum ¶¶104-05.

24 ⁷ "HAMP Services" is the non-registered d/b/a of D.N. Marketing. Ostrum
25 ¶101; *id.* ¶198; *id.* ¶185. D.N. Marketing registered the fictitious business name
26 "Trial Payment Processing." *Id.* ¶107.

27 ⁸ As set forth in the Memorandum supporting *ex parte* relief in the FTC's *de*
28 *novo* action, *see supra* at 1 n.2., HOPE and HAMP Services are part of a common
enterprise. HOPE Services is an earlier iteration of the scam that now calls itself
HAMP Services; they have the same controlpersons, co-mingled staff, and an
identical scheme selling fraudulent MARS. For simplicity, this brief refers to
HAMP and HOPE collectively as "HOPE Services."

1 claims, however, are false: consumers do not receive the promised modifications,
2 their lenders never receive their trial payments, and consumers do not receive
3 refunds. Instead, Pacios and HOPE Services simply steal consumers' money.

4 **a. Phase One – HOPE Services' Initial Pitch**

5 In phase one, HOPE Services induces consumers to call in response to a
6 mailer and preliminarily approves the homeowner for a loan modification.⁹
7 Integral to this process are HOPE Services' representations, both implicit and
8 explicit, that it is affiliated with the United States government. Consumers report
9 that HOPE Services' government association or affiliation was one of the reasons
10 the consumer called.¹⁰

11 HOPE Services takes many steps to mislead consumers into thinking it is
12 government-approved. It uses "snap pack" or "snap sealed" mailers designed to
13 look and feel official, and have a government seal in the top right corner of the
14 letter. Ostrum ¶184; *see also* Cannizzo ¶3:1; Young ¶3:1; Wofford ¶3:1. Among
15 other things, the mailers claim: "You may qualify for this limited time government
16 program. Call . . . to see how much the government sponsored loan program can
17 save you on a monthly basis."¹¹ Homeowners who call the number on the mailer
18
19

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21 ⁹ HOPE Services generally uses mailers to induce victims to call a HOPE
22 Services intake representative; however, a small number of victims report
23 receiving unsolicited calls from a number with a Washington, D.C. area code of
24 "202." Ostrum ¶16.

25 ¹⁰ *See, e.g.*, Clemens ¶2 ("The solicitation seemed legitimate to me because
26 it was labelled 'confidential,' contained the Presidential seal, and referenced a
27 government-sponsored financing program.").

28 ¹¹ Cannizzo ¶3:1. HOPE Services characterizes the program as "an
aggressive update to Obama's original modification program," stating "[y]our bank
is now incentivized by the government to lower your interest rate through the New
HAMP 2 program." *Id.* The mailers encourage consumers to "[t]ake advantage of
this offer that the government has put in place to help consumers like you." *Id.*

1 reach “HOPE Services” or “HAMP Services,” terms used by legitimate
2 government programs.¹²

3 Pacios and his associates also state that HOPE Services is a “nonprofit”¹³
4 that “works directly” with three government “agencies”: MHA, the Department of
5 Housing and Urban Development (“HUD”), and the Neighborhood Assistance
6 Corporation of America (“NACA”).¹⁴ When consumers ask for more information,
7 HOPE Services directs them to the real MHA, HUD, and NACA websites.¹⁵

8 Pacios told at least one consumer that he worked for NACA. Wofford ¶7.

9 Purportedly due to the nature of government programs, Ostrum ¶257, and HOPE
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19 ¹² For instance, the website for the government’s Making Home Affordable
20 (“MHA”) program repeatedly references the word “HOPE,” encouraging
21 distressed homeowners to call the “Homeowner’s HOPE™ Hotline,” which is 888-
22 995-HOPE. “HAMP” is the acronym for the government’s “Home Affordable
23 Modification Program,” which the MHA website discusses. Ostrum ¶181.

24 ¹³ Ostrum ¶47 (“We’re a nonprofit organization that works directly with
25 three government agencies.”); *see also id.* ¶257; Cannizzo ¶6; Harris ¶4; Clemens
26 ¶6; Robinson ¶3.

27 ¹⁴ Cannizzo ¶6 (“Hope Services told me that they were a non-profit that
28 worked with HUD and the Making Home Affordable program. As a result, I
believed that they were one of the agencies **working with the government** to help
homeowners that were in distress.”) (emphasis added); Young ¶4; Clemens ¶4;
Robinson ¶3; Monrreal ¶4; Harris ¶4; Huggins ¶3.

¹⁵ Ostrum ¶56 (undercover transcript); *id.* at 13 (“You can go to
MakingHomesAffordable.gov.”).

