

82

1 WILLARD K. TOM
General Counsel

2 JAMES E. ELLIOTT
3 jelliott@ftc.gov
Texas Bar No. 06557100

4 JAMES E. HUNNICUTT
5 jhunnicutt@ftc.gov
Texas Bar No. 24054252
6 Federal Trade Commission
1999 Bryan Street, Suite 2150
Dallas, Texas 75201

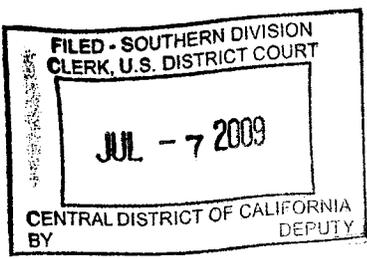
7 (214) 979-9373 (Elliott)
8 (214) 979-9381 (Hunnicuttt)
(214) 953-3079 (Fax)

9 JOHN D. JACOBS
10 jjacobs@ftc.gov
California Bar No. 134154
11 Federal Trade Commission
10877 Wilshire Blvd., Ste. 700
12 Los Angeles, California 90024
13 (310) 824-4343 (voice)
(310) 824-4380 (fax)

14 Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

18 FEDERAL TRADE COMMISSION,
19
20 Plaintiff,
21 v.
22 LUCASLAWCENTER "INCORPORATED",
23 *et al.*,
24 Defendants.



Case No. SACV09-770 DOC(ANX)

MEMORANDUM OF
POINTS AND
AUTHORITIES IN
SUPPORT OF PLAINTIFF'S
EX PARTE APPLICATION
FOR TEMPORARY
RESTRAINING ORDER
WITH ASSET FREEZE,
ORDER PERMITTING
EXPEDITED DISCOVERY,
APPOINTING RECEIVER,
AND ORDER TO SHOW
CAUSE WHY A
PRELIMINARY
INJUNCTION SHOULD
NOT ISSUE

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 (214) 979-9381 (Hunnicuttt)
 8 (214) 953-3079 (Fax)

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 10 jjacobs@ftc.gov
 California Bar No. 134154
 Federal Trade Commission
 11 10877 Wilshire Blvd., Ste. 700
 Los Angeles, California 90024
 12 (310) 824-4343 (voice)
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14 Attorneys for Plaintiff
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 17 **SOUTHERN DIVISION**

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21 **LUCASLAWCENTER "INCORPORATED",**
 22 *et al.,*

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MISCELLANEOUS

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1 **I. INTRODUCTION¹**

2 In order to halt a deceptive practice that is victimizing financially distressed
3 consumers fighting to save their homes, Plaintiff Federal Trade Commission
4 (“FTC”) brings this action under Sections 5 and 13(b) of the Federal Trade
5 Commission Act (“FTC Act”). Defendants market mortgage loan modification
6 and foreclosure avoidance counseling and negotiation services (“loan modification
7 services”) costing thousands of dollars to struggling homeowners, but then fail to
8 provide the promised services.

9 Defendants, under the guise of a legal practice, have launched a nationwide
10 radio advertising campaign, as well as two Internet Web sites, to promote their
11 loan modification services, capitalizing on widely-publicized efforts to assist
12 homeowners with modifying or refinancing their home mortgage loans.
13 Consumers pay Defendants up-front fees ranging from \$2000 to \$3995, relying on
14 Defendants’ guarantees that they will obtain a loan modification for the consumer
15 in all or virtually all cases, or their money-back. In some cases, they callously
16 advise consumers to stop paying their mortgages in order to either pay the
17 Defendants’ fee or to make the loan modification process easier, placing the
18 consumers who follow this advice at even greater risk of losing their homes. After
19 taking their fee, however, Defendants do little or nothing to help their clients.
20 Defendants refuse to honor their guarantee of a full refund. The promised refunds
21 are sometimes only provided to those who complain to local law enforcement
22 authorities, the California Attorney General, the Better Business Bureau of the
23 Southland (“BBB”), or the State Bar of California. The BBB has given Lucas Law
24 Center an “F” rating. McPeck Att. 11 at 175. Defendants’ practices violate
25 Section 5 of the FTC Act, 15 U.S.C. § 45.

26
27 ¹ In support of this application, Plaintiff is concurrently filing five
28 volumes of consumer declarations, declarations of two FTC investigators, other
declarations, and exhibits.

1 To immediately halt Defendants' illegal practices and preserve assets
2 necessary for consumer restitution, the FTC seeks, under Section 13(b) of the FTC
3 Act, 15 U.S.C. § 53(b), issuance of a temporary restraining order ("TRO") with an
4 asset freeze, the appointment of a temporary receiver, and an order to show cause
5 why a preliminary injunction should not issue. The proposed TRO would enjoin
6 Defendants' illegal conduct and their collection of advance fees before performing
7 the promised services, preserve assets and documents, and require Defendants to
8 report promptly limited information about their business. This relief is necessary
9 to prevent continued harm to consumers, dissipation of assets, and destruction of
10 evidence, thereby preserving the Court's ability to provide effective final relief to
11 consumers injured by Defendants' illegal practices.

12 **II. THE PARTIES**

13 **A. Plaintiff**

14 The FTC is an independent agency of the United States government created
15 by the FTC Act, 15 U.S.C. § 41 *et seq.* The FTC enforces Section 5(a) of the FTC
16 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
17 affecting commerce. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes
18 the FTC, through its own attorneys, to initiate federal district court proceedings to
19 enjoin violations of the FTC Act and secure appropriate equitable relief, including
20 rescission or reformation of contracts, restitution, the refund of monies paid, and
21 the disgorgement of ill-gotten monies.

22 **B. Defendants**

23 Defendants operate nationwide a purported mortgage loan modification
24 service. The Corporate Defendants, which operate as a common enterprise, do
25 business as Lucas Law Center.

26 Defendant **LUCASLAWCENTER "incorporated"** ("Lucas Law Center")
27 is a California corporation incorporated in June 30, 2008, with its principal place of
28 business at 65 Enterprise, Suite 450, Aliso Viejo, California, and another office at

1 75 Enterprise, Suite 180, Aliso Viejo, California. McPeek Att. 18 at 445, Att. 31 at
2 671, Att. 34 at 677, Att. 19 at 451.

3 Defendant **Future Financial Services, LLC** (“Future Financial Services”)
4 has its principal place of business at 65 Enterprise, Suite 450, Aliso Viejo,
5 California, and another office at 75 Enterprise, Suite 180, Aliso Viejo, California.
6 Future Financial Services provides the offices for Lucas Law Center. McPeek Att.
7 1 at 16 ¶ 4.

8 Pursuant to a management agreement, Lucas Law Center and Future
9 Financial Services jointly operate a loan modification services business in which
10 Future Financial Services provides the staff and facilities. McPeek Att. 1 at 15.
11 According to the agreement, Future Financial Services delivers foreclosure
12 avoidance services, including marketing, customer service, and negotiation. *Id.*
13 The agreement provides that Lucas Law Center will be responsible for delivery of
14 legal services, but it delegates much of the actual delivery of these services to non-
15 attorneys employed by either company. Future Financial Services employees
16 represent themselves as “being with [Lucas Law Center],” or “employees of the
17 law firm.” The agreement further provides that Future Financial Services trains
18 and supervises these employees according to Lucas Law Center’s guidelines and
19 policies. *Id.* at 16 ¶ 3.b. Only the name Lucas Law Center is provided to the
20 public by this joint operation. The name Future Financial Services is not provided
21 to the public. Gearhart Att. A at 9; Jeremy Att. A at 9-13, Att. E-G at 23-29;
22 Keylon Att. A-C at 7-11, Att. E at 13; Kranzberg Att. A-G at 10-21; McPeek Att.
23 26-28 at 539-55 (radio advertisements). As discussed below, Lucas Law Center
24 and Future Financial Services act as a common enterprise to perpetrate their fraud.²

25 Defendant **Paul Jeffrey Lucas** is a resident of Newport Beach, California.
26 McPeek Att. 19 at 454, Att. 29 at 559. Lucas is Lucas Law Center’s CEO, CFO,
27

28 ² See discussion *infra* pp. 29-31.

1 and Secretary, and its director. McPeek Att. 18 at 448. He is its registered agent.
 2 *Id.* His principal business address is 65 Enterprise, Aliso Viejo, California.³ *Id.*
 3 Lucas graduated from Southwestern University Law School in 1992, is licensed by
 4 the Supreme Court of California, and is a member of the State Bar of California.⁴
 5 McPeek Att. 20 at 463, Att. 24 at 527, Att. 34 at 677.

6 Defendant **Christopher Francis Betts** is a resident of Ladera Ranch,
 7 California. McPeek Att. 32 at 672-73, Att. 36 at 685-86, Att. 37 at 713. His
 8 principal place of business is in Aliso Viejo, California. McPeek Att. 1 at 16 ¶ 4.
 9 Betts owns and operates Future Financial Services. McPeek Att. 1 at 19. Betts is
 10 the registrant and serves as the billing contact for one of the Lucas Law Center
 11 Web sites. McPeek Att. 37 at 713. The billing account information for a toll-free
 12 telephone number used by a consumer lists Betts' residence as the telephone
 13 account's billing address. McPeek Att. 33 at 674, Att. 10 at 113 (consumer
 14 identifies Lucas Law Center's phone number as 800 331-8000). Betts told
 15 consumers that he was "at the top" of Lucas Law Center hierarchy, right under
 16 Lucas. Keylon ¶ 21.

17 Betts, by joining with Lucas, is able to circumvent the California statute that
 18 prohibits foreclosure consultants from demanding or collecting payment before all
 19 promised services have been completed.⁵ This statute exempts attorneys licensed
 20

21 ³ According to the State Bar of California's Web site, Lucas provided his
 22 practice address as 75 Enterprise, Aliso Viejo, California. McPeek Att. 34 at 677.

23 ⁴ Lucas' California Bar number is 163076. McPeek Att. 20 at 463, Att.
 24 34 at 677. While he is currently a member in active standing, he was suspended
 25 from practicing law during a period of time in 2007 for failure to pay Bar
 26 membership fees. Additionally, he maintained "inactive" status for periods of time
 27 in 2002, 2003, and 2008. McPeek Att. 34 at 677-78. *See*
 28 http://members.calbar.ca.gov/search/member_deatil.aspx?x=163076.

⁵ *See* CAL. CIV. CODE §§ 2945-2945.11 (West 2009). "These foreclosure
 consultants, however, often charge high fees. The payment of which is often secured

1 to practice in California. Not surprisingly, foreclosure consultants have attempted
2 to partner with attorneys to avoid these statutory prohibitions against the collection
3 of advance fees.

4 Betts also appears to be associated with Andris Pukke, a defendant, and
5 Peter Baker, a third party contemnor, in *FTC v. AmeriDebt, Inc.*, No. 8:03-3317-
6 PJM (D. Md.).⁶ (Pukke named as a defendant). According to the receiver's report
7 in that case, Betts provided sales force management services to Baker using the
8 entity Future FX LLC. McPeck Att. 6 at 56-58. Betts also was a co-owner with
9 Pukke in two *AmeriDebt* companies. McPeck Att. 6 at 56-57 & n.1. The
10 *AmeriDebt* court-appointed receiver filed suit against Betts for refusing to return

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20 by a deed of trust on the residence to be saved, and perform no service or essentially
a worthless service." CAL. CIV. CODE § 2945. See discussion *infra* pp. 10-11.

21 ⁶ See generally Complaint, *FTC v. AmeriDebt, Inc.*, No. 8:03-cv-03317-
22 PJM (D. Md. Nov. 19, 2003). McPeck Att. 5 at 42-52. AmeriDebt was formed by
23 Andris Pukke as a non-profit credit counseling agency that aggressively marketed
24 debt management plans, promising to lower consumers' interest rates with no up-
25 front costs. Consumers made monthly payments to AmeriDebt, who then used the
26 money to pay consumers' creditors, after taking a fee. Pukke also created an
27 "independent" for-profit company, DebtWorks, to "process" the debt management
28 plans. AmeriDebt was then able to funnel money to DebtWorks purportedly as fees
negotiated between independent parties. The scheme generated profits by charging
high up-front "voluntary contributions" taken from consumer's initial payments into
the debt management plans.

1 funds transferred in violation of the court's preliminary injunction.⁷ McPeek Att. 7
2 at 85-86.