1 Services' good working relationship with the homeowner's lender,¹⁶ Pacios and his
2 partners claim to have a high success rate.¹⁷

3 After the consumer submits preliminary paperwork, Pacios and his
4 associates provide "good news"—the homeowner has "met the initial guidelines
5 for some of the programs being offered right now." They provide the homeowner
6 with an "eligibility number"¹⁸ and request additional documentation relevant to a
7 genuine loan modification, such as mortgage statements, payment records,
8 foreclosure paperwork, paystubs, and utility bills. Ostrum ¶49.

9 **b. Phase Two – HOPE Services Induces the First Payment**

10 In phase two, Pacios and his confederates inform the consumer that he has
11 been "approved" for a loan modification, and send the consumer purported
12 confirmation of the new loan terms and final paperwork. Over the course of about
13 a week, Pacios and others obtain additional documents, such as financial
14 information¹⁹ and a "hardship letter," Ostrum ¶63-64. Pacios and his team
15 discourage the consumer from speaking to anyone who might determine that
16 HOPE Services is a fraud, such as an attorney or the consumer's lender. Ostrum
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18
19 ¹⁶ Cannizzo ¶7 ("Hope Services told me that they had direct contacts with
20 the 'higher-ups' at various lending agencies, and I would never be able to reach
21 these people. And this was why they would be able to get a mortgage modification
22 when I could not."); Clemens ¶6 ("[Caldaronello] also stated Hope Services was
23 uniquely successful having government-backed gateways to the top lenders and
24 banks."); Monrreal ¶4 ("[Pacios] went on to explain that . . . [HOPE Services] had
25 an excellent relationship with big lenders like mine (Wells Fargo)."); Ostrum ¶48.

26 ¹⁷ Monrreal ¶4 ("[Pacios] went on to explain it was likely Hope Services
27 could save my home because it had done so for many other clients[.]"); Ostrum
28 ¶48; *see also* Clemens ¶6 ("[Caldaronello detailed Hope Services' 99% success
rate with mortgage modification, stating they had never lost a home.").

¹⁸ Wofford ¶6 ("[Pacios] said that if I got an eligibility number, than that
meant I was going to get a loan modification.").

¹⁹ Ostrum ¶52; *see also* Cannizzo ¶9; Monrreal ¶5; Harris ¶3; Huggins ¶4;
Young ¶4; Wofford ¶6.

1 ¶68; *id.* ¶78. Finally, they tell the consumer that they have sent his or her
2 application to three “government agencies.”²⁰

3 A few days later, Pacios and his partners claim that MHA has approved the
4 homeowner’s loan modification request. Ostrum ¶75. The proposed new terms
5 are favorable, and include a payment schedule for any “reinstatement fee” and/or
6 three monthly trial mortgage payments at the new, reduced rate.²¹ HOPE Services
7 state that they will send partially completed MHA paperwork overnight, which the
8 homeowner should sign and return as soon as possible. Ostrum ¶80. They
9 emphasize that the lender can still foreclose until the homeowner returns the
10 paperwork and makes the first payment.²²

11
12 ²⁰ Ostrum ¶60. The counselor remains optimistic and upbeat about
13 consumers’ chances: “I would be shocked if you’re not eligible for something
14 personally[.]” Ostrum ¶73.

15 ²¹ Cannizzo ¶¶11-13 (“Jeff [HOPE Services] told me that Nationstar had
16 agreed to modify my mortgage to a fixed rate of 2.85% for 30 years, and that
17 Nationstar had agreed to waive all arrearages. . . . To finalize my loan
18 modification, Jeff told me that I needed to sign some paperwork and submit three
19 monthly trial payments of \$2,231.07. After making these three payments, my loan
20 modification would be final.”); Wofford ¶11 (“Brian [Pacios] told me that the
21 lender approved my modification at a 2% fixed interest rate with a 40-year term.”);
22 Monreal 1 ¶6 (“A few days after this application process, [Pacios] called and told
23 me that my loan modification was approved.”); Ostrum ¶75. Significantly,
24 legitimate government programs use a trial payment process, so homeowners who
25 search for information about trial payments and loan modification will not
26 necessarily notice anything suspicious about what HOPE Services proposes. *See*
27 Ostrum ¶76.

28 ²² Ostrum ¶67; *See, e.g.*, Wofford ¶16 (“Brian [Pacios] told me that once
they received my paperwork and the first payment, they wouldn’t be able to
foreclose on my house and that the loan modification would be in place.”); Ostrum
¶75 (“[B]y making those payments on time, accepting the terms, signing the
documents that enables you to receive the modification 90 [to 120] days from now
as a permanent one[.]”). Additionally, in a recorded call, a consumer asked Pacios:
“So if I make the payments, I’m guaranteed to be 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
¶258; *id.* ¶9 (“[FTC investigator]: “**do I have a modification now[?]**” “[HOPE
Services]: **Yes**, you do, yeah.” (emphasis added).