3 From 1994 to 1997, Betts was involved in securities fraud while he was
4 living in New York. As a result, in 2000, civil and criminal cases were brought
5 against Betts, as well as a Securities and Exchange Commission ("SEC")
6 administrative proceeding in 2004.⁸ McPeek Att. 2-4 at 20-41.

7
8 ⁷ Complaint, *Robb Evans & Assocs., LLC v. Betts*, No. 08-cv-01878-PJM
9 (D. Md. July 18, 2008). McPeek Att. 8 at 92-103. In that ongoing case, the receiver
10 alleges that Betts knew or should have known that \$795,000 in payments he, and the
11 two companies he controlled, received between May 2006 and April 2007 were from
12 one bank account in Peter Baker's name and another account owned and controlled
13 by Andris Pukke. These payments were made in violation of the preliminary
14 injunction entered in the *AmeriDebt* case. Robb Evans demanded that Betts return
15 those payments, but Betts refused.

16 ⁸ See generally Final Judgment as to Def. Christopher Betts, *SEC v.*
17 *Abish*, No. 1:00-cv-00978-BSJ-HBP (S.D.N.Y. Mar. 7, 2006); McPeek Att. 3 at 27-
18 37. The SEC filed civil actions arising from the massive securities fraud that was
19 conducted through Sterling Foster & Company, Inc. ("Sterling Foster"), a formerly
20 registered broker-dealer based in Melville, NY. The SEC charged 18 Sterling Foster
21 registered representatives with using fraudulent "boiler-room" sales practices to
22 induce investors to purchase micro-cap securities in six public offerings at prices
23 artificially inflated by Sterling Foster and others in a market manipulation scheme
24 that defrauded investors of at least \$75 million. Betts was a registered representative
25 associated with Sterling Foster between October 1994 and February 1997. Order
26 Making Findings, *In re Abish*, No. 3-11632, Exchange Act Release No. 50638, 2004
27 SEC LEXIS 2584 (SEC Nov. 5, 2004); McPeek Att. 4 at 38-41.

28 Betts was charged with defrauding investors by using fraudulent sales
practices in criminal cases brought by the United States Attorney in the Southern
District of New York. On December 19, 2000, Betts pled guilty to one count of
conspiracy to commit securities fraud, mail fraud and wire fraud, three counts of
securities fraud, and one count of mail fraud. Judgment in a Criminal Case, *United*
States v. Betts, No. 00-CR-91-04 RWS, 2002 WL 31426011, at *1 (S.D.N.Y. Oct.
28, 2002); Order, *United States v. Betts*, No. 00-CR-91-04 (RSW) (S.D.N.Y. Jan. 18,
2001); McPeek Att. 2 at 20-21. The court determined that Betts caused over \$19

1 Defendant **Frank Sullivan** is a resident of California. His principal business
2 address is 65 Enterprise, Aliso Viejo, California. He told a consumer that he was
3 the “manager.” McPeek Att. 12 at 313. A Lucas Law center representative
4 transferred a call to Sullivan after the consumer asked to speak to a “supervisor.”
5 McPeek Att. 11 at 144.

6 **III. JURISDICTION AND VENUE**

7 This Court has subject matter jurisdiction over the FTC’s claims pursuant to
8 28 U.S.C. §§ 1331, 1337(a), and 1345. Personal jurisdiction over Defendants
9 exists pursuant to the FTC Act’s provision for nationwide service of process, 15
10 U.S.C. § 53(b).

11 Additionally, venue is proper in the Central District of California. Under the
12 FTC Act, an action may be brought where a corporation or person “resides or
13 transacts business.” 15 U.S.C. § 53(b). As noted above, Defendants do business in
14 this district in Aliso Viejo, Orange County, California.

15 **IV. BACKGROUND ON THE MORTGAGE FORECLOSURE CRISIS**

16 Over the past year, the nation has confronted an unprecedented downturn in
17 the housing and mortgage markets. Home sales and housing starts are stagnant.
18 Home prices are in steep decline, causing many homeowners to owe more on their
19 mortgages than their homes are worth. Concurrently, mortgage delinquencies and
20 foreclosures have accelerated. The combined effects of falling home prices,

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24 million of investor injury, and ordered Betts to pay over \$1.33 million in restitution
25 and to serve 365 days of home confinement. McPeek Att. 2 at 22 and 25. According
26 to the court’s docket, he has paid only \$45,000 of the \$1.33 million consumer injury.
27 See Court Docket, *United States v. Betts*, No. 00-CR-91 (RWS) (S.D.N.Y. Oct. 28,
28 2002).

29 In the SEC’s administrative proceeding, Betts was barred from association
30 with any broker or dealer. *In re Abish, supra*. McPeek Att. 4 at 41.

1 resetting adjustable rate mortgages, tighter underwriting standards, and the
2 worsening job market have led to a mortgage credit meltdown.

3 **A. Government Response to the Crisis**

4 The government has responded to the crisis with widely-publicized
5 government programs to assist homeowners who are struggling to make their
6 monthly mortgage payments. These programs aim to help distressed homeowners
7 modify or refinance mortgage loans that have become unaffordable. Since late
8 2007, the Department of Housing and Urban Development (“HUD”) has approved
9 thousands of non-profit housing counseling agencies to offer *free* services to
10 homeowners at risk for foreclosure or falling behind on their mortgage payments.
11 *See, e.g.* Keylon ¶ 26. These HUD-approved counselors negotiate with lenders on
12 behalf of homeowners, at no cost to the homeowners. Recently, the Obama
13 Administration also announced a federally-funded program led by the Department
14 of the Treasury to spur lenders to modify homeowners’ loans to make them more
15 affordable. In the wake of these federal efforts, the term “loan modification” has
16 become common parlance. Many homeowners fighting to avoid foreclosure have
17 heard of widely-reported federal programs and legislation to provide assistance.

18 Unfortunately, while federal and state governments offer assistance to
19 homeowners in economic turmoil, unscrupulous actors also have seized on the
20 chance to market loan modification services to homeowners in search of help.
21 These deceptive marketers - typically selling services that cost thousands of dollars
22 - compete with federal and state regulators and non-profit entities for the attention
23 of desperate homeowners and, in many cases, divert unwitting consumers away
24 from *free* government and government-endorsed programs. In the wake of
25 government efforts to promote its mortgage relief plan, for-profit marketers touting
26 their ability to obtain mortgage relief have proliferated.

27 In recent months, the FTC has taken action against mortgage relief marketers
28 and their principals alleging that they falsely promise they would obtain loan

1 modification or foreclosure relief for distressed homeowners in violation of
2 Section 5.⁹

3 In these cases, the defendants require substantial up-front fees before
4 providing the purported services, often equal to one-month's mortgage payment.
5 The FTC alleged in these cases that, despite consumers paying these substantial
6 fees, the defendants failed to obtain the promised loan modification or foreclosure
7 relief.¹⁰

8 Notably, the relief obtained by the FTC in one of these cases included a
9 preliminary injunction prohibiting the defendants from obtaining up-front fees
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12 ⁹ See Press Release, *Federal and State Enforcers Crack Down on*
13 *Mortgage Modification and Foreclosure Relief Scams*, Federal Trade Commission,
<http://www2.ftc.gov/opa/2009/04/hud.shtm>.

14 ¹⁰ **This district:** TRO, *FTC v. Data Med. Capital, Inc.*, No. SA-CV-99-
15 1266 AHS (EEx) (C.D. Cal. May 27, 2009); Complaint, *FTC v. Dinamica*
16 *Financiera LLC*, No. CV09-3554 CAS (PJWx) (C.D. Cal. May 19, 2009);
17 Complaint, *FTC v. Fed. Loan Modification Law Ctr., LLP*, No. SACV09-401CJC
(MLGx) (C.D. Cal. Apr. 3, 2009); Complaint, *FTC v. Nat'l Foreclosure Relief, Inc.*,
18 No. SACV09-117 DOC(MLGx) (C.D. Cal. Feb. 2, 2009). **Other districts:**
19 Complaint, *FTC v. One or More Unknown Parties Misrepresenting Their Affiliation*
With the Making Home Affordable Program, No. 1:09-cv-00894-CKK (D.D.C. May
20 14, 2009); Complaint, *FTC v. Freedom Foreclosure Prevention Serv., LLC*, No. CV-
21 09-1167-PHX-FJM (D. Ariz. June 1, 2009); Amended Complaint, *FTC v. Ryan*, No.
22 1:09-00535 (HHK) (D.D.C. Mar. 25, 2009); Complaint, *FTC v. Home Assure, LLC*,
23 No. 8:09-CV-00547-T-23-TSM (M.D. Fla. Mar. 24, 2009); Complaint, *FTC v. Hope*
Now Modifications, LLC, No. 1:09-cv-01204-JBS-JS (D.N.J. Mar. 17, 2009);
24 Complaint, *FTC v. New Hope Prop., LLC*, No. 1:09-cv-01203-JBS-JS (D.N.J. Mar.
17, 2009); Complaint, *FTC v. United Home Savers, LLP*, No. 8:08-cv-1735-T33-
25 TBM (M.D. Fla. Sept. 3, 2008); Complaint, *FTC v. Foreclosure Solutions, LLC*, No.
26 1:08-cv-01075 (N.D. Ohio Apr. 28, 2008); Complaint, *FTC v. Mortgage Foreclosure*
Solutions, Inc., No. 8:08-cv-00388-SDM-EAJ (M.D. Fla. Feb. 26, 2008); Complaint,
27 *FTC v. Nat'l Hometeam Solutions, Inc.*, No. 4:08-cv-00067-RAS (E.D. Tex. Feb. 26,
28 2008); Complaint, *FTC v. Safe Harbour Found. of Fla., Inc.*, No. 08-C-1185 (N.D.
Ill. Feb. 27, 2008).

1 from consumers. *FTC v. Federal Loan Modification Law Center, LLP*, No.
2 SAVC09-401-CJC (MLGx) (C.D. Cal. Apr. 24, 2009).

3 **B. State Regulation of Foreclosure Consultants**

4 Recognizing the high risk for fraud, a number of states, including
5 California,¹¹ have passed laws that specifically regulate the activities of foreclosure
6 consultants (like Defendants).¹² *See* CAL. CIV. CODE § 2945 *et seq.* These statutes
7 typically prohibit foreclosure consultants from demanding or collecting payment
8 before all promised services have been completed.¹³ *Id.* All of these statutes
9 exempt attorneys, except for Florida, and most limit this exemption to attorneys
10 licensed to practice in that state.

11 Not surprisingly, foreclosure consultants have attempted to partner with
12 attorneys to avoid these statutory prohibitions against the collection of advance
13 fees. This development has spurred at least two State Bars, California and Florida,
14 to issue ethics warnings that many relationships between licensed attorneys and
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18 ¹¹ For example, in passing legislation, the California Legislature found
19 that foreclosure consultants too often resorted to fraud, deception, and harassment
20 and tended to “charge high fees . . . and perform no service or essentially a worthless
21 service.” CAL. CIV. CODE § 2945(a) (West 2009).

22 ¹² These states include Colorado, Illinois, Indiana, Maryland, Minnesota,
23 Missouri, New Hampshire, and Rhode Island. *See* COLO. REV. STAT. §§ 6-1-1102 to
24 -1120 (West 2009); 765 ILL. COMP. STAT. 940/5 to /999 (West 2009); IND. CODE §§
25 24-5.5-1-1 to 6-6 (West 2009); MD. CODE ANN., REAL PROP. §§ 7-301 to -325 (West
26 2009); MINN. STAT. ANN. §§ 325N.01- .18 (West 2009); MO. ANN. STAT. §§
407.935- .943 (West 2009); N.H. REV. STAT. ANN. §§ 479-B:1 to B:11 (2009); R.I.
GEN. LAWS §§ 5-79-1 to -9 (2009).

27 ¹³ *See* CAL. CIV. CODE § 2945.7 (West 2009) (a violation of these
28 provisions is punishable by a fine of not more than \$10,000, by imprisonment in the
county jail or state prison for not more than one year, or both, for each violation).