1 Next, HOPE Services overnights to the consumer most of a partially
2 completed genuine MHA application (omitting only the page that warns of loan
3 modification frauds),²³ the new terms of the consumer’s modified loan, and a
4 payment schedule. Cannizzo ¶16:2; Robinson ¶7:2; Young ¶2:2; Wofford ¶12:2.
5 Critically, HOPE Services instructs the homeowner to send “certified funds
6 only”—either a cashier’s check or money order²⁴—by “FedEx or UPS Next Day
7 Air”²⁵ to a California address.²⁶

8 Perhaps the most ingenious aspect of the scam is HOPE Services’
9 instruction that the funds be payable to the lenders’ purported trust account.²⁷
10 Hope Services tells consumers that the name of the trust account is Trial Payment
11

12
13 ²³ Anyone can download the paperwork from the MHA website. *See*
14 [http://www.makinghomeaffordable.gov/get-started/request-](http://www.makinghomeaffordable.gov/get-started/request-modification/Documents/RMA_english_03.30.2012_static.pdf)
15 [modification/Documents/RMA_english_03.30.2012_static.pdf](http://www.makinghomeaffordable.gov/get-started/request-modification/Documents/RMA_english_03.30.2012_static.pdf) (viewed Mar. 8,
16 2015); Ostrum ¶181; Robinson ¶6:1; Huggins ¶5:2 (attaching pre-filled form);
17 Ostrum ¶80; Wofford ¶16 (“[Pacios] also told me not to worry about all of the
18 blank parts [in] the loan modification paperwork, because [Advocacy Department]
19 would fill those out for me based on his interview with me; all I needed to do was
20 sign my name to the documents.”).

21 ²⁴ These are more difficult for consumers to trace than personal checks.
22 Likewise, stop payment orders on cashier’s checks or money orders are difficult or
23 impossible. Ostrum ¶81.

24 ²⁵ Possibly an attempt by HOPE Services to evade detection by the Postal
25 Inspectors. Ostrum ¶82.

26 ²⁶ *See, e.g.*, Young ¶7:2; Cannizzo ¶16:2; Clemens ¶8:2; Huggins ¶5:3;
27 Robinson ¶7:3; Wilson ¶2:A; Wofford ¶12:4.

28 ²⁷ *See, e.g.*, Robinson ¶4 (“[Pacios] explained that the loan modification
process involved trial payments, which would be held in a trust account and
delivered to the lender after the modification was complete.”); Cannizzo ¶14 (“Jeff
[HOPE Services] told me that the payments would not be sent to Nationstar
immediately, but would instead go to a trust account, to make certain that
Nationstar did not take the money without accepting the modification.”); Harris ¶5
 (“[Pacios] told me that the reinstatement fee and trial payments would be held in
trust. If [Pacios] had not stated that the money would be held in trust, I would not
have continued to work with Hope Services.”). Ostrum ¶76 (“Every payment that
[the consumer] made does go into the trust account.”); *id.* at ¶257.

1 Processing²⁸ (or Trust Payment Center²⁹ or Retention Divisions)³⁰ “/” the name of
2 the consumer’s lender.³¹ For instance, Pacios told one consumer to stop paying
3 PNC’s loss mitigation department, and instead send her trial payment check to
4 “Trust Payment Center/PNC.” Wofford ¶13.

5 What consumers do not know is that “Trust Payment Center,” “Trial
6 Payment Processing,” and “Retention Divisions” are all registered fictitious
7 business names that belong to the corporate entities that do business as HOPE
8 Services.³² Under the revised U.C.C. § 3-110(d), many banks will cash a draft
9 payable to “Trust Payment Center/PNC” with only a signature from the FBN’s
10 registrant—in this case, HOPE Services.³³

11
12 ²⁸ Ostrum ¶79:30 at 365; Ferriero ¶7.

13 ²⁹ See, e.g., Robinson ¶7; Harris ¶7; Wells Fargo ¶¶6, 12-14.

14 ³⁰ The scam used “Retention Divisions” in early 2014. See Huggins ¶5:3.
15 “Retention Divisions” apparently worked because lenders sometimes have “Home
16 Retention” departments that work with distressed homeowners.

17 ³¹ Clemens 1st ¶9:2 at 7; Cannizzo ¶15:2 at 12; Young ¶8:4 at 11. More
18 recently, HOPE Services has been directing consumers to make their checks
19 payable to “Trial Payment Processing” as a standalone entity. Ostrum ¶79:30 at
20 365; Ferriero ¶7. In phone conversations, however, HOPE Services makes clear
21 that Trial Payment Processing is the lender trust account. Ostrum ¶79:30 at 365.