1 foreclosure consultants violate the Rules of Professional Conduct and other ethical
2 rules.¹⁴

3 **V. DEFENDANTS' DECEPTIVE PRACTICES**

4 **A. Lucas Law Center's Marketing Program**

5 Defendants use deceptive acts in a nationwide scheme targeting consumers
6 who are losing, or likely to lose, their homes in mortgage foreclosure proceedings.
7 They falsely represent they will successfully negotiate home loan modifications or
8 fully refund consumers' money. Defendants' misrepresentations are made through
9 radio advertisements, two Web sites, and sales calls.

10 **1. Lucas Law Center's Advertising**

11 Defendants' radio advertisements have aired on California stations in
12 housing markets with high foreclosure rates. Gearhart ¶ 4; Jeremy ¶ 3; Utley ¶ 4;
13 McPeek Att. 10 at 121, 123, Att. 11 at 153, Att. 12 at 322, 324. These radio
14 advertisements direct consumers to visit Defendants' Web sites or call their toll-
15 free telephone number to learn more about Lucas Law Center's services. Gearhart
16 ¶ 4; Utley ¶ 17; McPeek Att. 10 at 121, Att. 25 at 535-36, Att. 27 at 541-46, Att. 28
17 at 549-52.

18 Defendants maintain two Web sites, www.LucasLawCenter.com and
19 www.oclawoffices.us. McPeek Att. 20-21 at 459-514, Att. 24 at 520-34. When
20 consumers visit Defendants' Web sites, they find general information about loan
21 modification services. In addition, Lucas Law Center's Web sites provide a toll-
22 free telephone number for a "free consultation." McPeek Att. 20 at 472-73, Att. 21
23 at 481 and 484, Att. 24 at 528 and 530. The Web sites make a variety of
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25 ¹⁴ See generally *Ethics Alert: Legal Services to Distressed Homeowners*
26 *and Foreclosure Consultants on Loan Modifications*, Committee on Professional
27 Responsibility and Conduct, The State Bar of California (Feb. 2, 2009),
28 <http://www.calbar.ca.gov/calbar/pdfs/ethics/Ethics-Alert-Foreclosure.pdf>; McPeek
Att. 9 at 104-08.

1 representations emphasizing Lucas Law Center's expertise as a law firm; its ability
2 to contact individuals who make the decisions at the consumers' lenders; and its
3 familiarity with lenders and mortgage servicers due to prior dealings with the
4 firm.¹⁵ One Web site recommends that consumers hire an attorney "[t]o avoid
5 falling victim to a predatory lender twice." McPeek Att. 20 at 466; *see also*
6 Kranzberg Att. A at 10 (urging consumers to not be fooled by struggling mortgage
7 companies that "started this big problem"). Both Web sites claim, "We specialize
8 in out-of-court resolutions of government and non-government mortgage
9 delinquencies or home foreclosure claims for homeowners." McPeek Att. 21 at
10 486, Att. 24 at 531.

11 Defendants' Web sites contain statements to induce consumers to purchase
12 their loan modification services, including:

- 13 1. We are able to get to the right people, the lenders' attorneys. We
14 negotiate directly with the people at the lenders who can make
15 decisions, and make the most logical ones for both the lender and the
16 borrower. McPeek Att. 20 at 459, Att. 21 at 476.
- 17 2. You might never have heard of the Lucas Law Center, but the
18 attorneys for Countrywide [Financial] have, and so have the attorneys
19 for Wells Fargo [Home Mortgage], First Federal, Litton [Loan
20

21 ¹⁵ The Lucas Law Center Web sites state: "We have some of the most
22 experienced and well respected *specialists* in the industry whose sole purpose is to
23 save your home, not buy it, sell it, or send you into bankruptcy." *See*
24 <http://www.oclawoffices.us/id20.html> (emphasis added). McPeek Att. 20 at 473,
25 Att. 21 at 484, Att. 24 at 530. The FTC has learned the identity of various members
26 of Lucas Law Center who have had communications with consumers. The FTC
27 checked those names against the membership roster of the State Bar of California
28 and was able to confirm that only Paul Jeffrey Lucas is licensed to practice law in
California. *See also* PX Gearhart ¶ 32; Jeremy ¶ 27; Keylon ¶ 29; Kranzberg ¶ 38;
LaPoint ¶ 35; Quick ¶ 31; Utley ¶ 30 (no one at Lucas Law Center, other than Lucas,
identified themselves as an attorney).

1 Servicing LP], Ocwen [Financial Corporation], Washington Mutual
2 [Inc.], America's Servicing Company, [sic] and many other large
3 scale lenders and servicers. We are also known by many of the so-
4 called "hard money lenders" who have taken advantage of our clients.
5 McPeek Att. 20 at 461, Att. 21 at 479.

- 6 3. The Lucas Law Center working with their first class network of over
7 30 affiliated attorneys will help you save your home, and provide a
8 financial solution that works for you, and your family. McPeek Att.
9 20 at 463, Att. 24 at 527.
- 10 4. Our objective is simple: to utilize our intimate knowledge of Federal
11 and Consumer Homeowner Laws to help our clients in this housing
12 crisis that is threatening the American Dream. McPeek Att. 24 at 520.
- 13 5. Coupling his real estate experience with his insider understanding of
14 how the mortgage industry works, Paul [Lucas] is in a unique position
15 when dealing with lenders to negotiate better terms for his client's
16 mortgages, and fight for borrowers whom have been mislead [sic], or
17 otherwise defrauded by unscrupulous mortgage brokers, and lenders.
18 McPeek Att. 20 at 463, Att. 24 at 527.
- 19 6. Our company specializes in resolutions of mortgage delinquencies or
20 home foreclosure claims on behalf of you, the homeowner. We
21 perform a detailed financial analysis and work with you to determine
22 your best alternatives. We review your lender's loss mitigation
23 policies and your state's foreclosure law to make sure that we give
24 you the best service within the context of your situation. By working
25 with you and your lender, we can tailor a resolution to meet your
26 specific criteria and financial circumstance. McPeek Att. 20 at 472,
27 Att 21 at 484, Att. 24 at 529.

1 7. We take care of all the paperwork and all of the negotiating. McPeek
2 Att. 20 at 475, Att. 21 at 487, Att 24 at 532.

3 8. Our staff has years of experience working with lenders and has the
4 credibility and reputation to work with even the toughest lenders. We
5 have contacts at most lenders and banks and will always be taken
6 seriously. McPeek Att. 20 at 475, Att. 21 at 487, Att. 24 at 532-33.

7 Defendants' Web sites also promise to refund consumers' money if
8 Defendants are unsuccessful: "We offer a money back [sic] guarantee if we cannot
9 get you a work out agreement with your lender(s) as long as no sale date has been
10 set." McPeek Att. 20 at 474, Att 21 at 485, Att. 24 at 531; *see also* Jeremy ¶ 4;
11 McPeek Att. 10 at 111.

12 2. Lucas Law Center's Representations

13 When consumers speak with Lucas Law Center representatives, the
14 representatives explain the loan modification program and guarantee that Lucas
15 Law Center's efforts will result in a satisfactory loan modification. Gearhart ¶¶ 5,
16 7; Jeremy ¶ 9; Keylon ¶¶ 4-5; Kranzberg ¶ 4; LaPoint ¶¶ 5, 7; Quick ¶¶ 7-8;
17 Quintana ¶ 7; Utley ¶¶ 6-7; McPeek Att. 10 at 119, 121, Att. 11 at 129, 140-41,
18 143-44, 148-49, 153, 156-57, 166, 168, 171, 173, Att. 12 at 273, 289 and 294, 313.
19 Representatives often claim that Lucas Law Center has a success rate of 90% or
20 higher in obtaining modifications. LaPoint, ¶ 5; Utley, ¶ 6; McPeek Att. 11 at
21 143.¹⁶

22 In order to further induce consumers to purchase Defendants' loan
23 modification services, Lucas Law Center representatives frequently claim the
24 company will obtain reductions in principal, interest, and monthly mortgage
25

26 ¹⁶ Defendants' representatives also told consumers that lenders were
27 merely "rubber stamping" modifications, that Lucas Law Center obtained
28 modifications from their lender "all the time," or that Lucas Law Center "did not
take cases they could not win." Jeremy ¶ 9; Kranzberg ¶ 4; McPeek Att. 11 at 148.

1 payments for consumers, at times quoting specific, substantial reductions. For
2 example:

- 3 1. Lucas Law Center told a consumer who had a mortgage at an interest
4 rate of 6.75%, that the company would obtain a modified loan with a
5 reduced interest rate of 4% or lower, and even possibly reduce the
6 \$917,000 principal balance by “a few hundred thousand.” McPeek
7 Att. 11 at 156.
- 8 2. Lucas Law Center told another consumer that Lucas Law Center
9 would have “no problem” modifying and consolidating his two
10 mortgages into one, reducing his monthly payments of \$2,600, not
11 including taxes, to \$1,800, including taxes. The consolidated
12 mortgage would have a 40-year fixed term and a fixed interest rate
13 between five and six percent. LaPoint ¶ 5.
- 14 3. Lucas Law Center told another consumer that the mortgage payments
15 for her home and rental property would be reduced from a combined
16 monthly payment of \$4,027 to \$3,100 through Lucas Law Center’s
17 negotiations. Quintana ¶ 7.¹⁷

18 The representatives also give specific time-frames in which consumers can expect
19 to receive their modifications, typically in less than three months. Gearhart ¶ 7;
20 Jeremy ¶ 11; Keylon ¶ 5; Kranzberg ¶ 4; LaPoint ¶ 7; Quick ¶ 8; Quintana ¶ 10;
21 Utley ¶ 8; McPeek Att. 11 at 144, 160, Att. 12 at 213.

22 To bolster their claimed ability to obtain loan modifications, representatives
23 tout Lucas Law Center’s legal experience and expertise as a real estate law firm.
24 Gearhart ¶ 5; Jeremy ¶ 10; Keylon ¶ 4; Kranzberg ¶ 4; Quick ¶ 7; Utley ¶¶ 6-7;

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27 ¹⁷ See also Gearhart ¶ 5; Keylon ¶ 4; Quick, ¶ 7; Utley ¶ 6; McPeek Att.
28 11 at 130, 140, Att. 12 at 313.

1 McPeek Att. 11 at 141, Att. 12 at 273, 294. Representatives unabashedly advocate
2 the advantage the purported firm has in negotiating for consumers:

3 [Y]ou're looking to retain an attorney to fix it just because . . . they
4 wouldn't listen to you.

5 McPeek Att. 17 at 430 [10:22-25].

6 [T]he only reason people use an attorney is because of the experience.

7 . . .

8 You give yourself the best opportunity to make sure you're getting
9 something done.

10 McPeek Att. 17 at 433 [13:8-9, 11-12].

11 Lucas Law Center representatives also stress that consumers do not have the time
12 or skills necessary to negotiate with lenders on their own:

13 "[I]t's just do you have the time and experience to get the results that
14 you want?

15 . . .

16 Are you the type of person that's good at negotiating and has the time
17 to, you know, deal with it on lender hours or are you . . . busy with
18 work."

19 McPeek Att. 17 at 433 [13:3-5, 19-21].

20 Furthermore, Lucas Law Center representatives claim the company will negotiate
21 directly with the people at the lenders who decide whether to modify consumers'
22 mortgage loans. Jeremy ¶ 10; Kranzberg ¶ 4; *see also* LaPoint ¶ 5; Utley ¶ 7;
23 McPeek Att. 12 at 273.

24 The company typically quotes a range of fees between \$2000 and \$3995 for
25 its loan modification services. Gearhart ¶ 7; Jeremy ¶ 11; Kranzberg ¶ 5; LaPoint
26 ¶ 7; Quick ¶ 8; McPeek Att. 10 at 111, 113, 119, Att. 11 at 131-34, 136, 140, 143-
27 44, 146, 148, 150-51, 153, 157, 160, 165, 166-68, 170-72, 174, Att. 12 at 226, 233,
28 293, 313, 322. Some consumers pay the full fee during the initial sales call.