22 ³² In California, county clerks assign FBNs based on “good faith filings,”
23 *i.e.*, filings substantiated with only a signature. Thus, one can obtain an FBN
24 without divulging the holder’s genuine address, or for a company that does not
25 exist. Furthermore, there is no statewide FBN database. Thus, even assuming an
26 FBN registration is legitimate, a victim must know to search for FBNs at the
27 county level—and which county—to locate the party authorized to use the FBN.

28 ³³ 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. 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 Tank” under U.C.C. § 3.110(d)) (“Where a check is
made payable to more than one payee and the payees’ names are separated by a
virgule, or slash, the check may lawfully be interpreted as having been made
payable in the alternative, allowing payment to be made upon presentation of a
proper endorsement from either payee.”).

1 **c. Phase Three – Keeping the Consumer on the Hook**

2 After Pacios and HOPE Services congratulate the consumer on his purported
3 MHA approval, they introduce the “Advocacy Department.”³⁴ The Advocacy
4 Department tells consumers that HOPE Services “referred your file to our office,”
5 ostensibly to help improve and finalize the consumer’s loan modification.³⁵
6 Advocacy Department tells consumers that it will communicate with their lenders,
7 and instructs them to forward all communications to Advocacy Department.³⁶ By
8 interposing itself between the homeowner and the lender, Advocacy Department
9 filters information that would make HOPE Services’ fraud obvious. For example,
10 when one consumer came home to find a foreclosure notice nailed to her door,
11 Lake wrote “[t]he case was probably given to the Attorney a couple of months ago
12 . . . so no need to worry about that at this time.” Harris ¶20:11.

13 Importantly, Advocacy Department reassures consumers that the
14 modification process is “moving forward,” which keeps consumers making
15 payments rather than questioning HOPE Services’ legitimacy. *See, e.g.*, Young ¶9;
16 Wofford ¶¶18-19; Clemens 3d ¶6:4 at 22. To substantiate that claim, Advocacy
17 Department submits complaints to miscellaneous public officials and government
18 agencies (that may or may not have anything to do with regulating the mortgage
19

20 ³⁴ Advocacy Department is the name most consumers hear, but it is also
21 sometimes called “Advocacy Division,” “Advocacy Program,” and “Advocacy
22 Agency.” Ostrum ¶20.

23 ³⁵ Ostrum ¶85:36; *see also id.* ¶86-37 (“[W]e submit the complaint to the
24 Congress and CFPB, and then we can forward that **to modify your loan through a
25 permanent modification.**”) (emphasis added).

26 ³⁶ *See, e.g.*, Wofford ¶20:7 at 46 (Lake’s capitalization); Harris ¶12:5 at 32.
27 Similarly, when asked who should respond to voicemails from Garcia’s lender,
28 Advocacy Department said: “[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; Young ¶9 (“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.”).

1 industry).³⁷ The complaints are sloppy and vague, and it is unlikely that they
2 would finalize or improve upon any modification, let alone one that never
3 existed.³⁸

4 **d. Evidence of Falsity**

5 There is overwhelming evidence of the falsity of Pacios' and HOPE Services
6 claims. First, in investigating HOPE Services' claims, the FTC conducted
7 undercover calls with HOPE Services. During those calls, HOPE Services claimed
8 that MHA and a financial institution had approved the FTC's request for a loan
9 modification, despite the fact that both the person making the request and the
10 mortgage under consideration were fabricated. Second, consumers and their
11 lenders offer sworn testimony that consumer payments were neither given to the
12 lenders, nor returned to the consumers. Moreover, this testimony is supported by a
13 forensic accounting. Finally, the "agencies" with whom HOPE Services allegedly
14 works offer sworn testimony contradicting Pacios' and HOPE Services' claims.

15 **i. Pacios' Associates "Approved" a Modification for a Fake**
16 **Person's Fabricated Mortgage**

17 Posing as Ann Garcia, the wife of financially distressed mortgagor Carlos
18 Garcia, an FTC investigator sought a loan modification from HOPE Services using
19 false financial information and fabricated documents.³⁹ Nevertheless, HOPE

21 ³⁷ "[D]on't get discouraged if local government tells you to call an 800
22 number or the FDIC says they don't regulate this particular issue . . . it only takes
23 ONE BULLET TO BRING THE LENDER DOWN." Harris ¶12:5 at 32 (Lake's
capitalization); Wofford ¶20:7 at 47 (same).

24 ³⁸ See, e.g., Harris ¶25 ("None of the letters Denny Lake wrote or
instructions he gave had any effect."); Clemens ¶5:3 at 20 (draft letter to
25 Congressman Heck).

26 ³⁹ Ostrum ¶¶41-98 (summarizing undercover calls); Ostrum ¶¶52:9 at 162-
77; *id.* ¶54:11 at 187; *id.* ¶57:14 at 213-16; *id.* ¶64:21 at 257-58; *id.* ¶52:9 at 163-
77; *id.* ¶54:11 at 187; *id.* ¶57:14 at 214-16. The address for the fabricated home
27 mortgage appeared on several documents Garcia submitted, including her
28 mortgage statement, foreclosure notice, utility bill, and her husband's paystubs.