1 Jeremy ¶ 13. In other situations, Lucas Law Center requires the consumer to make
2 a substantial down payment of at least \$1000-\$2000, with the remainder due before
3 the promised modification is finalized. Gearhart ¶ 9; Keylon ¶ 5; Kranzberg ¶ 5;
4 LaPoint ¶ 7; Quick ¶ 12; Quintana ¶ 8; Utley ¶ 13; McPeek Att. 11 at 129, 160,
5 166; Att 12 at 273, 293, 324). Whether in whole or in part, the fee must be paid
6 before Lucas Law Center will begin its loan modification services. Gearhart ¶ 7;
7 Jeremy ¶ 11; Keylon ¶ 5; Kranzberg ¶ 5; LaPoint ¶ 7; Utley ¶ 8.¹⁸

8 Defendants also represent that Lucas Law Center offers a money-back
9 guarantee if it cannot obtain a loan modification for the consumer. This refund
10 representation is made in three situations. First, both of Lucas Law Center's Web
11 sites contain an identical Frequently Asked Questions section that states: "We offer
12 a money-back guarantee if we cannot get you a work out agreement with your
13 lender(s) as long as no sale date has been set." McPeek Att. 20 at 474, Att 21 at
14 485, Att. 24 at 531; *see also* Jeremy ¶ 4; McPeek Att. 10 at 111. Second, after
15 hearing that they are guaranteed to receive a loan modification, consumers are
16 assured that they have nothing to lose because Lucas Law Center will provide a
17 full refund if it does not obtain the modification. Gearhart ¶ 7; Jeremy ¶ 11;
18 Quintana ¶ 8; McPeek Att. 10 at 111, Att. 11 at 130, 160, 167, Att. 12 at 312. And
19 finally, the Lucas Law Center contract contains a specific provision describing its
20 refund policy. Jeremy Att. E ¶ 4A; Kranzberg Att. E ¶ 4A; LaPoint Att. B ¶ 4A;
21 Quick Att. F ¶ 4A; Quintana Att. B ¶ 4A; *see also* McPeek Att. 10 at 119, Att. 11
22 at 131, 134, 144.

23
24 ¹⁸ Lucas Law Center frequently does not send a copy of its contract to
25 consumers until after they pay the fee, in whole or in part. Jeremy, ¶¶ 13-14; Keylon
26 ¶ 8; Quick ¶¶ 12-13; *see also* Gearhart ¶ 8 (no contract provided). Even when
27 consumers are given the contract before having to pay, the contract clearly states that
28 Lucas Law Center has no obligation to perform any services until after the initial
deposit is paid. Jeremy Att. E ¶ 1; Kranzberg Att. E ¶ 1; LaPoint Att. B ¶ 1; Quick
Att. F ¶ 1; Quintana Att. B ¶ 1; Utley Att. B ¶ 1 at 13.

1 Lucas Law Center representatives also callously instruct consumers to stop
 2 making payments on their mortgages. The representatives claim that stopping
 3 payments will benefit the consumer: “We would tell you personally if you were
 4 behind on a payment, you’re going to see a much better modification from your
 5 lender.” McPeek Att. 17 at 427-28 [7:24 - 8:1]; *see also* Gearhart ¶ 6; Keylon
 6 ¶ 13; LaPoint ¶ 13; Quintana ¶ 11; Utley ¶ 12; McPeek Att. 11 at 134, 136, 150,
 7 156, 171. Consumers are assured that the payments are not necessary because the
 8 modified loans will incorporate any late payments. Gearhart ¶ 6; Quick ¶ 7.
 9 Often, however, this instruction is given so that consumers will be able to afford to
 10 pay Defendants’ substantial fee. Utley ¶ 12; McPeek Att. 11 at 134.¹⁹

11 3. Lucas Law Center Does Little or Nothing For Its Fee

12 After receiving consumers’ fees, Lucas Law Center provides little, if any, of
 13 the promised assistance. Lucas Law Center’s representatives routinely avoid
 14 consumers’ requests for updates on the company’s negotiations. LaPoint ¶ 17;
 15 Quick ¶ 24; Quintana ¶ 18; Utley ¶¶ 13-14; McPeek Att. 10 at 119, Att. 11 at 130,
 16 134, 136, 140, 144, 150, 151, 153, 155, 158, 166, 172, Att. 12 at 213, 273, 293,
 17 322, 324. Some consumers are required to send in their paperwork multiple times.
 18 Keylon ¶¶ 12, 15; LaPoint ¶¶ 15, 17; McPeek Att. 11 at 150. Despite promises to
 19 the contrary, consumers have no contact with the purported attorneys who are
 20 supposed to be negotiating with their lenders. Kranzberg ¶ 29; McPeek Att. 10 at
 21 119, Att. 11 at 130, 170, Att. 12 at 233-34, 293.²⁰ When representatives do return
 22 phone calls from consumers, or consumers get through to a representative, the
 23 representatives typically tell consumers to be patient and assure them that Lucas

24
 25 ¹⁹ One consumer was even instructed to stop a payment she already
 26 initiated to her lender, and instead to deposit that money into Lucas Law Center’s
 27 bank account. Keylon ¶ 13.

28 ²⁰ Frank Sullivan admitted to one consumer that Lucas Law Center has no
 attorneys, just “underwriters.” McPeek Att. 11 at 148.

1 Law Center is actively negotiating a loan modification on their behalf. Gearhart
2 ¶¶ 14, 21; Jeremy ¶ 17; Keylon ¶¶ 10, 15; Kranzberg ¶¶ 17, 19; Quick ¶ 16;
3 Quintana ¶¶ 10-11; Utley ¶¶ 16-19; McPeek Att. 10 at 119, Att. 11 at 136, 144,
4 160, 170, Att. 12 at 226, 273. Consumers who receive default notices or
5 collections calls from their lenders are assured by Lucas Law Center that the
6 notices are simply “routine” and consumers should ignore their lenders. Gearhart
7 ¶¶ 12-13, 15-16; Kranzberg ¶¶ 13, 22; *see also* McPeek Att. 11 at 140.
8 Representatives often blame the lenders for the delay. Jeremy ¶ 22; Keylon ¶¶ 10,
9 15-17, 28; Kranzberg ¶ 17; LaPoint ¶¶ 13-15; Utley ¶¶ 19, 23; McPeek Att. 10 at
10 111, Att. 11 at 150, 156, Att. 12 at 313, 322, 324.

11 Ultimately, however, Defendants do not live up to their promises. Nearly
12 every consumer who is promised a loan modification never receives any offer to
13 modify their home loans. Gearhart ¶ 31; Jeremy ¶ 26; Keylon ¶¶ 26-28; Quick
14 ¶¶ 21, 30; Quintana ¶ 21; Utley ¶ 29; McPeek Att. 10 at 119, 121, Att 11 at 129-30,
15 140-41, 143-44, 148-49, 153, 156-57, 163, 166-68, 171, 173, Att. 12 at 213, 273,
16 293-94, 313.²¹ Consumers who subsequently contact their lenders learn that Lucas
17 Law Center never even contacted the lender, or merely verified the consumer’s
18 loan information. Keylon ¶ 27; Kranzberg ¶ 21; Quick ¶ 18; Utley ¶¶ 24-25;
19 McPeek Att. 10 at 119, Att. 11 at 130, 132-33, 141, 148-50, 160, 164, 174, Att at
20
21
22

23 ²¹ Only three consumer declarants and complainants received loan
24 modification offers through Lucas Law Center’s services. However, none of these
25 were as promised. One consumer received an inadequate modification offer for his
26 second mortgage but not his primary mortgage. Kranzberg ¶ 23. Another consumer
27 received an unwanted renewal of his hardship agreements instead of the promised
28 permanent modifications of his two loans. LaPoint ¶¶ 20-21. The third consumer
merely received the same inadequate offer he had obtained before retaining Lucas
Law Center to obtain a better one. McPeek Att. 12 at 234.

1 12 at 273, 324.²² Some consumers successfully achieve on their own what they
2 paid Lucas Law Center to do. Gearhart ¶ 24; Keylon, ¶ 26; Utley ¶ 25; McPeek
3 Att. 11 at 132, 159, 164.²³ However, many consumers ultimately lose their homes
4 or seek bankruptcy protection, incurring additional costs and expenses. Gearhart
5 ¶ 30; Quick ¶ 30; Quintana ¶ 22; McPeek Att. 11 at 131, 141, 149-50, 174.

6 Many consumers are denied full refunds after Lucas Law Center failed to
7 deliver on the promise to save their homes with a mortgage loan modification.
8 Contrary to Defendants' guarantee of a full refund Lucas Law Center routinely
9 denies consumers' initial requests for full refunds. Gearhart ¶¶ 25, 31; Kranzberg
10 ¶¶ 28, 30, 35; Quintana ¶¶ 14, 19-20; McPeek Att. 10 at 123-24, Att. 11 at 167,
11 Att. 12 at 213, 313.²⁴ Some consumers' requests for a full refund are approved, but
12 the refund is never delivered or only a partial refund is delivered. Quick ¶¶ 26-28,
13 31; McPeek Att. 10 at 111, Att. 11 at 144, Att. 12 at 215. Not surprisingly, Lucas
14 Law Center only provides full refunds to the most tenacious consumers, who
15

16 ²² When confronting Lucas Law Center about never contacting their
17 lenders, some consumers are told (by Frank Sullivan in one instance) that the lender
18 was lying. McPeek Att. 11 at 130, 133, 160. One of these consumers was referred to
19 a person claiming to be a 10% owner of Lucas Law Center, who admitted that the
20 consumer "had been ripped off and to get over it." McPeek Att. 11 at 130. In the
21 company's response to one BBB complaint, Lucas Law Center claimed the lender
22 required a \$50,000 payment toward the delinquency, but the consumer confirmed
23 with her lender that this was not true. McPeek Att. 11 at 148.

24 ²³ After one consumer obtained a modification through his own means,
25 Lucas Law Center falsely claimed that the company had obtained the modification,
26 and used that claim as an excuse to deny a refund. Gearhart ¶ 25 and 28; *see also*
27 McPeek Att. 11 at 159. Another consumer obtained a modification of one of her
28 mortgages on her own, only to be told later by a Lucas Law Center representative
that the company was continuing to negotiate with that lender. Utley, ¶ 26.

²⁴ Lucas Law Center denied one refund by claiming that the company had
performed too much work, even though it had never contacted the consumer's
lender. Keylon ¶¶ 24, 27.

1 complain to government authorities and the Better Business Bureau. Jeremy ¶ 25;
 2 Keylon ¶¶ 20-25; McPeek Att. 11 at 130-31, 134, 142, 144. However, even
 3 consumers who file complaints are sometimes denied the guaranteed full refunds.
 4 Gearhart ¶ 31; Kranzberg ¶ 35; Quick ¶ 29 and at 8 ¶ 31. In other instances,
 5 consumers' requests for full refunds are simply ignored. McPeek Att. 11 at 167,
 6 Att. 12 at 273.²⁵

7 **B. Lucas Law Center Misrepresents That It Will Obtain A Loan**
 8 **Modification or Provide a Full Refund**

9 **1. Lucas Law Center Makes the Challenged Claims**

10 Lucas Law Center's misrepresentations are principally made during sales
 11 calls and in its contract.²⁶ Consumer declarations and consumer complaints to the
 12 BBB and government agencies establish that it makes these unlawful claims.²⁷

14 ²⁵ Complaints and refund requests submitted to the BBB after January 28,
 15 2009, have never been responded to by Lucas Law Center. McPeek Att. 11 at 153,
 16 155, 157-58, 160, 163-66, 167-68, 170-71, 172-74.

17 ²⁶ Lucas Law Center does make refund claims on its Web sites and ads.
 18 *See discussion supra* p. 17.

19 ²⁷ The FTC can prove its claims through a small number of injured
 20 consumers; the FTC is not required to demonstrate that each individual consumer
 21 relied on a Defendants' representations or omissions. *FTC v. Figgie Int'l, Inc.*, 994
 22 F.2d 595, 605-06 (9th Cir. 1993), *cert. denied*, 510 U.S. 1110, 114 S. Ct. 1051, 127
 23 L. Ed. 2d 373 (1994); *FTC v. Int'l Diamond Corp.*, 1983-2 Trade Cas. (CCH)
 24 P65,725, 1983 WL 1911, at *7 (N.D. Cal. Nov. 8, 1983). From this small number of
 25 consumers, a court can infer a pattern or practice of deceptive behavior. *FTC v. Sec.*
 26 *Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991); *FTC v. Amy Travel*
 27 *Serv., Inc.*, 875 F.2d 564, 576 (7th Cir.1989); *FTC v. Kitco of Nev., Inc.*, 612 F.
 28 Supp. 1282, 1293-94 (D. Minn. 1985); *FTC v. Nat'l Bus. Consultants, Inc.*, 781 F.
 Supp. 1136, 1141-42 (E.D. La. 1991); *Int'l Diamond*, 1983 WL 1911, at *6-7. This
 pattern or practice of deceptive behavior can be proven by consumer declarations and
 complaints, which are admissible under Rule 807. *See Figgie Int'l, Inc.*, 994 F.2d at
 608-09 (affirming district court's ruling that consumer complaint letters are
 admissible to prove the price paid by consumers and total injury). *See also FTC v.*

1 After hearing sales pitches from Lucas Law Center representatives, consumers are
 2 led to believe that they are guaranteed a mortgage loan modification.
 3 Occasionally, representatives tout that the company has an exceptionally high
 4 success rate in negotiating loan modifications. Lucas Law Center representatives
 5 also promise consumers specific reductions in their interest rates or in the amount
 6 that they will have to pay their lenders each month. *See* discussion *supra* p. 14-15.

7 2. Lucas Law Center Fails to Obtain The Promised Loan 8 Modifications

9 Contrary to Defendants' representations, once consumers pay the large up-
 10 front fees to Lucas Law Center, they receive the run-around from Defendants.
 11 Lucas Law Center frequently ignores consumers' requests for updates. Some
 12 consumers who speak to their lenders learn that Lucas Law Center never even
 13 contacted the lender. Even when Lucas Law Center contacts the lenders,
 14 consumers discover that Lucas Law Center does little, if anything, to work on the
 15 consumers' behalf.²⁸ Often Lucas Law Center only confirms that the consumer's

17 *Kuykendall*, 312 F.3d 1329, 1343 (10th Cir. 2002) (affirming district court's ruling
 18 that consumer declarations and consumer complaints are admissible as evidence of
 19 the appellants' violative behavior); *Amy Travel*, 875 F.2d at 576 (affirming district
 20 court's ruling that sworn consumer declarations are admissible to show actual harm
 21 to consumers had resulted from the defendants' activities); *Kitco*, 612 F. Supp. at
 22 1294 (holding that affidavits are admissible as proof of purchase, injury to
 23 consumers, and entitlement to restitution); *FTC v. Cyberspace.com*, 2003-1 Trade
 24 Cas. (CCH) P73,960, No. C00-1806L, 2002 U.S. Dist. LEXIS 25565, at *13 n.5
 (W.D. Wash. July 10, 2002) (holding that "e-mails and letters of complaint from
 recipients of the solicitations are admissible both to show notice and to show the
 truth of the matters asserted").

25 ²⁸ While Lucas Law Center's contract contradicts and disclaims any
 26 guarantee of success, and makes specific exclusions to the refund policy, this does
 27 not cure Defendants' misrepresentations. *See, e.g., FTC v. Gill*, 71 F. Supp. 2d 1030,
 28 1044 (C.D. Cal. 1999) (rejecting argument that representations were not deceptive
 because contract contained clause disclaiming guarantees); *Kranzberg Att. E.* ¶ 12.

1 loan information with the lender. Ultimately, most consumers never receive the
2 promised loan modification.²⁹

3 3. Lucas Law Center Fails to Provide The Promised Refunds

4 Contrary to Defendants' refund representations,³⁰ once consumers determine
5 that Lucas Law Center has done little or nothing to obtain the guaranteed loan
6 modification, they are stymied in their attempts to obtain a full refund. Lucas Law
7 Center routinely denies consumers' requests for full refunds. Some consumers
8 receive partial refunds, but only after making multiple calls and experiencing
9 lengthy delays. While a few consumers obtained full refunds after complaining to
10 government agencies and the BBB, Jeremy ¶¶ 24-25; Keylon ¶ 24, other

11
12 Similarly, Defendants' success claims are not cured by providing refunds to some
13 consumers who did not receive modifications. It is well settled that providing
14 refunds does not sanitize misrepresentations. *FTC v. Think Achievement Corp.*, 312
15 F.3d 259, 261 (7th Cir. 2002) (argument that misrepresentations are cured by refunds
16 has been "repeatedly rejected"), *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263,
17 1272 (S.D. Fla. 1999) ("[t]he existence of a money-back guarantee . . . is neither a
18 cure for deception nor a remedy for consumer injury."). Moreover, consumers who
19 have obtained refunds often have done so only after lengthy delays, several attempts
20 to contact Lucas Law Center, retaining counsel, or complaining to organizations such
21 as the BBB and law enforcement or regulatory agencies. *See, e.g.*, LaPoint ¶ 31.
22 Some consumers also have reported that they did not receive refunds at all or that
23 they only received partial refunds. *See* Gearhart ¶¶ 28, 31; Kranzberg ¶ 35; Quick at
24 8 ¶ 31; Quintana ¶ 20; McPeck Att. 10 at 111, 113, 117.

25 ²⁹ In some cases, Lucas Law Center customers may have received actual
26 loan modifications. However, the Defendants represent, without qualification, that
27 they will assist *all* consumers. As in *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp.
28 2d 502, 528-30 (S.D.N.Y. 2000), it is reasonable for consumers to believe that the
promised loan modifications are obtainable by them. Moreover, the fact that the
Defendants may have obtained loan modifications for some consumers does not
negate their liability. Settled law holds that "[t]he existence of some satisfied
customers does not constitute a defense under the FTC [Act]." *Amy Travel*, 875 F.2d
at 572; *SlimAmerica, Inc.*, 77 F. Supp. 2d at 1273.

³⁰ *See* discussion *supra* p. 17.

1 consumers' requests for full refunds are continuously denied or simply ignored.

2 Gearhart ¶¶ 28, 31; Kranzberg ¶ 35; Quick at 8 ¶ 31; Quintana ¶ 20.

3 **VI. LEGAL ANALYSIS**

4 To stop Defendants' ongoing deceptive marketing of their loan modification
 5 services, the FTC respectfully requests that the Court issue a TRO enjoining future
 6 misrepresentations; appointing a temporary receiver; prohibiting the collection of
 7 advance fees until promised services are performed; preserving assets and
 8 documents; requiring a prompt reporting of customers and status; requiring an
 9 accounting of Defendants' finances and scope of their operations; and ordering
 10 Defendants to show cause why a preliminary injunction should not be entered. The
 11 requested relief, which the Court is authorized to grant under Section 13(b) of the
 12 FTC Act, is warranted. The FTC is likely to succeed on the merits. Irreparable
 13 injury is likely to result to consumers and to the Court's ability to provide effective
 14 final relief to consumers. Additionally, irreparable injury is likely to occur if
 15 Defendants' misrepresentations and their receipt of advance fees are not enjoined,
 16 assets and documents are not preserved, and Defendants' customers are not
 17 informed of this action.

18 **A. The Court is Authorized to Grant the Requested Relief**

19 Section 13(b) of the FTC Act authorizes the FTC to seek, and the Court to
 20 issue, temporary, preliminary, and permanent injunctions. The second proviso of
 21 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), states that "in proper cases the
 22 Commission may seek, and, after proper proof, the court may issue, a permanent
 23 injunction" against violations of "any provision of law enforced by the Federal
 24 Trade Commission." 15 U.S.C. § 53(b).³¹ The Ninth Circuit has recognized that

25
 26 ³¹ See also *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996)
 27 ("[s]ection 13(b) of the Federal Trade Commission Act authorizes the FTC to seek,
 28 and the district courts to grant, preliminary and permanent injunctions against
 practices that violate any of the laws enforced by the Commission").

1 any case alleging violations of a law enforced by the FTC constitutes a proper case
2 for which injunctive relief may be sought. *FTC v. Evans Prod. Co.*, 775 F.2d
3 1084, 1086-87 (9th Cir. 1985); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111-13
4 (9th Cir. 1982). Moreover, Section 13(b) preserves the Court's inherent authority
5 not only to order permanent relief, restitution, or disgorgement of ill-gotten gains,
6 but to grant ancillary and preliminary equitable relief, including temporary orders
7 imposing asset freezes and issuing other relief. *FTC v. World Wide Factors, Ltd.*,
8 882 F.2d 344, 346-47 (9th Cir. 1989); *H.N. Singer*, 668 F.2d at 1113-14 (finding
9 that the district court is authorized to order an asset freeze and rescission in a case
10 brought under 13(b)).³²

11 Here, where the public interest is at stake, exercise of the court's broad
12 equitable authority is particularly appropriate. *United States v. Laerdal Mfg.*, 73
13 F.3d 852, 857 (9th Cir. 1995); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th
14 Cir. 1994); *World Wide Factors*, 882 F.2d at 347. The Ninth Circuit has held that a
15 Court may exercise the full breadth of its equitable authority in a Section 13(b)
16 action because Congress "did not limit that traditional equitable power" when
17 enacting the FTC Act. *H.N. Singer*, 668 F.2d at 1113-14. Thus, the Court has
18 latitude to issue the full range of equitable relief, including an order to freeze assets
19 and a TRO enjoining deceptive practices and allowing expedited discovery. *See*,

21 The FTC is not proceeding under the first proviso of 13(b), which allows the
22 Court to issue temporary relief in aid of an administrative action brought by the FTC.
23 Therefore, the procedural and notice requirements of the first proviso do not apply to
24 this case. *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982); *FTC v.*
U.S. Oil & Gas Corp., 748 F.2d 1431, 1434 (11th Cir. 1984).

25 ³² *See also Gem Merch. Corp.*, 87 F.3d at 469-70 (district court may award
26 consumer restitution under 13(b)); *Sec. Rare Coin & Bullion Corp.*, 931 F.2d at 1314
27 (8th Cir. 1991) (upholding the district court's rescission remedy); *FTC v. Southwest*
Sunsites, Inc., 665 F.2d 711, 718 (5th Cir. 1982) (court authorized to "exercise the
28 full range of equitable remedies traditionally available to it" in Section 13(b)
actions).

1 *e.g.*, *id.* at 1113-14; *U.S. Oil & Gas Corp.*, 748 F.2d at 1432; *FTC v. Gill*, 183 F.
2 Supp. 2d 1171, 1176 (C.D. Cal. 2001); *see also* S. Rep. No. 103-130, 1993 WL
3 322671, at *15-16 (1993) (“Section 13 of the FTC Act authorizes the FTC to file
4 suit to enjoin any violation of the FTC [Act]. The FTC can go into court *ex parte*
5 to obtain an order freezing assets . . .”). Finally, district courts are authorized to
6 depart from normal discovery procedures and to fashion discovery by court order
7 to meet needs in particular cases. Fed. R. Civ. P. 1, 26(b)(2), 30(a), 34(b).

8 **B. The FTC Has Met the Standard for Issuance of a Temporary**
9 **Restraining Order**

10 To determine whether to grant a temporary or preliminary injunction in a
11 case pursuant to Section 13(b) of the FTC Act, the Court must consider the
12 Plaintiff’s likelihood of success on the merits and weigh the equities. *World Wide*
13 *Factors*, 882 F.2d at 346; *see also* *FTC v. Arlington Press, Inc.*, No. 98CV9260,
14 1999 WL 33562452 (C.D. Cal. 1999); *FTC v. Sage Seminars, Inc.*, No. 95-2854,
15 1995 WL 798938, at *2 (N.D. Cal. 1995). Unlike private litigants, the government
16 need not show irreparable injury. *World Wide Factors*, 882 F.2d at 347; *United*
17 *States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 175 (9th Cir. 1987) (“No
18 specific or immediate showing of the precise way in which violation of the law will
19 result in public harm is required.”). Because irreparable injury is presumed in
20 statutory enforcement actions, the district court need only find “some chance of
21 probable success” on the merits to grant an injunction. *World Wide Factors*, 882
22 F.2d at 347 (citing *Odessa*, 833 F.2d at 176). In balancing the equities, the public
23 interest should receive greater weight, particularly where, as here, the evidence
24 demonstrates that Defendants are engaged in deceptive practices. *World Wide*
25 *Factors*, 882 F.2d at 347. A TRO should issue in this case because the FTC has a
26 likelihood of success in proving Defendants are violating the FTC Act, and will
27 continue to do so absent court intervention, and because the public interest favors
28 entry of the requested Order.