1 Services claimed that MHA had spoken with the Garcias' bank and approved a
2 loan modification.⁴⁰ No genuine government program, lender, or servicer could
3 have "approved" the Garcias for anything, much less a modification for a non-
4 existent loan.

5 Moreover, Pacios' girlfriend, Cortney Gonsalves, deposited the FTC's
6 "reinstatement fee" into HOPE Services' bank account.⁴¹ Pacios spoke with the
7 FTC investigator when she called to request a refund on February 19. Pacios told
8 her that he had "one of my . . . counselors reach out to the servicer" and assured
9 her that he would send a refund via certified mail in the new few days.⁴² The FTC
10 never received its refund. Ostrum ¶98.

11 **ii. Consumers, Their Lenders, and Forensic Accounting**
12 **Confirm that HOPE Services Kept Consumers' Money**

13 Consumers and their lenders offer sworn testimony establishing the falsity of
14 Pacios' and HOPE Services' claims, which is supported by the FTC's forensic
15 accounting. With consent from seven homeowners who made payments to HOPE
16 Services, the Commission contacted their lenders or servicers (Wells Fargo, Selene
17 Financial, BSI, and PNC). Each lender or servicer confirmed that it had not
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24 ⁴⁰ Ostrum ¶75:30 at 345 ("[F]rom what I can see is that they [MHA] did
25 come to an agreement with [your lender] directly, okay. . . . HUD is still in
26 submission, but . . . they got copied on MHA's terms and said they don't think they
27 can do better than that. So it looks like this might be our only option, okay?")

28 ⁴¹ Ostrum ¶84:35 at 414-17; Ostrum ¶219:94 at ATM Surveillance Videos
Folder.

⁴² Ostrum ¶97:45 at 552-53.

1 received the consumers’ payments, or any MHA applications during the period
2 after the consumers returned their paperwork to HOPE Services.⁴³

3 Bank records obtained by the Commission establish that HOPE Services’
4 failure to send consumers’ money to their lenders is widespread. The Commission
5 determined that consumers submitted to HOPE Services approximately \$1.9
6 million from approximately March 1, 2014 through January 2015. George ¶12.
7 The FTC has been unable to uncover any evidence that any material sum (let alone
8 \$1.9 million) was transferred to lenders, or to other accounts for which the
9 Commission’s forensic accountant lacks records.⁴⁴ On the other hand, the financial
10 records show many payments to Pacios (through his girlfriend) very large cash
11 withdrawals, travel expenses, and personal charges. George ¶¶41-49; *id.* at ¶20.

12 **iii. HOPE Services Has No Connection to HUD, MHA, or**
13 **NACA**

14 HOPE Services’ claims that they “work directly with three government
15 agencies”—MHA, HUD, and NACA—are false. Ostrum ¶47:7 at 138. First, as the
16 Treasury Department explains, “MHA is not an ‘agency,’ but a program
17 administered by Treasury as part of the federal government’s larger effort to aid
18 distressed homeowners.” Treasury ¶12. “[MHA] has no employees or physical
19 location. Any representation is false to the extent it conveys to consumers that
20 MHA is doing things (or could do things) such as reviewing applications[.]” *Id.*

21
22 ⁴³ Compare Young ¶8:4 at 11 with Wells Fargo ¶12:3 at 16; Clemens ¶10
23 with Wells Fargo ¶15:6 at 20-22; compare Monreal ¶6:3 at 7 with Wells Fargo
24 ¶13:4 at 17; compare Robinson ¶7:2 at 13 and ¶9:4 at 16-17 with Wells Fargo
25 ¶14:5 at 18-19; compare Harris ¶7:2 at 10 with BSI ¶¶3-6:1-3 at 3-5; compare
Wilson ¶¶4-5:1 at B with Selene ¶¶3-4:1 at 3-5; compare Wofford ¶15:5 at 29-30
with PNC 2 ¶¶2-3:1-2 at 3-4 and PNC 1 ¶2.

26 ⁴⁴ *Id.* ¶¶17-19. There are several payments to Capital One that appear to be
27 primarily credit card payments (totaling less than \$3,500). *Id.* ¶18. There are also
28 few payments to a bank, but two appear to be transfers to Gonsalves and Moreira,
and the third is less than \$6000. *Id.* ¶19.

1 Treasury reviewed HOPE Services' mailers, and confirmed that it has "no
2 relationship with whatever persons or entities are distributing [them]." *Id.* ¶8.

3 Second, HUD also confirmed that "any representation is false to the extent it
4 conveys that loan modification applications are routinely accepted by HUD. HUD
5 sometimes receives misdirected applications from distressed homeowners, but it
6 does not have an official process for receiving and/or reviewing them." HUD ¶8.