1 1. **The FTC Is Likely To Succeed on the Merits**

2 As described above and evidenced in the exhibits to this memorandum, the
3 FTC is likely to succeed in establishing that Defendants are violating Section 5 of
4 the FTC Act. Section 5 prohibits “unfair or deceptive acts or practices in or
5 affecting commerce.” 15 U.S.C. § 45(a). Section 5 condemns as deceptive any
6 material representation or omission that would likely mislead consumers acting
7 reasonably under the circumstances. *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095
8 (9th Cir. 1994) (citing *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 164-65
9 (1984)); *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001).³³ Through their
10 advertising and marketing practices, Defendants have made material
11 misrepresentations about their purported loan modification services and have
12 falsely represented that they will provide a full refund if they cannot obtain a loan
13 modification.

14 First, Defendants falsely represent that they can obtain loan modifications
15 for consumers in all or virtually all cases. The evidence demonstrates that
16 Defendants market their loan modification services using claims of high success
17 rates, and that these claims are false. As described above, the record shows that
18 Defendants expressly guarantee that they will obtain loan modifications for
19 consumers and claim success rates near 90%. LaPoint ¶ 5; Utley ¶ 6; McPeck Att.
20 11 at 143. However, as demonstrated by some 65 consumer complaints filed with
21 the BBB and other law enforcement agencies, eight consumer declarations, and
22 three private lawsuits brought by consumers, Defendants have failed to obtain loan
23

24 ³³ A violation of Section 5(a) is properly found upon a showing that “first,
25 there is a representation, omission, or practice that, second, is likely to mislead
26 consumers acting reasonably under the circumstances, and third, the representation,
27 omission, or practice is material.” *Pantron I Corp.*, 33 F.3d at 1095; *see also Resort*
28 *Car Rental System v. FTC*, 518 F.2d 962, 964 (9th Cir. 1975), *cert. denied*, 423 U.S.
827, 95 S. Ct. 41, 46 L. Ed 2d 42 (1975) (advertising that induces consumer response
through deception violates FTC Act).

1 modifications for many consumers. Gearhart ¶ 31; Jeremy ¶ 26; Keylon ¶¶ 26-28;
2 Quick ¶¶ 21, 30; Quintana ¶ 21; Utley ¶ 29; McPeck Att. 10 at 119, 121, Att 11 at
3 129-30, 140-41, 143-44, 148-49, 153, 156-57, 163, 166-68, 173, Att. 12 at 213,
4 273, 293-94, 313. Defendants cannot represent that they will obtain loan
5 modifications for consumers unless that result is typical, not the exception. *See*
6 *Five-Star Auto Club, Inc.*, 97 F. Supp. 2d at 530 (court held evidence that some
7 Five Star participants were satisfied customer does not demonstrate that “no
8 consumers were deceived”).³⁴

9 Second, Defendants misrepresent that Defendants will give full refunds to
10 consumers if Defendants fail to obtain a loan modification. In addition to
11 providing a guaranteed modification, Defendants in numerous instances explicitly
12 promise that consumers will be entitled to full refunds if Defendants fail to provide
13 satisfactory modifications of the consumers’ loans. However, even when Lucas
14 Law Center does nothing and consumers lose their homes, or Lucas Law Center
15 never contacts consumers’ lenders, it refuses to provide full refunds. Instead,
16 consumers who trusted Lucas Law Center to save their homes are left without the
17 large sum of money paid to Lucas Law Center and without the relief that Lucas
18 Law Center promises them in their hour of desperation.

19 As a matter of law, Defendants’ false claims concerning: (1) their promise
20 to obtain a modification of the consumer’s loan; and (2) their providing a full
21 refund if not able to obtain a loan modification are material because they are
22 express in nature and would affect consumers’ decision to purchase Defendants’
23 loan modification services.³⁵ Indeed, Defendants’ promise of successfully

24
25 ³⁴ The existence of some satisfied consumers is not a defense to FTC Act
26 violations. *See Amy Travel*, 875 F.2d at 572; *SlimAmerica*, 77 F. Supp. 2d at 1273.

27 ³⁵ A claim is considered material if it “involves information that is
28 important to consumers and, hence, [is] likely to affect their choice of, or conduct
regarding a product.” *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir.

1 obtaining a modification go to the core reasons why consumers would consider
2 purchasing Lucas Law Center's services. Defendants' representations about
3 providing a full refund if unsuccessful also are important to consumers' purchasing
4 decision. In addition, Defendants' false claims are likely to mislead consumers
5 because, as a matter of law, consumers are entitled to rely on express claims and
6 are under no obligation to doubt the veracity of the Defendants' success claims.³⁶
7 Accordingly, as supported by the evidence in this case and established by law,
8 Defendants have made false, express claims of guaranteeing a loan modification or
9 the consumer will be provided a full refund, these claims are material to consumers
10 and are likely to mislead, and thus the FTC is likely to prevail in showing that
11 Defendants are violating Section 5 of the FTC Act.

12 **2. The Corporate And Individual Defendants Are Subject To**
13 **Joint And Several Liability**

14 **a. The Corporate Defendants Are Subject to Joint and**
15 **Several Liability as a Common Enterprise**

16 Corporate defendants may be held jointly and severally liable if they operate
17 as a common enterprise. *FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1202
18

19
20 2006). Express claims and implied claims used to induce the purchase of a product
21 are presumed to be material. *In re Thompson Med. Co.*, 104 F.T.C. 648, 816-18
22 (1984); *see also Pantron I Corp.*, 33 F.3d at 1095-96; *Figgie Int'l*, 994 F.2d at 605-
23 606; *Am. Home Prods. Corp. v. FTC*, 695 F.2d 681, 688 n.11 ("Once the
24 Commission finds deception, it is normally allowed to infer materiality.").

25 ³⁶ *See FTC v. Standard Educ. Soc'y*, 302 U.S. 112, 116 (1937); *Five-Star*
26 *Auto Club*, 97 F. Supp. 2d at 528 (S.D.N.Y. 2000) ("Consumer reliance on express
27 claims is presumptively reasonable. It is reasonable to interpret express statements
28 as intending to say exactly what they say."). Moreover, consumers reasonably
assume that Defendants' claims of successful loan modifications would apply to
them. *Five-Star Auto Club*, 97 F. Supp. 2d at 528-30 ("at the very least it would
have been reasonable for consumers to have assumed that the promised rewards were
achieved by the typical Five Star participant").

1 (C.D. Cal. 2000) (citations omitted).³⁷ To determine whether a common enterprise
2 exists, “the pattern and frame-work of the whole enterprise must be taken into
3 consideration.” *Del. Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964). A host
4 of factors may demonstrate the existence of a common enterprise, including:
5 common control, shared officers, shared office space, commingling of funds,
6 unified advertising, and a maze of interrelated companies through which the
7 business was transacted. *Id.* (citations omitted); *Think Achievement*, 144 F. Supp.
8 2d at 1011. No one factor is dispositive, and all factors need not be present to
9 justify a finding of common enterprise. *FTC v. Kennedy*, 574 F. Supp. 2d at 722
10 (“It is not necessary that the FTC prove any particular number of entity
11 connections and any specific connection.”)

12 Several of those factors are present here, demonstrating that the corporate
13 defendants operate as a common enterprise. Pursuant to the Management
14 Agreement, Lucas Law Center and Future Financial Services jointly operate a loan
15 modification services business in which Future Financial Services provides the
16 staff and facilities. McPeck Att. 1 at 15-19. According to the agreement, Future
17 Financial Services delivers foreclosure avoidance services, including marketing,
18 customer service, and negotiation. McPeck Att. 1 at 15 ¶ 1b. The agreement
19 provides that Lucas Law Center is responsible for delivery of legal services, but it
20 delegates services to non-attorneys employed by Lucas Law Center, or employed
21 by Future Financial Services and subcontracted to Lucas Law Center. McPeck Att.
22 1 at 16 ¶ 3b. Future Financial Services employees represent themselves as “being
23

24 ³⁷ See *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (5th Cir.
25 1973); *FTC v. Kennedy*, 574 F. Supp. 2d 714, 722 (S.D. Tex. 2008); *FTC v.*
26 *SkyBiz.com, Inc.*, No. 01-CV-396-K (E), 2001 WL 1673649, at *5 (N.D. Okla. Aug.
27 2, 2001); *Think Achievement Corp.*, 144 F. Supp. 2d at 1011; see also *FTC v. Para-*
28 *Link Int’l, Inc.*, No. 8:00-CV-2114-T-17E, 2000 WL 33988084, at *2-4 (M.D. Fla.
Nov. 21, 2000) (holding multiple corporate entities liable as participants in a
common enterprise).

1 with [Lucas Law Center],” or “employees of the law firm.” *Id.* The agreement
2 further provides that Future Financial Services trains and supervises these
3 employees according to Lucas Law Center’s guidelines and policies. *Id.* Only the
4 name Lucas Law Center is provided to the public by this joint operation.
5 Gearheart Att. F at 22; Jeremy Att. E-G at 23-29, J at 32, K at 34, L at 38;
6 Kranzberg Att. A-F at 10-19; LaPoint Att. A-C at 9-18, H at 29; Quick Att. A-C at
7 10-12, E-I at 14-22; Quintana Att. B at 12-19; Utley Att. A at 9-10, B-C at 13-23,
8 F-M at 27-35.

9 Also, the Management Agreement shows that the corporate Defendants
10 share office space. McPeck Att. 1 at 16 ¶ 4. Use of a common work force in
11 negotiating loan modifications demonstrates there is no separation of companies or
12 distinction between the companies. Future Financial Services employees identify
13 themselves to consumers as employees of Lucas Law Center. *Id.* at 16 ¶ 3b.

14 Additionally, a toll-free telephone number used by the company has Betts’
15 residence as its billing address. McPeck Att. 33 at 674, Att. 10 at 113 (consumer
16 identifies Lucas Law Center’s phone number as 800 331-8000). Betts told
17 consumers that he was “at the top” of Lucas Law Center hierarchy, right under
18 Lucas. Keylon ¶ 21. As these facts demonstrate, there is no real distinction
19 between the individual defendants and their companies.

20 Finally, the common enterprise is used to perpetuate a fraud, and unjust loss
21 or injury would result from treating the proposed Defendants separately because
22 both companies are involved actively in the alleged deception.

23 **b. Lucas, Betts, and Sullivan Can Be Held Individually**
24 **Liable for the Acts and Practices of the Common**
25 **Enterprise**

26 Individuals can be held liable for corporate violations of Section 5 of the
27 FTC Act. *Cyberspace.com*, 453 F.3d at 1202; *FTC v. Am. Standard Credit Sys.*,
28 874 F. Supp. 1080, 1089-90 (C.D. Cal. 1994). Individual liability for injunctive

1 relief is appropriate where the individual defendant directly participated in or had
2 the authority to control corporate deceptive acts and practices. *Am. Standard*, 874
3 F. Supp. at 1089. Authority to control can arise from assuming the duties of a
4 corporate officer. *Amy Travel*, 875 F.2d at 573; *see also Am. Standard*, 874 F.
5 Supp. at 1089. This is especially true when the corporate defendants, as those in
6 this case, are small, closely held corporations. *Think Achievement*, 144 F. Supp. 2d
7 at 1011. Individual defendants are further subject to monetary liability if they had
8 knowledge of the practices at issue. *Id.*³⁸ “The degree of participation in business
9 is probative of knowledge.” *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d
10 1247, 1270 (S.D. Fla. 2007); *Amy Travel*, 875 F.2d at 574 (citing *Int’l Diamond*
11 *Corp.*, 1983-2 Trade Cas. (CCH) at 69,707-8). The individual defendants’
12 awareness of a high volume of consumer complaints further demonstrates
13 knowledge of deceptive practices. *Amy Travel*, 875 F.2d at 574-76.

14 Here, all three of the individual defendants are liable for both injunctive and
15 monetary relief. Lucas is listed as CEO, CFO, and Secretary and sole director of,
16 and registered agent for, Lucas Law Center. McPeck Att. 18 at 445, 448. He signs
17 Lucas Law Center’s refund checks and signs the contracts with consumers. Jeremy
18 Att. E at 27; Keylon Att. E at 13; Kranzberg Att. E at 18; LaPoint Att. B at 14;
19 Quick Att. F at 19; Quintana Att. B at 16; Utley Att. B at 17. The American
20 Express merchant account was opened in the name of Lucas Law center using his
21 Social Security Number. McPeck Att. 38 at 718. Lucas discusses the status of
22 their loan modification applications with consumers, and, on at least one occasion,
23 agreed to provide a consumer a refund. LaPoint ¶ 31; McPeck Att. 11 at 133, 160,

24
25 ³⁸ However, an individual need not have had subjective intent to deceive
26 or actual knowledge of the deception; reckless indifference to the truth or falsity of a
27 misrepresentation or an awareness of a high probability of fraud coupled with
28 intentional avoidance of the truth will suffice. *Amy Travel*, 875 F.2d at 573-74; *see*
Cyberspace.com, 453 F.3d at 1202; *Am. Standard*, 874 F. Supp. at 1089; *J.K.*
Publ’ns, 99 F. Supp. 2d at 1204.