7 Finally, NACA is "not a government agency" at all, but a nonprofit
8 "community advocacy and homeownership organization." NACA ¶5. NACA does
9 not "provide[] loan modifications" itself. *Id.* Although NACA helps homeowners
10 obtain loan modifications, NACA confirms that "any representation is false to the
11 extent it conveys that any third party submits documentation to NACA other than
12 the homeowner, the lender, or the lender's servicer." *Id.* ¶4. Additionally, "NACA
13 has not authorized any third party to use its name for any commercial purpose
14 whatsoever." *Id.* ¶7. As NACA's National Director put it, the use of NACA's
15 name in a telemarketing scam is "grossly offensive." *Id.* ¶8.

16 **2. Contempt Defendant's Role at HOPE Services**

17 Contempt Defendant sells fraudulent mortgage assistance relief services,
18 both directly and indirectly, at HOPE Services. Pacios directly defrauds
19 consumers by convincing them that HOPE Services can assist them in obtaining a
20 modification. Multiple consumers report that they worked with "Brian" when they
21 were defrauded in the scam set forth above. Harris ¶¶3-9; Monrreal ¶¶4-7;
22 Robinson ¶¶3-6; Wofford ¶¶4-14.

23 Additionally, Pacios exerts control over HOPE Services and provides
24 assistance to HOPE Services' employees who sell fraudulent MARS. First, Pacios
25 helped set up the underlying office infrastructure that allows HOPE Services to
26 steal consumer funds. He obtained the main business number and telephone
27 system HOPE Services used until December of 2014, to make and receive calls to
28 consumers in the scheme described above. Ostrum ¶267:116. He also facilitated

1 the continuation of the scam, by arranging for the new office lease of the ongoing
2 iteration of HOPE Services (under its new name, HAMP Services). Ostrum
3 ¶190:109 at 1158; *id.* Ostrum ¶186:109 at 1114. Second, Pacios makes deposits
4 into HOPE Services’ bank accounts, *id.* ¶219:94, and uses them to pay his rent, *id.*
5 ¶254:134 at 2665-67. Third, HOPE Services identifies Pacios as one of two
6 managers in charge of HOPE Services’ “compliance department,” *id.* ¶98:45 at
7 553, and fields refund requests, *id.* ¶98, Hicks ¶7. Finally, Pacios responded to a
8 mortgage fraud-related subpoena issued by Washington state authorities as HOPE
9 Services’ “authorized representative.”⁴⁵

10 Pacios attempts to thwart discovery of his contempt by both consumers and
11 law enforcement by using the aliases “Brian Barry” and “Brian Kelly.” He,
12 however, fails to cover his tracks completely. Among other things, on his auto
13 loan documents (executed under oath), Pacios identified his employer as the entity
14 that does business as HOPE Services, and he listed a cell-phone number registered
15 to his real name. Ostrum ¶205:133 at 2648; *id.* ¶216:120 at 1734. When Pacios
16 registered HOPE Services’ telephone system, he used the name “Brian Barry” but
17 gave the telephone company the same cell-phone number listed on his auto loans
18 and registered to his carrier under his real name. *Id.* ¶202:116 at 1604. Moreover,
19 although HOPE Services appears to employ a “Brian Barry,” *id.* ¶204:116 at 1601,
20 1606, no one by such name receives payments from HOPE Services, George ¶15.

21 HOPE Services recently changed its name, address, and phone number,
22 presumably to continue the scam despite gaining the attention of local law
23 enforcement. Similarly, Contempt Defendant changed his alias to “Brian Kelly.”⁴⁶

25 ⁴⁵ DFI ¶1 at 5-7. Pacios signed the subpoena under penalty of perjury using
26 his fake name, “Brian Barry.” *Id.*

27 ⁴⁶ Ostrum ¶204:116 at 1601, 1606. All of the HOPE Services’ employees
28 changed their aliases when the company shifted to a new office and new public-
facing name. *See id.*

1 Although “Brian Kelly” has a phone extension, the new iteration of HOPE
2 Services does not pay him. Ostrum ¶204:116 at 1601, 1606; George ¶15.
3 Meanwhile, although Pacios has no phone extension at the premises, his vehicle
4 was spotted parked outside of HOPE Services’ new offices. Ostrum ¶204:116 at
5 1601, 1606; Stahl ¶8:3 at 9; Ostrum ¶113:58 at 611.

6 Finally, Contempt Defendant is paid handsomely for his work at HOPE
7 Services, but receives all funds indirectly. As noted above, HOPE Services pays
8 for some of his expenses directly from its corporate accounts. *See supra* at 14. In
9 other instances, Pacios funnels money through the accounts of his girlfriend,
10 Cortney Gonsalves.⁴⁷ Gonsalves receives large checks from HOPE Services,
11 George ¶20, despite the fact that there is no evidence that anyone named Cortney
12 works there. There are no telephone extensions at either office assigned to a
13 “Cortney” and no consumers report speaking with anyone named “Cortney.”
14 Ostrum ¶36; *id.* ¶203. Nor does her name does appear on HOPE Services’
15 corporate or legal documents. *See* Ostrum. Indeed, Cortney Gonsalves’ only
16 known activity is depositing consumers’ checks.⁴⁸

17 III. ARGUMENT

18 Civil contempt is warranted where there is clear and convincing evidence the
19 contemnors violated a specific and definite order of the court. *FTC v. Affordable*
20 *Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999). Here, there is clear and
21

22 ⁴⁷ On an insurance invoice, Gonsalves is identified as “married” and residing
23 at Pacios’ address. Ostrum ¶210:119 at 1698-99. Additionally, as of early last
24 year, as of early last year, Pacios leased two vehicles: a 2014 Jeep Wrangler, and a
25 2014 Jeep Grand Cherokee. ¶194:111 at 1240; *id.* ¶195:111 at 1256. Pacios
26 executed the leases, Ostrum ¶194:111 at 1239; *id.* ¶195:111 at 1255, but Gonsalves
27 made most of the payments. Ostrum ¶194:111 at 1243-53. Notably, in early
28 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.

⁴⁸ Ostrum ¶219:94 at ATM Surveillance Videos Folder.

1 convincing evidence that Pacios violated two specific and definite provisions of the
2 Permanent Injunction. Therefore, Pacios should be held in contempt and ordered
3 to pay compensatory sanctions measured by the full amount consumers paid as a
4 result of Pacios' violative conduct.⁴⁹

5 **A. Pacios is Bound by the Permanent Injunction**

6 Injunctions bind parties with actual notice of the order. Fed. R. Civ.
7 P. 65(d)(2)(A). Because Pacios is a party to the Permanent Injunction and
8 stipulated to its entry, he is bound by its prohibitions.⁵⁰

9 **B. Pacios Sells MARS in Violation of the Permanent Injunction**

10 Pacios has violated and continues to violate the Permanent Injunction.
11 Section I of the Permanent Injunction bans Pacios from "advertising, marketing,
12 promoting, offering for sale, or selling any mortgage assistance relief product or
13 service" and from "assisting others" who are engaging in the same behavior. As
14 described above, consumers in many states report working with "Brian Barry" and
15 "Brian Kelly" at HOPE Services to obtain a mortgage modification.⁵¹ "Brian
16 Barry" and "Brian Kelly" are Brian Pacios' aliases. Therefore, Brian Pacios is both
17 "selling" and "assisting others" who are "advertising, marketing, promoting,
18 offering for sale, or selling any mortgage assistance relief product or service."
19
20
21

22
23 ⁴⁹ To the extent that Pacios and his co-defendants are found liable in the
24 related *de novo* complaint, full consumer redress in that matter would be
25 duplicative of the compensatory sanctions sought here. The FTC would not double
26 recover; rather, the compensation in one matter would limit the redress in the other.

27 ⁵⁰ Permanent Injunction, *FTC v. Lakhany*, No. SACV12-337 (Feb. 28, 2013),
28 DE152 at 3.

⁵¹ Ostrum ¶¶19, 21, 31; Harris ¶¶3-9; Monrreal ¶¶4-7; Robinson ¶¶3-6;
Wofford ¶¶4-14. In addition, as noted above, our investigator spoke with "Brian"
when seeking a refund. *See* Ostrum ¶98:45 at 553-55.

1 **C. Pacios Misrepresents That Consumers Will Receive MARS**

2 Pacios’ violations of the Permanent Injunction are particularly egregious,
3 because he does not simply sell MARS, but he also makes material
4 misrepresentations in the course of these sales. Section III of the Permanent
5 Injunction prohibits Pacios from “misrepresenting or assisting others in
6 misrepresenting, expressly or by implication, any material fact” of any product or
7 service. “Express product claims are presumed to be material . . .” *FTC v.*
8 *Pantron I Corp.*, 33 F.3d 1088, 1095-96 (9th Cir.) (citing *FTC Policy Statement on*
9 *Deception*, Oct. 14, 1983, reprinted in *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174,
10 182 (1984)). As set forth above, Pacios misrepresents, and assists others in
11 misrepresenting, a myriad of material facts in the sale of MARS.

12 First, Pacios and his confederates claim that HOPE Services will obtain
13 mortgage modifications for consumers that will make their payments substantially
14 more affordable, will substantially lower their interest rates, and/or will help them
15 avoid foreclosure. Second, Pacios and his associates tell consumers that their trial
16 payments and/or reinstatement fee payment will be held in his or her lender’s trust
17 account and either be paid to his or her lender at the end of the trial period to
18 finalize his or her modification, or be refunded. Third, Pacios and his confederates
19 state explicitly and impliedly that HOPE Services is affiliated with, endorsed or
20 approved by, or otherwise associated with the United States government, the MHA
21 program, HUD, or NACA. Fourth, Pacios and his associates state that HOPE
22 Services communicates with specialized departments, divisions, or “higher-ups” at
23 the maker, holder, or servicer of the consumer’s dwelling loan. Fifth, Pacios and
24 his confederates tell the consumer that the consumer’s lender can no longer
25 foreclose on the consumer’s house after HOPE Services receives signed documents
26 and the first payment from the consumer. Finally, Pacios and his associates tell
27 consumers that the loan modification process will be completed within several
28 months. As set forth above, all of these statements are false; instead, consumers

1 receive no loan modifications, lose all the money sent to Pacios and his associates,
2 and in some instances, loses their homes.

3 **D. Pacios' Violations Have Caused At Least \$1.9 Million in**
4 **Consumer Loss**

5 The Court has broad authority to impose sanctions for violations of its
6 orders, including requiring compensation for losses sustained as a result of the
7 failure to comply with the order. *United States v. United Mine Workers of Am.*,
8 330 U.S. 258, 303-04 (1947); *Ahearn ex rel. NLRB v. Int'l Longshore &*
9 *Warehouse Union, Locals 31 & 24*, 721 F.3d 1122, 1131 (9th Cir. 2013).
10 Consumers injured by defendants' conduct are entitled to full remedial relief.
11 *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193 (1949). In an FTC
12 contempt action, consumer loss is an appropriate measure of the compensatory
13 remedy. *FTC v. EDebitPay, LLC*, 695 F.3d 938, 945 (9th Cir. 2012). In this case,
14 because HOPE Services widely disseminated its deceptive claims of MARS, all
15 consumers who paid HOPE Services are presumed to have relied on them. *See,*
16 *e.g., FTC v. Figgie Int'l*, 994 F.2d 595, 605-06 (9th Cir. 1993) ("A presumption of
17 actual reliance arises once the [FTC] has proved that the defendant made material
18 misrepresentations, that they were widely disseminated, and that consumers
19 purchased the defendant's product.").

20 Here, as set forth above, Pacios does not just participate in the sales of
21 MARS, he also exerts control over HOPE Services and assists HOPE Services
22 employees in the sales of MARS. This behavior violates the ban set forth in
23 Section I of the Permanent Injunction. In addition, Pacios makes
24 misrepresentations in the sales of MARS, exerts control over HOPE Services, and
25 assists HOPE Services employees in making misrepresentations in the sales of
26 MARS. Indeed, Pacios facilitated Hope Services' fraudulent sales of MARS by
27 obtaining the company offices and a phone system. This behavior violates the
28 prohibition on making misrepresentations in the sale of any product or service, set

1 forth in Section III of the Permanent Injunction. In short, Pacios' violative actions
2 harmed all consumers who sent payments to HOPE Services.

3 Because Pacios' contumacious activity injured all consumers who worked
4 with HOPE Services, the consumer loss is measured by the full amount all
5 consumers sent to HOPE Services. At this time, the FTC estimates that Pacios'
6 conduct defrauded consumers of approximately \$1.9 million, as deposits into
7 HOPE's known bank accounts that seem obviously to be from consumers total
8 \$1,898,554.15.⁵² This figure, however, is an estimate based on evidence gathered
9 through an undercover investigation and may be further refined following
10 traditional discovery.⁵³ Following such discovery, the FTC will present any further
11 evidence in support of its request for an order holding Contempt Defendant Pacios
12 in civil contempt and ordering him to pay a compensatory sanction in the full
13 amount consumers paid.

14 IV. CONCLUSION

15 For the foregoing reasons, the FTC requests that the Court find Brian Pacios
16 in contempt of the Permanent Injunction and order compensatory sanctions
17 measured by the full amount consumers paid.

22 ⁵² George ¶12. In addition, there are at least \$216,856.29 in money orders
23 and cashiers' checks where the remitter was not identified or was illegible. *Id.*
24 ¶14. Moreover, this analysis does not include consumer funds from late February,
25 March, or April. *Id.*

26 ⁵³ As noted *supra* at 1 n.2, the FTC also filed under seal a Complaint and
27 unnoticed Application for an *Ex Parte* Temporary Restraining Order in a related
28 matter, *FTC v. Lake*. Once the *Lake* Defendants are aware of the FTC's
investigation, the FTC may conduct additional discovery as permitted under the
Permanent Injunction, as well as pursuant to the TRO if it is granted, to collect
further evidence of the full amount consumers lost.

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Respectfully submitted,

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