1 Att. 12 at 215. Additionally, Lucas is the only attorney listed on either Lucas Law
2 Center Web site. McPeek Att. 20 at 463, Att. 24 at 527. His name is prominently
3 displayed, along with his California Bar number, on the Web sites (McPeek Att. 20
4 at 463, Att. 24 at 527) and in email correspondence with consumers. Kranzberg
5 Att. A at 10. These factors not only demonstrate his authority to control, but also
6 illustrate his knowledge of the deceptive acts and practices of Lucas Law Center.

7 Defendant Betts owns and operates Future Financial Services. McPeek Att.
8 1 at 19. He signed the Management Agreement on behalf of Future Financial
9 Services. *Id.* Betts is the face of the Future Financial Services which operates
10 under the terms of the Management Agreement as Lucas Law Center. *See* McPeek
11 Att. 1 at 15-19. He is the registrant and serves as the billing contact for one of the
12 Lucas Law Center Web sites. McPeek Att. 37 at 713. Additionally, a toll-free
13 telephone number used by a consumer has Betts' residence as its billing address.
14 McPeek Att. 33 at 674, Att. 10 at 113 (consumer identifies Lucas Law Center's
15 same phone number as 800 331-8000). Betts deals with consumers after they
16 contracted with Lucas Law Center. Keylon ¶ 21. His actions demonstrate his
17 authority to control, as well as knowledge of the deceptive acts and practices of
18 Lucas Law Center and Future Financial Services.

19 Defendant Frank Sullivan is a resident of California. His principal business
20 address is 65 Enterprise, Aliso Viejo, California. He told a consumer that he was
21 the "manager." McPeek Att. 12 at 313. A Lucas Law center representative
22 transferred a call to Sullivan after the consumer asked to speak to a "supervisor."
23 McPeek Att. 11 at 144; *see also id.* at 156.

24 Sullivan handles consumer complaint calls and refund requests at Lucas Law
25 Center. Kranzberg ¶ 17; Quick ¶ 26; Quintana ¶¶ 12-19; McPeek Att. 10 at 113,
26 Att. 11 at 131, 134-35, 138, 141, 156. In those instances where consumers
27 complained about the status of their loan modification applications, Sullivan
28 intervened and took over the matters from the loan negotiators. Jeremy ¶ 23-24;

1 Quintana ¶ 12. On occasions, he denied refunds. McPeck Att. 11 at 159, Att. 12 at
2 313. On other occasions, he agreed to issue partial refunds to consumers. Jeremy
3 ¶ 24; Quick ¶ 26; Quintana ¶¶ 14, 19; McPeck Att. 11 at 131, 134, 141, 144, 168.
4 Sullivan has demonstrated his authority to control Lucas Law Center, as well as his
5 knowledge of its deceptive acts and practices.

6 The individual Defendants' positions with and actions in furtherance of the
7 business demonstrate their ability to control the common enterprise, subjecting
8 each to injunctive liability. Additionally, the individual Defendants have the
9 requisite knowledge of Lucas Law Center's deceptive acts and practices to be
10 subject to monetary liability. In this case, it would be unreasonable for the
11 individual defendants to assert that they were unaware of their advertisements, the
12 Web sites' contents, and the Lucas Law Center's representations, the contract
13 terms, the consumer complaints to Lucas Law Center and to the BBB, and private
14 lawsuits. Moreover, it would be equally implausible for Defendant Lucas to assert
15 that he was unaware of Lucas Law Center's practices. He launched the Lucas Law
16 Center, incorporated it, opened its merchant accounts, and allows it to operate
17 using his name and California Bar number. Moreover, Lucas, Betts and Sullivan
18 know of mounting consumer complaints arising from Lucas Law Center's
19 marketing practices.

20 3. The Balance of Equities Favors Issuance of An Injunction

21 The public interest in halting Defendants' false claims about their loan
22 modification services and in preserving assets for a meaningful monetary remedy
23 far outweighs any interest Defendants may have in continuing to deceptively
24 advertise their services. In balancing the hardships between the public and private
25 interest, "the public interest should receive greater weight." *FTC v. World Travel*
26 *Vacation Brokers*, 861 F.2d 1020, 1030 (7th Cir. 1988); *see also Affordable Media,*
27 *LLC*, 179 F.3d at 1236 ("Obviously, the public interest in preserving the illicit
28 proceeds . . . for restitution to the victims is great."). Here, the balance tips

1 strongly in favor of issuance of the requested TRO. Defendants' ongoing law
2 violations, hardly isolated in nature, strongly suggest they will persist in
3 defrauding consumers absent the requested injunctive relief.³⁹ In contrast, "[T]here
4 is no oppressive hardship to defendants in requiring them to comply with the FTC
5 Act, refrain from fraudulent representation or preserve their assets from dissipation
6 or concealment." *World Wide Factors*, 882 F.2d at 347. Thus, the court has no
7 obligation to protect ill-gotten profits or illegal business interests. *CFTC v. British*
8 *Am. Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977); *United States v.*
9 *Diapulse Corp. of America*, 457 F.2d 25, 29 (2d Cir. 1972). The public interest
10 strongly favors entry of the requested Order.

11 **C. Injunctive Relief Prohibiting Future Misrepresentations and**
12 **Collection of Advance Fees is Warranted**

13 To prevent ongoing consumer injury, the proposed TRO prohibits
14 Defendants from making misrepresentations concerning its provision of loan
15 modification services and from collecting or charging fees in advance of
16 performing those services. As discussed above, this Court has broad equitable
17 authority under Section 13(b) to grant ancillary relief necessary to accomplish
18 complete justice. *Amy Travel*, 875 F.2d at 571-72; *H.N. Singer*, 668 F.2d at 1113;
19 *Five-Star Auto Club*, 97 F. Supp. 2d at 533. The prohibition on making false
20 claims in promoting any loan modification service does no more than order that
21 Defendants comply with the FTC Act. The provision barring Defendants from
22 charging or requesting advance fees from consumers in connection with the sale of
23 any loan modification service also is necessary to prevent ongoing consumer
24 injury. This second provision is justified by Defendants' ongoing illegal conduct
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26

27 ³⁹ Additionally, Betts' involvement in SEC violations warrants injunctive
28 relief. See discussion *supra* p. 6 & n.8.

1 and the substantial amount of fees Defendants charge consumers, who can least
2 afford to pay them.

3 The prohibition on advance fees is consistent with state laws regulating
4 foreclosure consultants.⁴⁰ As a matter of public policy, these States already have
5 determined that the high risk for fraud, coupled with enormous required fees, favor
6 delaying payment until foreclosure consultants actually perform the promised
7 services. As the evidence demonstrates, Defendants charge thousands of dollars in
8 up-front fees, and then do little, or nothing, for consumers after receiving payment.
9 As described above, those consumers targeted by Defendants' marketing can little
10 afford to have thousands of dollars tied up with Defendants for months while little
11 or nothing is done on their behalf. These consumers otherwise could use the
12 money to continue paying their mortgage or reduce other debt. Accordingly, the
13 requested preliminary injunctive relief is within the equitable powers of this Court
14 and will protect consumers from injury during the litigation.

15 **D. An Asset Preservation Order is Necessary to Preserve the**
16 **Possibility of Final Effective Relief**

17 In addition to injunctive relief, the FTC will seek a final order with monetary
18 restitution. To preserve the availability of funds to redress consumers' injury and
19 to determine the scope of the harm. The FTC requests that the Court issue an order
20 requiring the preservation of assets and evidence. Such an order is well within the
21 Court's authority.⁴¹ Moreover, courts have imposed asset freezes on the basis of
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24 ⁴⁰ See discussion *supra* pp. 10-11.

25 ⁴¹ See *Commodity Futures Trading Comm'n v. Am. Metals Exch. Corp.*,
26 991 F.2d 71, 79 (3d Cir. 1993); *Gem Merch. Corp.*, 87 F.3d at 469 (affirming asset
27 freeze obtained by FTC); *World Travel Vacation Brokers, Inc.*, 861 F.2d at 1031
28 (same); *H.N. Singer*, 668 F.2d at 1103 (same); *In re Nat'l Credit Mgmt. Group,*
L.L.C., 21 F. Supp. 2d 424, 462 (D.N.J. 1998) (“[a] freeze of the assets of all
Defendants is appropriate to preserve those assets for possible restitution.”).

1 the mere possibility of dissipation.⁴² The requested relief is similar to that ordered
2 in prior FTC cases in the Central District of California.⁴³

3 An asset freeze is appropriate where, as here, the magnitude of the financial
4 injury is large and there is a possibility of dissipation. *See, e.g., FTC v. U.S.A.*
5 *Bevs, Inc.*, No. 05-61682-CIV-LENARD/KLEIN, 2005 U.S. Dist. Lexis 39075 at
6 *24-25 (S.D. Fla. Dec. 5, 2005) (considerable motivation to hide assets because of
7 potential size of monetary remedy). Defendants have spent significant sums to
8 advertise their loan modification services on television and radio. Defendants'
9 potential liability likely already exceeds the funds that are available for restitution,
10 and therefore any new business expenditures would jeopardize the possibility of
11 effective relief. When a district court determines that the FTC is likely to prevail
12 in a final determination on the merits, it has "a duty to ensure that . . . assets . . .
13 [are] available to make restitution to the injured customers." *World Travel*
14 *Vacation Brokers*, 861 F.2d at 1031. To help ensure the availability of assets,
15 preserve the status quo, and guard against the dissipation and diversion of assets,
16 the Court may issue an order freezing Defendants' assets.

17 Further, the Court can order Defendants' assets to be frozen whether the
18 assets are inside or outside the United States. *United States v. First Nat'l City*
19 *Bank*, 379 U.S. 378, 384, 85 S. Ct. 528, 531, 13 L. Ed. 2d 365, 370 (1965) ("Once
20 personal jurisdiction of a party is obtained, the District Court has authority to order
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22 ⁴² *See, e.g., Fed. Sav. & Loan Ins. Corp. v. Sahni*, 868 F.2d 1096, 1097
23 (9th Cir. 1989) (holding that when a government agency is the movant, the
24 possibility of a dissipation of assets is sufficient to justify a freeze).

25 ⁴³ *See, e.g., FTC v. Fed. Loan Modification Law Ctr., LLP*, No. SACV09-
26 401-CJC (MLGx) (C.D. Cal. Apr. 24, 2009) (temporary restraining order with asset
27 freeze); *FTC v. Nat'l Foreclosure Relief, Inc.*, No. SACV09-117-DOC (MLGx),
28 (C.D. Cal. Feb. 2, 2009) (grant of TRO with asset freeze); *FTC v. Productive Mktg,*
Inc., 136 F. Supp. 2d 1096, 1100 (C.D. Cal. 2001)(issued preliminary injunction
based on the terms of the temporary restraining order which included asset freeze).

1 it to 'freeze' property under its control, whether the property be within or without
2 the United States"). Courts have frozen company assets and individual defendants'
3 assets where the individual defendants controlled the deceptive activity and had
4 actual or constructive knowledge of the deceptive nature of the practices in which
5 they were engaged. *Amy Travel*, 875 F.2d at 574-76; *Nat'l Credit Mgmt.*, 21 F.
6 Supp. 2d at 462.

7 In addition to a provision directing Defendants not to dissipate or conceal
8 assets, the FTC seeks a provision in the TRO directing banks and other financial
9 institutions to freeze Defendants' assets in their custody or control. This Court has
10 the authority to direct its order to such third parties to preserve assets that are easily
11 dissipated and may be difficult or impossible to trace.⁴⁴

12 Finally, the FTC seeks an immediate accounting of Defendants' assets, and
13 seeks an order requiring that Defendants complete and return to the FTC financial
14 statements on the forms attached to the proposed TRO. Requiring accounting and
15 financial statements, combined with an asset freeze, will increase the likelihood of
16 preserving existing assets pending final determination of this matter.⁴⁵

17 Here, Defendants' ongoing fraud demonstrates their willingness to engage in
18 wrongdoing. The possibility of a large monetary judgment provides Defendants
19 with ample incentive to conceal or dissipate otherwise recoverable assets.⁴⁶
20 Without an immediate freeze of the recoverable assets of Defendants, it is unlikely

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22 ⁴⁴ See *First Nat'l City Bank*, 379 U.S. at 385; *Reebok Int'l, Ltd. v.*
23 *McLaughlin*, 49 F.3d 1387, 1391-92 (9th Cir. 1995); *Waffenschmidt v. Mackay*, 763
24 F.2d 711, 714 (5th Cir. 1985).

25 ⁴⁵ See, e.g., *SEC v. Parkersburg Wireless Ltd. Liability Co.*, 156 F.R.D.
26 529, 532 n.3 (D.D.C. 1994); *SEC v. Bankers Alliance Corp.*, 881 F. Supp. 673, 676
(D.D.C. 1995).

27 ⁴⁶ Additionally, the accusation against Betts regarding concealing illegal
28 proceeds and involvement in SEC violations provides Betts the incentive to conceal
or dissipate Defendants' assets. See discussion *supra* p. 6.

1 that funds will remain to satisfy any final order granting restitution to deceived
2 consumers or disgorging Defendants' ill-gotten gains.

3 **E. A Temporary Receiver Should Be Appointed**

4 A temporary receiver will preserve evidence and assets, evaluate the true
5 nature of the Defendants' enterprise,⁴⁷ and refer consumer-victims to HUD-
6 approved counselors to assist in the loan modification process. Additionally, a
7 receiver has the ability to segregate the Defendants loan modification business
8 from any legitimate legal practice, and provide staff access as appropriate.

9 Federal district courts have the inherent power to appoint a receiver incident
10 to their statutory authority to issue a permanent injunction under Section 13(b).⁴⁸
11 A court's exercise of its equity jurisdiction to appoint a receiver is necessary in
12 instances in which a corporate defendant, via its management, has defrauded the
13 public.⁴⁹ A receiver is also appropriate where the business may continue to operate
14 in an unlawful manner without a receiver's oversight.⁵⁰ The appointment of a
15 receiver in this case is appropriate under both standards.

16 Defendants are nothing more than business agents for the consumer in the
17 modification process and do not provide legal representation. However, should
18 Lucas Law Center provide some legal services in addition to acting as a business
19

20 ⁴⁷ This is especially true in an operation associated with Betts, whose past
21 business relationship with the public gave rise to criminal and civil fraud charges
22 stemming from SEC violations and consumer injury estimated by the court to be
nearly \$20 million. *See discussion supra* p. 6 & n.8.

23 ⁴⁸ *See U.S. Oil & Gas Corp.*, 748 F.2d at 1432-34 (all the inherent
24 equitable powers of the District Court are available in an action filed pursuant to the
25 final proviso in FTC Act 13(b)); *see also SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d
1082, 1105-06 (2d Cir. 1972).

26 ⁴⁹ *See, e.g., World Wide Factors, Ltd.*, 882 F.2d at 348; *FTC v. Am. Nat'l*
27 *Cellular, Inc.*, 810 F.2d 1511, 1512-14 (9th Cir. 1987).

28 ⁵⁰ *See SEC v. Keller Corp.*, 323 F.2d 397, 403 (7th Cir. 1963).

1 agent of mortgage consumers, appointing a receiver will assist in ensuring that the
2 sanctity of the legal practice is maintained. The appointment of a receiver in this
3 matter will allow an independent party to filter documents maintained by
4 Defendants. Also, customer files consist of copies of retainer agreements, letters
5 of authorization, mortgage contracts, and other financial documents. Even if
6 Defendants were providing professional legal services, the documents would not
7 be privileged because they merely contain facts and are disclosed to third party
8 lenders.⁵¹ The receiver will have the ability to segregate the business's loan
9 modification services from any legitimate legal practice, and therefore limit FTC
10 access.

11 Moreover, Lucas Law Center is not providing bona fide legal services.
12 Rather, Lucas Law Center simply acts as business agent for the consumer in the
13 process of seeking a home loan modification. Business services - even those
14 performed by lawyers - are not entitled to privilege protections.⁵² Non-lawyers
15 regularly provide foreclosure prevention and mortgage loan modification services.
16 The fact that a lawyer may perform such services does not render them legal

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19 ⁵¹ *2,022 Ranch L.L.C. v. Super. Ct. of San Diego County*, 7 Cal. Rptr. 3d
20 197, 205 (Cal. Ct. App. 2003) (holding that documents do not become privileged
21 simply because they are given to counsel; information cannot be disclosed to third
22 parties if it is to remain privileged).

23 ⁵² *See United States v. The Corp.*, 974 F.2d 1068, 1070-71 n.2 (9th Cir.
24 1992) (holding that attorney-client privilege protects only communications made to
25 obtain or dispense legal advice – when legal advice is sought from a legal adviser
26 acting in his capacity as such; the party asserting privilege has the burden of proving
27 it applies); 24 CHARLES ALAN WRIGHT & KENNETH W. GRAHAM, JR., FEDERAL
28 PRACTICE AND PROCEDURE § 5478 (3d ed. 2008) (Privilege only applies to
communications that concern “professional legal services.” “Purely business”
matters do not constitute “professional legal services” and therefore are not
privileged).

1 services.⁵³ The Defendants' paperwork is not covered by the attorney-client
 2 privilege because it contains factual information and is intended to be conveyed to
 3 third party lenders.⁵⁴

4
 5 ⁵³ See *2,022 Ranch L.L.C.*, 7 Cal Rptr. 3d at 209 ("It is settled that the
 6 attorney-client privilege is inapplicable where the attorney merely acts as a
 7 negotiator for the client, gives business advice, or otherwise acts as a business
 8 agent.") (internal quotations omitted); *Watt Indus., Inc. v. Super. Ct. of the City &*
 9 *County of San Francisco*, 171 Cal. Rptr. 503, 504 (Cal. Ct. App. 1981) (holding that
 10 privilege did not extend to work product of attorney acting as business agent for
 11 client in conveying client's position during real estate contract negotiations); State
 12 Bar of California Standing Comm. on Prof'l Responsibility and Conduct, Formal Op.
 13 1995-141 (stating that non-legal services include real estate brokerage; business
 14 management, and accounting activities).

15 ⁵⁴ Additionally, there are numerous indicia that lead to the conclusion that
 16 Lucas Law Center is acting as the business agent for consumers, rather than acting as
 17 a legal representative. For example:

- 18 • The Lucas Law Center contract limits representation to modification of
 19 the terms of the consumer's home loan. The contract specifically states that
 20 Lucas Law Center will not represent the consumer in any other matter.
 21 Kranzberg Att. E at 14 ¶ 2.
- 22 • The contract states that Lucas Law Center has a number of affiliated
 23 attorneys licensed in other states. Therefore, if it does not have an affiliated
 24 attorney licensed in the consumer's state of residence, that is because the
 25 services to be rendered do not constitute the practice of law. Consumers'
 26 communication with Lucas Law Center has been with non-attorneys at the
 27 California offices and not with an affiliated attorney. See *LaPoint* ¶ 35. No
 28 consumer spoke to any attorney other than Lucas. *Gearhart* ¶ 32; *Jeremy* ¶ 27;
Keylon ¶ 29; *Kranzberg* ¶ 38; *LaPoint* ¶ 35; *Quick* ¶ 31; *Utley* ¶ 30; see
also discussion *supra* p. 18 & n.20.
- The contract limits the scope of work to be performed. For example, the
 contract limits services to modification of the consumer's loan with a specific
 lender for a specific property. "Attorney's representation does not include
 independent or related matters that may arise." Such matters require a
 separate agreement between the parties. *Kranzberg* Att. E at 16 ¶ 10.

1 Defendants have continuously operated an unlawful scheme since mid-2008.
2 They persist in this practice despite receiving numerous consumer complaints,
3 obtaining an “F” rating by the BBB. McPeck Att. 11 at 175. The risk that
4 Defendants will continue to operate unlawfully is extremely high. A receiver will
5 assist in the preservation of evidence and marshaling of assets. By timely reporting
6 the status of the Defendants’ operations, the receiver can assess the nature of the
7 Defendants’ business, and if instructed to wind-down its unlawful operations, can
8 refer victims to HUD-approved counselors. Moreover, should Lucas operate a law
9 practice at the Defendants’ location, appointment of a receiver is necessary to
10 provide a “filter” for the purposes of separating business records. The receiver
11 would be able to “filter” business records relating to consumers’ loan modification
12 services from Lucas Law Center records that reflect a legal practice, if any, and for
13 which the attorney-client privilege and the attorney work product doctrine may
14 apply.

15 **F. Limited Expedited Discovery Is Necessary**

16 The Court should grant the FTC’s request for limited discovery to locate and
17 identify consumers, documents, and assets; to determine the status of Defendants’
18 work on each consumer’s case; and to identify the attorneys, if any, whom
19 Defendants use to negotiate with consumers’ lenders. District courts are
20 authorized to depart from normal discovery procedures and fashion discovery to
21 meet discovery needs in particular cases. Fed. R. Civ. P. 26(d), 33(a), 34(b)
22 (authorizing alteration of standard discovery provisions, including applicable time
23 frames governing depositions and production of documents). Such a departure is
24 justified in light of the Court’s broad and flexible authority in equity to grant
25 preliminary emergency relief in cases involving the public interest.⁵⁵

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28 ⁵⁵ See, e.g., *Gill*, 183 F. Supp. 2d at 1176-77 (granting expedited
discovery); *Productive Mktg.*, 136 F. Supp. 2d at 1100 (same). See also *Fed. Sav. &*

1 In this case, limited discovery is crucial. First, it will aid in locating and
2 securing assets for final relief and ensuring compliance with any asset freeze the
3 FTC requests that the Court order. Second, limited discovery into Defendants'
4 business practices will shed light on the scope of consumer injury. It also will help
5 to determine the existence and location of documents needed to determine the
6 nature and extent of consumer injury. That determination, in turn, will reveal
7 whether further-reaching preliminary relief is required to sufficiently protect the
8 financially vulnerable consumers to whom Defendants target their services.
9 Further, the FTC's request will not unduly burden Defendants as the requested
10 information should be available readily in a computerized, business-records format
11 because it is the information needed daily by Defendants to fulfill their promise to
12 provide loan modification services.⁵⁶

13 VII. CONCLUSION

14 For the reasons delineated above, the FTC respectfully requests that
15 the Court enter a Temporary Restraining Order and Show Cause Order, including
16 provisions for the preservation of assets and evidence, to halt Defendants' ongoing
17 violations of the FTC Act and to protect the Court's ability to issue effective, final
18 relief in this matter as it may deem appropriate.

24 *Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 562 (5th Cir. 1987).

25 ⁵⁶ This type of information is commonly kept on proprietary, client-
26 contact software, which is often not readable in its native format without the
27 underlying software. As a result, an order to provide information in written format,
28 rather than produce the computer records themselves, will facilitate the design of
appropriate preliminary injunctive relief by the Court.

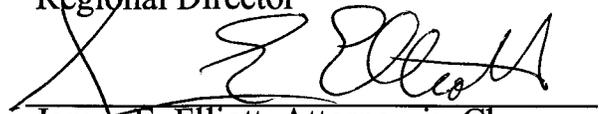
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Respectfully submitted,

WILLARD K. TOM
General Counsel

DEANYA T. KUECKELHAN
Regional Director



James E. Elliott, Attorney-in-Charge
jelliott@ftc.gov
Texas Bar Number 06557100
James E. Hunnicutt, Attorney
jhunnicutt@ftc.gov
Texas Bar Number 24054252
Federal Trade Commission
1999 Bryan Street, Suite 2150
Dallas, Texas 75201
(214) 979-9373 (Mr. Elliott)
(214) 979-9381 (Mr. Hunnicutt)
(214) 979-9350 (Office)
(214) 953-3079 (Facsimile)

John D. Jacobs (Local Counsel)
jjacobs@ftc.gov
California Bar No. 134154
Federal Trade Commission
10877 Wilshire Blvd., Ste. 700
Los Angeles, California 90024
(310) 824-4343 (voice)
(310) 824-4380 (fax)

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION