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15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
SOUTHERN DIVISION

18 **FEDERAL TRADE COMMISSION,**

19 Plaintiff,

20 v.

21 **LUCASLAWCENTER "INCORPORATED",**

22 *et al.,*

23 Defendants.
24

**Case No. SACV 09-0770
DOC (ANx)**

**MEMORANDUM OF
POINTS AND
AUTHORITIES IN
SUPPORT OF
PLAINTIFF'S MOTION
FOR SUMMARY
JUDGMENT**

Date: May 24, 2010

Time: 8:30 a.m.

Courtroom 9D

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TABLE OF CONTENTS

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

- I. MOTION FOR SUMMARY JUDGMENT. 1
- II. INTRODUCTION. 1
- III. PROCEDURAL HISTORY. 2
- IV. THE PARTIES. 4
 - A. The Federal Trade Commission. 4
 - B. Defendants. 5
- V. DEFENDANTS’ DECEPTIVE PRACTICES. 8
 - A. Lucas Law Center’s Marketing Program. 8
 - 1. Lucas Law Center’s Advertising. 9
 - 2. Lucas Law Center’s Representations. 10
 - 3. Lucas Law Center Did Little or Nothing For Its Fee. 13
- VI. LEGAL ARGUMENT. 15
 - A. Summary Judgment Is Appropriate in This Case. 15
 - B. Jurisdiction, Venue, and Commerce Requirements Are Met. 16
 - C. Defendants Violated Section 5 of the FTC Act. 16
 - D. Complaint Counts. 19
 - 1. Count One of the Complaint. 19
 - 2. Count Two of the Complaint. 20
 - E. The Receiver’s Reports Confirm the
FTC’s Uncontroverted Evidence. 21

1 F. The Number of Loans Defendants Claim to Have Modified Is
2 Inaccurate, Unreliable, and Irrelevant. 22
3 G. Plaintiff Is Entitled to the Adverse Inference
4 Created by Defendants’ Assertion of the Fifth
5 Amendment Privilege Against Self-Incrimination. 24
6
7 VII. THE CORPORATE AND INDIVIDUAL DEFENDANTS ARE SUBJECT
8 TO JOINT AND SEVERAL LIABILITY. 25
9 A. The Corporate Defendants Are Subject to
10 Joint and Several Liability as a Common Enterprise. 25
11 B. Lucas, Betts, and Sullivan Can and Should Be Held Individually
12 Liable for the Acts and Practices of the Corporate Defendants. 28
13
14 VIII. REQUESTED RELIEF. 31
15 A. Injunctive Relief. 33
16 1. The Court has the authority to issue broad injunctive relief. . . 33
17 a. Court has the authority to issue “fencing-in” relief. . . . 34
18 b. The Court may impose occupational bans. 34
19 2. The requested bans are appropriate. 36
20 a. Section I: Ban on Mortgage Loan Modifications. 36
21 b. Section II: Ban on Financial Related Goods
22 or Services for Defendant Betts. 37
23 c. Sections III and IV: Injunctions Preventing
24 Defendants from Violating the Law in a New Guise. . . 38
25 B. Monetary Relief. 39
26 1. Measure of monetary relief. 39
27 2. Amount of monetary relief. 41
28

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

C. Ancillary Equitable Relief Required to Protect Consumers and
Monitor Compliance. 41

1. Sections VI and VII provide necessary protections for
Defendants’ consumer victims. 41

2. Monitoring, compliance reporting, and record keeping
provisions are necessary to ensure compliance. 42

IX. CONCLUSION. 42

TABLE OF AUTHORITIES

FEDERAL CASES

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)..... 15

Baxter v. Palmigiano,
425 U.S. 308, 96 S. Ct. 1551, 47 L. Ed. 2d 810 (1976)..... 25

CFTC v. CoPetro Marketing Group, Inc.,
502 F. Supp. 806 (C.D. Cal. 1980). 33

CFTC v. Hunt,
591 F.2d 1211 (7th Cir. 1979)..... 33

In re Cliffdale Associates, Inc.,
103 F.T.C. 110 (1984)..... 17

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

Doe ex rel. Rudy-Glanzer v. Glanzer,
232 F.3d 1258 (9th Cir. 2000)..... 25

FTC v. Affordable Media, LLC,
179 F.3d 1228 (9th Cir. 1999)..... 29

FTC v. America Standard Credit Systems, Inc.,
874 F. Supp. 1080 (C.D. Cal. 1994). 28, 29

FTC v. Amy Travel Service, Inc.,
875 F.2d 564 (7th Cir. 1989)..... 18, 23, 28, 29

FTC v. Capital Choice Consumer Credit, Inc.,
No. 02-21050 CIV,
2004 WL 5149998 (S.D. Fla. Feb. 20, 2004). 36

FTC v. Check Investors, Inc.,
No. 03-2115 (JWB),
2005 U.S. Dist. LEXIS 37199 (D.N.J. Jul. 18, 2005). 35

FTC v. Colgate-Palmolive Co.,
380 U.S. 374, 85 S. Ct. 1035, 13 L. Ed. 2d 904 (1965)..... 34

FTC v. Connelly,
No. SACV 06-701 DOC (RNBx),
2006 U.S. Dist. LEXIS 98263 (C.D. Cal. Dec. 20, 2006)..... 20

FTC v. Cyberspace.com, LLC,
453 F.3d 1196 (9th Cir. 2006)..... 15, 28, 29

1 *FTC v. Cyberspace.com, LLC*,
 2002 U.S. Dist. LEXIS 25565,
 2 2003-1 Trade Cas. (CCH) ¶ 73,960 (W.D. Wash. July 10, 2002)..... 18

3 *FTC v. Data Medical Capital, Inc.*,
 2010 U.S. Dist. LEXIS 3344,
 4 2010-1 Trade Cas. (CCH) ¶ 76,885 (C.D. Cal. 2010)..... 26

5 *FTC v. Direct Marketing Concepts, Inc.*,
 648 F. Supp. 2d 202 (D. Mass. 2009)..... 42

6 *FTC v. Elders Grain Inc.*,
 7 868 F.2d 901 (7th Cir. 1989)..... 32

8 *FTC v. Evans Products Co.*,
 775 F.2d 1084 (9th Cir. 1985)..... 32

9 *FTC v. Febre*,
 10 128 F.3d 530 (7th Cir. 1997)..... 39, 40

11 *FTC v. Figgie*,
 994 F.2d 595 (9th Cir. 1993)..... 17, 18, 40

12 *FTC v. Five-Star Auto Club, Inc.*,
 13 97 F. Supp. 2d 502 (S.D.N.Y. 2000)..... 17, 23, 33, 34, 36

14 *FTC v. Freecom Communications, Inc.*,
 401 F.3d 1192 (10th Cir. 2005)..... 28

15 *FTC v. Garvey*,
 16 No. CV 00-9358 (GAF) (CWx),
 2001 U.S. Dist. LEXIS 25060 (C.D. Cal. Nov. 8, 2001)..... 17

17 *FTC v. Gem Merchandise Corp.*,
 18 87 F.3d 466 (11th Cir. 1996)..... 33, 40

19 *FTC v. Gill*,
 71 F. Supp. 2d 1030 (C.D. Cal. 1999)..... 17, 20, 24, 33

20 *FTC v. Gill*,
 21 265 F.3d 944 (9th Cir. 2001)..... 17, 35

22 *FTC v. H.N. Singer, Inc.*,
 668 F.2d 1107 (9th Cir. 1982)..... 32

23 *FTC v. International Diamond Corp.*,
 24 1983 U.S. Dist. LEXIS 11862,
 1983-2 Trade Cas. (CCH) ¶ 65,725 (N.D. Cal. Nov. 8, 1983). 18, 19

25 *FTC v. Investment Developments, Inc.*,
 26 No. 89-642,
 1989 U.S. Dist. LEXIS 6502 (E.D. La. June 9, 1989)..... 26

27 *FTC v. J.K. Publications, Inc.*,
 28 99 F. Supp. 2d 1176 (C.D. Cal. 2000)..... 25, 26, 29, 34

1 *FTC v. Jordan Ashley, Inc.*,
 1994 U.S. Dist. LEXIS 7494,
 2 1994-1 Trade Cas. (CCH) ¶ 70,570 (S.D. Fla. 1994). 36

3 *FTC v. Kitco of Nevada, Inc.*,
 612 F. Supp. 1282 (D. Minn. 1985).. 18, 34

4 *FTC v. Kuykendall*,
 5 312 F.3d 1329 (10th Cir. 2002).. 18

6 *FTC v. MacGregor*,
 2009 U.S. App. LEXIS 28661 (9th Cir. 2009). 25

7 *FTC v. Magazine Solutions, LLC*,
 8 No. 7-692,
 2009 U.S. Dist. LEXIS 20629 (W.D. Pa. Mar. 16, 2009).. 18

9 *FTC v. Mandel Brothers, Inc.*,
 10 359 U.S. 385, 79 S. Ct. 818, 3 L. Ed. 2d 893 (1959).. 34

11 *FTC v. Medicor, LLC*,
 217 F. Supp. 2d 1048 (C.D. Cal. 2002).. 40

12 *FTC v. Medicor, LLC*,
 13 2002 U.S. Dist. LEXIS 16220,
 2002-2 Trade Cas. (CCH) ¶ 73,759 (C.D. Cal. 2002).. 35, 41

14 *FTC v. Micom Corp.*,
 15 1997 U.S. Dist. LEXIS 3404,
 1997-1 Trade Cas. (CCH) ¶ 71,753 (S.D.N.Y. 1997).. 36

16 *FTC v. NCH, Inc.*,
 17 1995 U.S. Dist. LEXIS 21096,
 1995-2 Trade Cas. ¶ 71,114 (D. Nev. 1995). 35

18 *FTC v. National Business Consultants, Inc.*,
 19 781 F. Supp. 1136 (E.D. La. 1991). 18

20 *FTC v. Neovi, Inc.*,
 598 F. Supp. 2d 1104 (S.D. Cal. 2008). 26

21 *FTC v. Pantron I Corp.*,
 22 33 F.3d 1088 (9th Cir. 1994).. 16, 17, 33, 40

23 *FTC v. Para-Link International, Inc.*,
 No. 8:00-CV-2114-T-17E,
 24 2000 WL 33988084 (M.D. Fla. Nov. 21, 2000). 26

25 *FTC v. Rainbow Enzymes, Inc.*,
 No. 87-1522 PHX WPC,
 26 1988 U.S. Dist. LEXIS 16173 (D. Ariz. Nov. 7, 1988).. 25

27 *FTC v. Ruberoid Co.*,
 343 U.S. 470, 72 S. Ct. 800, 96 L. Ed. 1081 (1952). 34

28

1 *FTC v. Security Rare Coin & Bullion Corp.*,
 931 F.2d 1312 (8th Cir. 1991). 18

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 1995 U.S. Dist. LEXIS 22254,
 1995-1 Trade Cas. (CCH) ¶ 70,918 (N.D. Cal. Feb. 24, 1995). 24

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 2001 WL 1673649,
 2001-2 Trade Cas. (CCH) ¶ 73,495 (N.D. Okla. Aug. 2, 2001) 25

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 77 F. Supp. 2d 1263 (S.D. Fla. 1999). 20

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 559 F.3d 924 (9th Cir. 2009). 24

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 2007 U.S. Dist. LEXIS 25173,
 2007-1 Trade Cas. (CCH) ¶ 75,666 (W.D. Wash. Apr. 3, 2007). 17

11

12 *FTC v. Southwest Sunsites, Inc.*,
 665 F.2d 711 (5th Cir. 1982). 32, 33

13

14 *FTC v. Think Achievement Corp.*,
 144 F. Supp. 2d 1013 (N.D. Ind. 2000). 33, 36, 42

15

16 *FTC v. Think Achievement Corp.*,
 144 F. Supp. 2d 993 (N.D. Ind. 2000). 26

17

18 *FTC v. Think Achievement Corp.*,
 312 F.3d 259 (7th Cir. 2002). 20

19

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 748 F.2d 1431 (11th Cir. 1984). 32

21

22 *FTC v. U.S. Oil & Gas Corp.*,
 No. 83-1702-CIV-WMH,
 1987 U.S. Dist. LEXIS 16137 (S.D. Fla. July 10, 1987). 26, 28

23

24 *FTC v. Wilcox*,
 926 F. Supp. 1091 (S.D. Fla. 1995). 36

25

26 *FTC v. Wolf*,
 1996 U.S. Dist. LEXIS 1760,
 1997-1 Trade Cas. (CCH) ¶ 71,713 (S.D. Fla. 1996). 36

27

28 *HUD v. Cost Control Marketing & Sales Management of Virginia, Inc.*,
 64 F.3d 920 (4th Cir. 1995). 39

Kraft, Inc. v. FTC,
 970 F.2d 311 (7th Cir. 1992). 35

1 *Maceachern v. City of Manhattan Beach*,
 623 F. Supp. 2d 1092 (C.D. Cal. 2009)..... 15, 16

2

3 *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*,
 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)..... 15

4 *N.Y. District Council of Carpenters Pension Fund v. Perimeter Interiors,*
 Inc.,
 657 F. Supp. 2d 410 (S.D.N.Y. 2009)..... 24

5

6 *National Acceptance Co. of America v. Bathalter*,
 705 F.2d 924 (7th Cir. 1983)..... 25

7

8 *Nationwide Life Insurance Co. v. Richards*,
 541 F.3d 903 (9th Cir. 2008)..... 24

9

10 *P.F. Collier & Son Corp. v. FTC*,
 427 F.2d 261 (6th Cir. 1970)..... 28

11

12 *Porter v. Warner Holding Co.*,
 328 U.S. 395, 66 S. Ct. 1086, 90 L. Ed. 1332 (1946). 33

13

14 *S.A. Empresa de Viacao Aerea Rio Grandense v. Walter Kidde & Co.*,
 690 F.2d 1235 (9th Cir. 1982)..... 15

15

16 *SEC v. First City Finance Corp.*,
 890 F.2d 1215 (D.C. Cir. 1989)..... 39

17

18 *SEC v. Interlink Data Network of Los Angeles, Inc.*,
 1993 U.S. Dist. LEXIS 20163..... 24

19

20 *SEC v. Lorin*,
 76 F.3d 458 (2d Cir. 1996). 39

21

22 *SEC v. Management Dynamics, Inc.*,
 515 F.2d 801 (2d Cir. 1975). 33

23

24 *SEC v. Murphy*,
 626 F.2d 633 (9th Cir. 1980)..... 15

25

26 *Standard Educators, Inc. v. FTC*,
 475 F.2d 401 (D.C. Cir. 1973)..... 28

27

28 *Sterling Drug, Inc. v. FTC*,
 741 F.2d 1146 (9th Cir. 1984)..... 34

Sunshine Art Studios, Inc. v. FTC,
 481 F.2d 1171 (1st Cir. 1973)..... 25

In re Thompson Medical Co., Inc.,
 104 F.T.C. 648 (1984)..... 17

Trans World Accounts, Inc. v. FTC,
 594 F.2d 212 (9th Cir. 1979)..... 34

1 *United States v. Rylander*,
 460 U.S. 752, 103 S. Ct. 1548, 75 L. Ed. 2d 521 (1983)..... 24
 2
 3 *United States v. W.T. Grant Co.*,
 345 U.S. 629, 73 S. Ct. 894, 97 L. Ed. 1303 (1953). 33, 34

4 **STATE CASES**

5
 6 *Vasquez v. Superior Court*,
 484 P.2d 964 (Cal. 1971)..... 19

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8
 9 *Complaint, FTC v. AmeriDebt, Inc.*,
 No. 8:03-cv-03317-PJM (D. Md. Nov. 19, 2003)..... 7
 10 *FTC v. Bay Area Bus. Council, Inc.*,
 No. 02-C-5762 (N.D. Ill. Apr. 14, 2004)..... 36
 11 *FTC v. Consumer Alliance, Inc.*,
 No. 02-C-2429 (N.D. Ill. Oct. 17, 2003)..... 36
 12 *FTC v. Global Marketing Group, Inc.*,
 No. 8:06-cv-2272-T-33TGW (M.D. Fla. Dec. 24, 2008). 35
 13 *FTC v. Tashman*,
 No. 98-07058-CIV-Ryskamp (S.D. Fla. July 11, 2006). 35, 38
 14 *FTC v. World Media Brokers Inc.*,
 No. 02-C-6985 (N.D. Ill. June 22, 2004)..... 36
 15 *Complaint, Robb Evans & Associates, LLC v. Betts*,
 No. 08-cv-01878-PJM (D. Md. July 18, 2008). 7
 16
 17
 18

19 **FEDERAL STATUTES**

20 15 U.S.C. § 41 *et seq.*..... 4
 21 15 U.S.C. § 44..... 16
 22 15 U.S.C. § 45..... 16, 38, 39
 23 15 U.S.C. § 45(a). 2, 4, 16
 24 15 U.S.C. § 53(b). 5, 16, 32, 33
 25 15 U.S.C. §§ 1679-1679j. 38
 26 28 U.S.C. § 1331..... 16
 27 28 U.S.C. § 1337(a). 16
 28

1 28 U.S.C. § 1345..... 16

2 28 U.S.C. § 1391(b), (c). 16

3 16 C.F.R. § 310.4(a)(5)..... 39

4

5 74 Fed. Reg. 41988, 42005-09, 42020 (Aug. 19, 2009)
 (to be codified at 16 C.F.R. § 310.4(a)(5)). 39

6 Fed. R. Civ. P. 56(c). 1, 3, 4, 15

STATE STATUTES

8

9 Cal. Bus. & Prof. Code § 6007 (West 2009)..... 6

10 Cal. Bus. & Prof. Code § 6106.3(a) (West 2009)..... 7

11 Cal. Civ. Code § 2944.6-.7 (West 2009)..... 7

12 Cal. Civ. Code § 2945.1(b)(1) (West 2009). 6

13 Cal. Civ. Code §§ 2945-2945.11 (West 2009). 6

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1 **I. MOTION FOR SUMMARY JUDGMENT**

2 Plaintiff Federal Trade Commission (“FTC”) moves for summary judgment,
3 under Federal Rule of Civil Procedure 56(c), against Defendants LucasLawCenter
4 “incorporated” (“Lucas Law Center”), also doing business as Lucas Law Center,
5 Future Financial Services, LLC (“FFS”), Paul Jeffrey Lucas, Christopher Francis
6 Betts, and Frank Sullivan (collectively, “Defendants”). All material facts
7 necessary for the Court to grant summary judgment are undisputed.¹ As more fully
8 discussed in the supporting memorandum below, the FTC is entitled to summary
9 judgment as a matter of law on all counts of its Complaint and monetary and
10 injunctive relief.

11 **II. INTRODUCTION**

12 Since at least June 2008 and up to the entry of the Amended Order Granting
13 Ex Parte Application for Temporary Restraining Order and Issuing Order to Show
14 Cause, Dkt. #24, Defendants operated a deceptive operation that defrauded
15 thousands of consumers nationwide. Defendants marketed mortgage loan
16 modification and foreclosure avoidance services (“mortgage loan modification
17 services”) costing thousands of dollars to struggling homeowners, but then failed
18 to provide the promised services.

19 Defendants, under the guise of a law practice, launched a nationwide radio
20 advertising campaign, as well as two Internet Web sites, to promote their loan
21 modification services, capitalizing on widely-publicized efforts to assist
22 homeowners with modifying or refinancing their home mortgage loans.
23 Consumers paid Defendants up-front fees ranging from \$2000 to \$3995, relying on
24 Defendants’ guarantees that they would obtain a loan modification for the

25
26 ¹ Plaintiff FTC is concurrently filing, under Local Rule 56-1, “Statement
27 of Uncontroverted Facts and Conclusions of Law in Support of Plaintiff’s Motion for
28 Summary Judgment” (“Uncontroverted Facts”). Citations in this memorandum to
the separately-numbered uncontroverted facts are abbreviated as “UF # __.”

1 consumer in all or virtually all cases, or they would give their money back. In
2 some cases, Defendants callously advised consumers to stop paying their
3 mortgages in order to either pay Defendants' fee or to make the loan modification
4 process easier. Consumers who followed this advice were placed at even greater
5 risk of losing their homes. After taking their fee, however, Defendants did little or
6 nothing to help their clients and refused to honor their guarantee of a full refund.
7 The promised refunds were sometimes only provided to those who complain to
8 local law enforcement authorities, the California Attorney General, the Better
9 Business Bureau of the Southland, Inc. ("BBB"), or the State Bar of California.

10 Defendants' actions have caused substantial consumer injury across the
11 country. Defendants advertised, marketed, promoted, offered for sale, and sold
12 loan modification services to consumers in California and throughout the United
13 States. Defendants' actions are especially troubling because the victims are often
14 those who can least afford to lose their money. The pervasiveness of Defendants'
15 deceptive practices is evidenced by the complaints filed against them with the
16 FTC, the BBB, the California Attorney General, and the State Bar of California; by
17 the declarations of nine consumers; and by the deposition testimony of five
18 consumers.

19 **III. PROCEDURAL HISTORY**

20 Plaintiff FTC commenced this action on July 7, 2009, and alleges that
21 Defendants violated Section 5(a) of the Federal Trade Commission Act ("FTC
22 Act"), 15 U.S.C. § 45(a). In its Complaint, the FTC alleges that Defendants
23 engaged in deceptive acts or practices in connection with the advertising,
24 marketing, promotion, offering for sale, or sale of mortgage loan modification
25 services in violation of the FTC Act. The Complaint includes two counts. Count I
26 alleges that Defendants misrepresented that they will obtain mortgage loan
27 modifications in all or virtually all instances. Count II alleges that Defendants
28 misrepresented that they will give full refunds to consumers if Defendants fail to

1 obtain a modification of their loan. The Complaint seeks temporary, preliminary,
2 and permanent injunctive relief, and equitable relief as necessary to redress injury
3 to consumers resulting from Defendants' violations of the FTC Act, including, but
4 not limited to, rescission or reformation of contracts, restitution, the refund of
5 monies paid, and the disgorgement of ill-gotten monies by Defendants.

6 Simultaneously with the filing of its Complaint, the FTC applied for an *ex*
7 *parte* temporary restraining order freezing assets and appointing a temporary
8 receiver. The Court granted the FTC's application on July 9, 2009, and entered the
9 Amended Order Granting Ex Parte Application for Temporary Restraining Order
10 and Issuing Order to Show Cause ("Amended TRO"), Dkt. #24. The Court
11 extended the asset freeze to cover all Defendants and appointed a permanent
12 receiver on July 16, 2009, by entering its Order Freezing Assets, Appointing
13 Permanent Receiver, Extending Amended Temporary Restraining Order and
14 Issuing Order to Show Cause ("Extended TRO"), Dkt. #34. The Court further
15 extended the Amended TRO and Extended TRO on August 3, 2009, by entering its
16 Order Continuing Hearing on Plaintiff's Motion for Preliminary Injunction and
17 Order Continuing Temporary Restraining Orders, Dkt. #69.

18 On August 24, 2009, a stipulated Preliminary Injunction Order Freezing
19 Assets, Appointment of Permanent Receiver and Other Equitable Relief, Dkt. #81,
20 was entered by the Court.

21 Plaintiff FTC now seeks an order granting summary judgment under Federal
22 Rule of Civil Procedure 56(c) because there are no genuine issues of material fact,
23 and the FTC is entitled to judgment as a matter of law. Summary judgment is
24 particularly appropriate in the present case for three reasons. First, the
25 voluminous, uncontroverted evidence establishes that there are no genuine issues
26 as to any material fact concerning the allegations in the Complaint. This
27 uncontroverted evidence includes, but is not limited to, Defendants' Web sites,
28 Defendants' business records, transcripts of Defendants' telephone conversations

1 with an FTC investigator posing as a consumer, and testimony, declarations, and
2 complaints from consumers nationwide. Second, the reports filed by Robb Evans
3 & Associates, LLC, the Court-appointed Receiver (“Receiver”), confirm the FTC’s
4 uncontroverted evidence. Third, the number of modifications Defendants claim to
5 have obtained has proven to be inaccurate and unreliable, and is irrelevant to
6 disproving their deception. Accordingly, the FTC is entitled to summary judgment
7 against Defendants under Federal Rule of Civil Procedure 56(c) on both counts
8 pled in the Complaint.

9 For its relief, Plaintiff FTC seeks permanent injunctions (1) banning
10 Defendants from providing mortgage loan modification services, (2) banning
11 Defendant Betts, a consumer fraud recidivist, from providing other financial
12 related goods and services, and (3) prohibiting Defendants from further violations
13 of Section 5 of the FTC Act and other consumer laws.² The FTC also seeks an
14 equitable monetary judgment against Defendants for \$6,120,200.43, which
15 represents a reasonable estimate of net consumer injury caused by Defendants’
16 fraudulent activities.³

17 **IV. THE PARTIES**

18 **A. The Federal Trade Commission**

19 Plaintiff FTC is an independent agency of the United States Government
20 created by the FTC Act, 15 U.S.C. § 41 *et seq.* The FTC is charged with
21 enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits
22 unfair and deceptive acts and practices in or affecting commerce. Section 13(b) of
23

24 ² The relief the FTC seeks includes restrictions on Defendants’ future
25 conduct, as well as compliance monitoring and reporting, record-keeping, and
26 distribution obligations.

27 ³ The FTC bases its minimum estimate of consumer injury on the results
28 of the Receiver’s forensic accounting of the corporate Defendants’ finances. *See* UF
#139-41.

1 the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to initiate federal district court
2 proceedings, by its own attorneys, to enjoin violations of the FTC Act in order to
3 secure appropriate equitable relief, including rescission or reformation of contracts,
4 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies.

5 **B. Defendants**

6 Defendants operated nationwide a purported mortgage loan modification
7 service. The corporate Defendants, which operated as a common enterprise, did
8 business as Lucas Law Center.

9 Defendant **LucasLawCenter “incorporated”** (“Lucas Law Center”) is a
10 California corporation incorporated on June 30, 2008, with its principal place of
11 business at 65 Enterprise, Aliso Viejo, California. UF #12.

12 Defendant **Future Financial Services, LLC** (“FFS”) is a limited liability
13 company with its principal place of business at 65 Enterprise, Aliso Viejo,
14 California. UF #13. FFS provided the offices for Lucas Law Center. UF #14-15.

15 Pursuant to a management agreement, Lucas Law Center and FFS jointly
16 operated a mortgage loan modification services business in which FFS provided
17 the staff and facilities, but only the name “Lucas Law Center” would be provided
18 to the public. *See* UF #14-19, 21. As discussed in more detail below, Lucas Law
19 Center and FFS acted as a common enterprise to perpetrate their fraud.⁴

20 Defendant **Paul Jeffrey Lucas** (“Lucas”), during the period June 2008 to
21 July 7, 2009, was a resident of Newport Beach, California. UF #27. Lucas is
22 Lucas Law Center’s CEO, CFO, and Secretary, and its director. UF #30. During
23 the period June 2008 to July 7, 2009, his principal business address was 65
24 Enterprise, Aliso Viejo, California. UF #28.⁵ Lucas was the only attorney

26 ⁴ *See* discussion *infra* pp. 25-28.

27 ⁵ According to the State Bar of California’s Web site, Lucas provided his
28 law practice address as 75 Enterprise, Aliso Viejo, California. UF #29.

1 employed by or affiliated with Lucas Law Center. UF #115-17.⁶ He lent his last
2 name to the purported law firm, and his name and California Bar number were
3 prominently displayed in email correspondence with consumers and on Lucas Law
4 Center's Web sites. UF #32.

5 Defendant **Christopher Francis Betts** ("Betts") is a resident of Ladera
6 Ranch, California. UF #41. During the period June 2008 to July 7, 2009, his
7 principal business address was 65 Enterprise, Aliso Viejo, California. UF #42.
8 Betts owns and operates, and is an officer of, FFS. UF #43. As discussed in more
9 detail below,⁷ Betts played a prominent role in the operations of both FFS and
10 Lucas Law Center. *See* UF #44-49.

11 Betts, by joining with Lucas, was able to circumvent the California statute
12 that prohibits foreclosure consultants from demanding or collecting payment
13 before all promised services have been completed.⁸ This statute exempts attorneys
14 licensed to practice in California.⁹ Not surprisingly, foreclosure consultants have
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18 ⁶ Lucas graduated from Southwestern University Law School in 1992,
19 and his California Bar number is 163076. UF #37. Lucas regained "active" status
20 with the State Bar of California on June 6, 2008 and was a member of the State Bar
21 of California in active standing until November 2009. UF #38. On November 4,
22 2009, Lucas was ordered involuntarily inactive by the State Bar of California for
23 posing "a substantial threat of harm to [his] clients or the public" under Business and
Professions Code § 6007. UF #39.

24 ⁷ *See* discussion *infra* pp. 27, 29-30.

25 ⁸ *See* CAL. CIV. CODE §§ 2945-2945.11 (West 2009). "These foreclosure
26 consultants, however, often charge high fees, the payment of which is often secured
27 by a deed of trust on the residence to be saved, and perform no service or essentially
a worthless service." *Id.* § 2945.

28 ⁹ *See* CAL. CIV. CODE § 2945.1(b)(1).

1 attempted to partner with attorneys to avoid these statutory prohibitions against the
2 collection of advance fees.¹⁰

3 Betts also was associated with Andris Pukke, a defendant, and Peter Baker, a
4 third party contemnor, in *FTC v. AmeriDebt, Inc.*, No. 8:03-3317-PJM (D. Md.).
5 *See* UF #50. *AmeriDebt* involved a complicated scheme purporting to operate as a
6 non-profit credit counseling agency that instead fraudulently charged high up-front
7 fees.¹¹ According to the receiver's report in that case, Betts provided sales force
8 management services to Baker using the entity Future FX LLC. UF #50. Betts
9 also was a co-owner with Pukke in two companies that were discussed in the
10 receiver's report in connection with the *AmeriDebt* case. *Id.* The *AmeriDebt*
11 court-appointed receiver filed suit against Betts for refusing to return funds
12 transferred in violation of the court's preliminary injunction. UF #51.¹²

14 ¹⁰ *See* Declaration of FTC Investigator Brent D. McPeek in Support of
15 Plaintiff's *Ex Parte* Application for Temporary Restraining Order, Vol. 1, Dkt #17
16 ("McPeek"), Att. 9 at 104-08 (*Ethics Alert: Legal Services to Distressed*
17 *Homeowners and Foreclosure Consultants on Loan Modifications*, Committee on
18 Professional Responsibility and Conduct, The State Bar of California (Feb. 2, 2009),
19 *available at* [http://www.calbar.ca.gov/calbar/pdfs/ethics/Ethics-Alert-](http://www.calbar.ca.gov/calbar/pdfs/ethics/Ethics-Alert-Foreclosure.pdf)
20 *Foreclosure.pdf*). To address these abusive practices, California enacted legislation,
21 effective October 11, 2009, to protect consumers from unscrupulous attorneys
22 offering mortgage loan modification services. *See* CAL. BUS. & PROF. CODE
23 § 6106.3(a) (West 2009); CAL. CIV. CODE § 2944.6-.7 (West 2009).

24 ¹¹ *See generally* McPeek Att. 5 at 42-52 (Complaint, *FTC v. AmeriDebt,*
25 *Inc.*, No. 8:03-cv-03317-PJM (D. Md. Nov. 19, 2003)).

26 ¹² *See generally* McPeek Att. 8 at 92-103 (Complaint, *Robb Evans &*
27 *Assocs., LLC v. Betts*, No. 08-cv-01878-PJM (D. Md. July 18, 2008)). In that
28 ongoing case, the receiver alleges that Betts knew or should have known that
\$795,000 in payments he, and the two companies he controlled, received between
May 2006 and April 2007 were from one bank account in Baker's name and another
account owned and controlled by Pukke. UF#51. The receiver alleged these
payments were made in violation of the Preliminary Injunction and Final Order
entered in the *AmeriDebt* case; the receiver demanded that Betts return those

1 From 1994 to 1997, Betts was involved in securities fraud while he was
2 living in New York. UF #52. As a result, in 2000, civil and criminal cases were
3 brought against Betts, as well as a Securities and Exchange Commission (“SEC”)
4 administrative proceeding in 2004. *Id.* On December 19, 2000, Betts pled guilty
5 to one count of conspiracy to commit securities fraud, mail fraud, and wire fraud;
6 three counts of securities fraud; and one count of mail fraud. UF #53. The
7 criminal court determined that Betts caused over \$19 million of investor injury,
8 and ordered Betts to pay over \$1.33 million in restitution and to serve 365 days of
9 home confinement. *Id.* In the SEC’s civil case, Betts was enjoined from violating
10 various provisions of the securities laws and regulations. UF #54. In the SEC’s
11 administrative proceeding, Betts was barred from association with any broker or
12 dealer. UF #55.

13 Defendant **Frank Sullivan** (“Sullivan”) is a resident of Newport Beach,
14 California. UF #56. As discussed in more detail below,¹³ Sullivan was employed
15 by both Lucas Law Center and FFS, and he played a prominent role in controlling
16 their deceptive acts and practices. *See* UF #57-61, 63-67.¹⁴ He particularly
17 controlled whether or not to honor Lucas Law Center’s refund policy. *See* UF #65-
18 67.

19 **V. DEFENDANTS’ DECEPTIVE PRACTICES**

20 **A. Lucas Law Center’s Marketing Program**

21 Defendants used deceptive acts in a nationwide scheme targeting consumers
22 who were losing, or likely to lose, their homes in mortgage foreclosure
23 proceedings. They falsely represented they would successfully negotiate home

24 _____
25 payments, but Betts refused. *Id.*

26 ¹³ *See* discussion *infra* pp. 30-31.

27 ¹⁴ Sullivan also directly participated in promising loan modifications and
28 instructing consumers to stop paying their mortgages. UF #62.

1 loan modifications or fully refund consumers' money. Defendants'
2 misrepresentations were made through radio advertisements, two Web sites, and
3 sales calls. The FTC's uncontroverted evidence establishes these facts.

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

5 Lucas Law Center's radio advertisements aired on California stations in
6 housing markets with high foreclosure rates. UF #68. These radio advertisements
7 directed consumers to visit Lucas Law Center's Web sites or call a toll-free
8 telephone number to learn more about its services. UF #69.

9 Lucas Law Center promoted its mortgage loan modification services on the
10 Internet using two Web sites, www.LucasLawCenter.com and
11 www.oclawoffices.us. UF #70-71. When consumers visited the Web sites, they
12 found general information about loan modification services. UF #72. In addition,
13 Lucas Law Center's Web sites provided a toll-free telephone number for a "free
14 consultation." UF #73.

15 Lucas Law Center's Web sites emphasized its expertise as a law firm. UF
16 #74. The Web sites represented that Lucas Law Center used attorneys to negotiate
17 for consumers. UF #75. One Web site recommended that consumers hire an
18 attorney "[t]o avoid falling victim to a predatory lender twice." UF #76. The Web
19 sites claimed, "We specialize in out-of-court resolutions of government and non-
20 government mortgage delinquencies or home foreclosure claims for homeowners."
21 UF #77; *see also* UF #83 ¶ e. Defendants' Web sites also claimed that Lucas Law
22 Center would work with its "first class network of over 30 affiliated attorneys [to]
23 help you save your home, and provide a financial solution that works for you, and
24 your family." UF #78.¹⁵

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28 ¹⁵ However, Lucas was the only attorney at this purported "law firm." UF #115-19.

1 Defendants' Web sites made a variety of representations emphasizing Lucas
2 Law Center's experience and expertise in the mortgage industry; its ability to
3 contact individuals who make the decisions at the consumers' lenders; and its
4 familiarity and positive working relationships with lenders and mortgage servicers
5 due to prior dealings with the firm. UF #79-83.

6 Defendants' Web sites also promised to refund consumers' money if
7 Defendants were unsuccessful: "We offer a money back guarantee if we cannot get
8 you a work out agreement with your lender(s) as long as no sale date has been set."
9 UF #84.

10 **2. Lucas Law Center's Representations**

11 When consumers spoke with Lucas Law Center representatives, the
12 representatives explained the loan modification program and represented that
13 Lucas Law Center's efforts would result in a satisfactory loan modification. UF
14 #85. Representatives often claimed that Lucas Law Center had a success rate of
15 90% or higher in obtaining modifications. UF #86.¹⁶

16 To further induce consumers to purchase Defendants' loan modification
17 services, Lucas Law Center representatives frequently claimed the company would
18 obtain reductions in principal, interest, and monthly mortgage payments for
19 consumers, at times quoting specific, substantial reductions. UF #88-91, 143. The
20 representatives also gave specific time-frames in which consumers could expect to
21 receive their modifications, usually in three months or less. UF #92.

22 To bolster their claimed ability to obtain loan modifications, representatives
23 touted Lucas Law Center's legal experience, its expertise as a real estate law firm,
24 and the advantages of having a law firm negotiate on consumers' behalf. UF #93-

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." UF #87.

1 95. Furthermore, Lucas Law Center representatives claimed the company would
2 negotiate directly with the people at the lenders who decided whether to modify
3 consumers' mortgage loans. UF #96.

4 Defendants also used a script that led consumers to believe that the
5 representatives consulted with Lucas. *See* UF #97. However, the script shows that
6 there was no actual consultation with an attorney before the consumer paid a fee.
7 *See id.* Instead, the script was designed to convince consumers to sign up quickly
8 and pay the advance fee, supporting the conclusion that Defendants labeled their
9 operation a "law firm" merely to circumvent the state statute prohibiting advance
10 fees.

11 The company typically quoted a range of fees between \$2000 and \$3995 for
12 its loan modification services. UF #98. Some consumers paid the full fee during
13 the initial sales call. UF #99. In other situations, Lucas Law Center required the
14 consumer to make a substantial down payment of at least \$1000, with the
15 remainder due before the promised modification was finalized. *Id.* The fee had to
16 be paid, whether in whole or in part, before Lucas Law Center would begin its loan
17 modification services. UF #100.¹⁷

18 Defendants also represented that Lucas Law Center offered a money-back
19 guarantee if it could not obtain a loan modification for the consumer. This refund
20 representation was made in three situations. First, both of Lucas Law Center's
21 Web sites contained a Frequently Asked Questions section that stated: "We offer a
22 money back guarantee if we cannot get you a work out agreement with your
23 lender(s) as long as no sale date has been set." UF #84. Second, Lucas Law
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25 ¹⁷ Lucas Law Center frequently did not send a copy of its contract to
26 consumers until after they paid the fee, in whole or in part. UF #101. Even when
27 consumers were given the contract before having to pay, the contract clearly stated
28 that Lucas Law Center had no obligation to perform any services until after the initial
deposit was paid. UF #102.

1 Center representatives assured consumers that they had nothing to lose because
2 Lucas Law Center would provide a full refund if it could not obtain the
3 modification. UF #103. And finally, the Lucas Law Center contract contained a
4 specific provision describing its refund policy. UF #104.

5 Lucas Law Center representatives also callously instructed some consumers
6 to stop making payments on their mortgages. UF #62, 105-08, 143. The
7 representatives claimed that stopping payments would benefit the consumer: “We
8 would tell you personally if you were behind on a payment, you’re going to see a
9 much better modification from your lender.” UF #105. Consumers were assured
10 by representatives that the payments were not necessary because the modified
11 loans would incorporate any late payments. UF #106. Often, however, consumers
12 were instructed to use the money for their mortgage payment to pay Defendants’
13 fees instead. UF #107. One consumer was even instructed to stop a payment she
14 had initiated to her lender, and instead to deposit that money into Lucas Law
15 Center’s bank account. UF #108.

16 Defendants went to great lengths to sign up unsuspecting consumers and
17 obtain their fees. For example, in an email to a consumer dated June 11, 2009,
18 Defendants explained why consumers should trust Lucas Law Center even though
19 the BBB rated it with an “F”:

20 The BBB is a ‘for profit’ organization they want moneys [sic] to
21 improve our rating. . . . We have only a 2% actual complaint ratio. . . .
22 Check out the California State BAR the licensing organization for
23 attorneys Paul has no complaints. The Ethics Committee Attorney
24 from the CA State Bar was here last week and gave us an ‘A’ rating in
25 all categories.

26 UF #109. Contrary to the representation that the State Bar of California had
27 received no complaints against Lucas, there were numerous complaints received by
28 the State Bar of California by June 11, 2009. UF #110.

1 **3. Lucas Law Center Did Little or Nothing For Its Fee**

2 After receiving consumers' fees, Lucas Law Center provided little, if any, of
3 the promised assistance. Lucas Law Center's representatives routinely avoided
4 consumers' requests for updates on the company's negotiations. UF #111; *see also*
5 UF #143. Some consumers were required to send in their paperwork multiple
6 times. UF #112. Despite promises to the contrary, consumers had no contact with
7 the purported attorneys who were supposed to be negotiating with their lenders.
8 UF #113.¹⁸ When consumers were able to speak to a representative, the
9 representatives typically told consumers to be patient and assured them that Lucas
10 Law Center was actively negotiating a loan modification on their behalf. UF #120.
11 Consumers who received default notices or collections calls from their lenders
12 were assured by Lucas Law Center that the notices were "normal" or "routine" and
13 consumers should ignore their lenders. UF #121. Representatives often blamed
14 the lenders for the delay. UF #122.

15 Ultimately, however, Defendants did not live up to their promises. In
16 numerous instances, Lucas Law Center failed to obtain the loan modifications it
17 promised to consumers. UF #123.¹⁹ Consumers who subsequently contacted their
18 lenders learned that Lucas Law Center never even contacted the lender, or merely
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21 ¹⁸ Sullivan admitted to one consumer that Lucas Law Center had no
22 attorneys, "just underwriters." UF #114. In fact, the Uncontroverted Facts indicate
23 that Lucas Law Center had only one attorney on staff, Defendant Lucas. *See* UF
24 #115-19; *see also* UF #152.

25 ¹⁹ One consumer received an inadequate modification offer for his second
26 mortgage and no offer for his primary mortgage. UF #124. Another consumer
27 received unwanted hardship agreements instead of the promised permanent
28 modifications of his two loans. *Id.* A third consumer merely received the same
inadequate offer he had obtained before retaining Lucas Law Center to obtain a
better one. *Id.*

1 verified the consumer's loan information. UF #125.²⁰ Some consumers
2 successfully achieved on their own what they paid Lucas Law Center to do. UF
3 #128.²¹ However, many consumers ultimately lost their homes or sought
4 bankruptcy protection, incurring additional costs and expenses. UF #131.

5 Many consumers were denied full refunds after Lucas Law Center failed to
6 deliver on the promises to save their homes with a mortgage loan modification.
7 Contrary to Defendants' guarantee of a full refund, Lucas Law Center routinely
8 denied consumers' initial requests for full refunds. UF #132, 145.²² Some
9 consumers' requests for a full refund were approved, but the refund was never
10 delivered or only a partial refund was delivered. UF #134. Not surprisingly, Lucas
11 Law Center only provided full refunds to the most tenacious consumers who
12 complained to government authorities and the Better Business Bureau. UF #135,
13 145. However, even consumers who filed complaints were sometimes denied the

16 ²⁰ When confronting Lucas Law Center about never contacting their
17 lenders, some consumers were told (by Sullivan in one instance) that the lender was
18 lying. UF #126. One of these consumers was referred to a person claiming to be a
19 10% owner of Lucas Law Center, who admitted that the consumer "had been ripped
20 off" and told the consumer "to get over it." *Id.* In the company's response to one
21 BBB complaint, Lucas Law Center claimed the lender required a \$50,000 payment
toward the delinquency, but the consumer confirmed with her lender that this was
not true. UF #127.

22 ²¹ After one consumer obtained a modification through his own means
23 (albeit unsatisfactory), Lucas Law Center falsely claimed that the company had
24 obtained the modification, and used that claim as an excuse to deny a refund. UF
25 #129. Another consumer obtained a modification of one of her mortgages on her
26 own, only to be told later by a Lucas Law Center representative that the company
was continuing to negotiate with that lender. UF #130.

27 ²² Lucas Law Center denied one refund because of "all the work" the
28 company had performed, even though it had never contacted the consumer's lender.
UF #133.

1 guaranteed full refunds. UF #136. In other instances, consumers' requests for full
2 refunds were simply ignored. UF #137.²³

3 **VI. LEGAL ARGUMENT**

4 **A. Summary Judgment Is Appropriate in This Case**

5 Summary judgment is appropriate when the moving party shows that there is
6 "no genuine issue as to any material fact and that the moving party is entitled to
7 judgment as a matter of law." Fed. R. Civ. P. 56(c)(2). Summary judgment is
8 proper when a rational trier of fact would not be able to find for the nonmoving
9 party on the claims at issue. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
10 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538, 552 (1986); *SEC v.*
11 *Murphy*, 626 F.2d 633, 640 (9th Cir. 1980) (citation omitted). Only disputes over
12 facts that might affect the outcome of the case would properly preclude summary
13 judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505,
14 2510, 91 L. Ed. 2d 202, 211 (1986). The opponent cannot rest on its pleadings:
15 "There must be specific, admissible evidence identifying the basis for the dispute."
16 *Maceachern v. City of Manhattan Beach*, 623 F. Supp. 2d 1092, 1097 (C.D. Cal.
17 2009) (citing *S.A. Empresa de Viacao Aerea Rio Grandense v. Walter Kidde &*
18 *Co.*, 690 F.2d 1235, 1238 (9th Cir. 1982)); *see also Murphy*, 626 F.2d at 640.
19 Thus, any opposition to this motion must set forth admissible evidence that is
20 significantly probative, and not merely colorable, of any fact that is claimed to be
21 disputed. *Murphy*, 626 F.2d at 640. As the Supreme Court has held: "The mere
22 existence of a scintilla of evidence . . . will be insufficient; there must be evidence
23 on which the jury could reasonably find for [the opposing party]." *Anderson*, 477
24 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214, *quoted and followed in*
25 *Maceachern*, 623 F. Supp. 2d at 1097. Because Defendants cannot come forward

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28 ²³ Complaints and refund requests submitted to the BBB after January 28,
2009, were never responded to by Lucas Law Center. UF #138.

1 with any probative evidence, Plaintiff FTC is entitled to summary judgment against
2 Defendants as a matter of law.

3 **B. Jurisdiction, Venue, and Commerce Requirements Are Met**

4 Plaintiff FTC brings this action against Defendants under Sections 5(a) and
5 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), in connection with their
6 deceptive marketing and sale of mortgage loan modification services. This Court
7 has subject matter jurisdiction over this action under 15 U.S.C. §§ 45(a) and 53(b),
8 and 28 U.S.C. §§ 1331, 1337(a), and 1345. UF #1. Personal jurisdiction over
9 Defendants LucasLawCenter “incorporated”, Future Financial Services, LLC, Paul
10 Jeffrey Lucas, Christopher Francis Betts, and Frank Sullivan exists pursuant to the
11 FTC Act’s provision for nationwide service of process, 15 U.S.C. § 53(b). UF #2.
12 Venue is proper in this case because all Defendants reside in and transact or have
13 transacted business in the Central District of California. 15 U.S.C. § 53(b); 28
14 U.S.C. § 1391(b), (c); UF #3-4.²⁴

15 As demonstrated by the consumer declarations and complaints, Defendants
16 operated their deceptive mortgage loan modification services nationwide (*see* UF
17 #11), thereby affecting the passage of property or messages from one state to
18 another. Such transactions are “in or affecting commerce,” as required by Section
19 4 of the FTC Act, 15 U.S.C. § 44.

20 **C. Defendants Violated Section 5 of the FTC Act**

21 Section 5 of the FTC Act, 15 U.S.C. § 45, prohibits deceptive acts and
22 practices. UF #8. An act or practice is deceptive if a defendant makes a material
23 misrepresentation or omission that is likely to mislead consumers acting
24 reasonably under the circumstances. *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095
25 (9th Cir. 1994) (quoting *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 164-65

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27
28 ²⁴ *See also* UF #12-13, 27-29, 41-42, 56 (showing that each Defendant
resided or transacted business in this District).

1 (1984)), *quoted in FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001). A claim is
2 considered material if it “involves information that is important to consumers and,
3 hence, [is] likely to affect their choice of, or conduct regarding a product.” *FTC v.*
4 *Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006) (quoting *Cliffdale*, 103
5 F.T.C. at 165). Express claims and implied claims used to induce the purchase of a
6 product are presumed to be material. *In re Thompson Med. Co., Inc.*, 104 F.T.C.
7 648, 816-18 (1984), *petition for review denied*, 791 F.2d 189, 197 (D.C. Cir.
8 1986); *see also Pantron I Corp.*, 33 F.3d at 1095-96; *FTC v. Figgie*, 994 F.2d 595,
9 605-06 (9th Cir. 1993). A claim is “likely to mislead” if it is false. *See FTC v.*
10 *Gill*, 71 F. Supp. 2d 1030, 1046 (C.D. Cal. 1999), *aff’d*, 265 F.3d 944 (9th Cir.
11 2001); *Thompson Med.*, 104 F.T.C. at 818-19. “Reasonable consumers are not
12 required to doubt the veracity of express representations, and the Court may
13 presume express claims to be material.” *FTC v. Stefanchik*, 2007 U.S. Dist. LEXIS
14 25173, at *14, 2007-1 Trade Cas. (CCH) ¶ 75,666 (W.D. Wash. Apr. 3, 2007),
15 *aff’d*, 559 F.3d 924 (9th Cir. 2009).²⁵

16 The FTC can prove its claims through a small number of injured consumers
17 and is not required to demonstrate that each individual consumer relied on
18 defendants’ misrepresentations or omissions. *Figgie*, 994 F.2d at 605. A
19 presumption of actual reliance arises once the FTC has proven that defendants
20 made material misrepresentations, that the misrepresentations were widely
21 disseminated, and that consumers purchased defendants’ product. *Id.* at 605-06.
22 “[R]equiring proof of subjective reliance by each individual consumer would
23 thwart effective prosecutions of large consumer redress actions and frustrate the
24

25 ²⁵ *See also FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528
26 (S.D.N.Y. 2000) (“Consumer reliance on express claims is presumptively reasonable.
27 It is reasonable to interpret express statements as intending to say exactly what they
28 say.”), *quoted with approval in FTC v. Garvey*, No. CV 00-9358 (GAF) (CWx),
2001 U.S. Dist. LEXIS 25060, at *20 (C.D. Cal. Nov. 8, 2001).

1 statutory goals of [Section 13(b)].” *Id.* at 605.²⁶ From this small number of
2 consumers, a court can infer a pattern or practice of deceptive behavior. *FTC v.*
3 *Nat’l Bus. Consultants, Inc.*, 781 F. Supp. 1136, 1141-42 (E.D. La. 1991) (citations
4 omitted); *see Sec. Rare Coin*, 931 F.2d at 1316; *Kitco*, 612 F. Supp. at 1293-94;
5 *FTC v. Int’l Diamond Corp.*, 1983 U.S. Dist. LEXIS 11862, at *17-19, 1983-2
6 Trade Cas. (CCH) ¶ 65,725 (N.D. Cal. Nov. 8, 1983).

7 Defendants’ pattern or practice of deception may be proven by consumer
8 declarations and complaints, which are admissible under Federal Rule of Evidence
9 807. *See Figgie*, 994 F.2d at 608-09 (affirming district court’s ruling that
10 consumer complaint letters were admissible under Rule 807’s predecessor, Rule
11 803(24), to prove the price paid by consumers and total injury).²⁷ In determining
12 the number of testifying consumers necessary to prove a Section 5 violation, the
13

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15 ²⁶ *See also FTC v. Sec. Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316
16 (8th Cir. 1991) (citing *FTC v. Kitco of Nev., Inc.*, 612 F. Supp. 1282, 1293 (D. Minn.
17 1985)) (“[The FTC does not file] a private fraud action, but a government action
18 brought to deter unfair and deceptive trade practices and obtain restitution on behalf
19 of a large class of defrauded investors. It would be inconsistent with the statutory
20 purpose for the court to require proof of subjective reliance by each individual
21 consumer.”).

21 ²⁷ *See also FTC v. Kuykendall*, 312 F.3d 1329, 1343 (10th Cir. 2002)
22 (affirming district court’s admission of consumer declarations and complaints as
23 evidence of violative behavior); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 576
24 (7th Cir. 1989) (affirming district court’s admission of consumer declarations to
25 show actual harm to consumers had resulted from the defendants’ activities); *FTC v.*
26 *Magazine Solutions, LLC*, No. 7-692, 2009 U.S. Dist. LEXIS 20629, at *3-8 & n.1
27 (W.D. Pa. Mar. 16, 2009) (admitting consumer complaints as evidence of material
28 facts and to show notice); *Kitco*, 612 F. Supp. at 1294 (admitting affidavits as proof
of purchase, injury to consumers, and entitlement to restitution); *FTC v.*
Cyberspace.com, LLC, 2002 U.S. Dist. LEXIS 25565, at *13 n.5, 2003-1 Trade Cas.
(CCH) ¶ 73,960 (W.D. Wash. July 10, 2002) (admitting emails and letters of
complaint to show both the truth of the matters asserted and notice).

1 *International Diamond* court quotes *Vasquez v. Superior Court*, 484 P.2d 964, 968
2 (Cal. 1971): “‘Frequently numerous consumers are exposed to the same dubious
3 practice by the same seller so that proof of the prevalence of the practice to one
4 consumer would provide proof for all.’” *Int’l Diamond*, 1983 U.S. Dist. LEXIS
5 11862, at *17-18. Thus, the Court can infer a widespread pattern of deceptive
6 practices based on the testimony of relatively few consumers.

7 **D. Complaint Counts**

8 **1. Count One of the Complaint**

9 Defendants have violated Section 5 of the FTC Act by falsely representing
10 that they would obtain mortgage loan modification services for consumers in all, or
11 virtually all, circumstances. The FTC’s uncontroverted evidence, including
12 consumer depositions, declarations, and complaints to the BBB, to government
13 agencies, and to the Defendants themselves establishes that Defendants made these
14 unlawful claims. After hearing sales pitches from Lucas Law Center
15 representatives, consumers were led to believe that they would receive a mortgage
16 loan modification. Occasionally, representatives touted that the company had an
17 exceptionally high success rate in negotiating loan modifications. Lucas Law
18 Center representatives also promised consumers specific reductions in their interest
19 rates or in the amount that they would have to pay their lenders each month. *See*
20 discussion *supra* pp. 10-11.

21 Contrary to Defendants’ representations, once consumers paid the large up-
22 front fees to Lucas Law Center, their requests for updates were ignored or they
23 received the run-around from Defendants. Some consumers who spoke to their
24 lenders learned that Lucas Law Center never even contacted the lender. Even
25 when Lucas Law Center contacted the lenders, consumers discovered that Lucas
26 Law Center did little, if anything, to work on the consumers’ behalf. Often Lucas
27 Law Center only confirmed the consumer’s loan information with the lender.

1 Ultimately, most consumers never received the promised loan modification.²⁸ See
2 discussion *supra* pp. 13-14. The evidence establishing Defendants’ violation of
3 Section 5 of the FTC Act has not be controverted.

4 **2. Count Two of the Complaint**

5 Defendants also have violated Section 5 of the FTC Act by falsely
6 representing that they will give full refunds to consumers if Defendants fail to
7 obtain a modification of their loan. The FTC’s uncontroverted evidence, including
8 consumer depositions, declarations, and complaints, and Defendants’ own
9 contracts and Web sites establishes that Defendants made these unlawful claims.
10 Consumers were assured that they had nothing to lose by contracting with
11 Defendants because, in the rare instance in which Defendants could not obtain a
12 loan modification, Defendants’ fee would be fully refunded. See discussion *supra*
13 pp. 11-12.

14 Contrary to Defendants’ refund representations, once consumers determined
15 that Lucas Law Center had done little or nothing to obtain the guaranteed loan
16 modification, they were stymied in their attempts to obtain a full refund. Lucas
17

18
19 ²⁸ While Lucas Law Center’s contract contradicted and disclaimed any
20 guarantee of success, and made specific exclusions to the refund policy, this does not
21 cure Defendants’ misrepresentations. See, e.g., *Gill*, 71 F. Supp. 2d at 1044
22 (rejecting argument that representations were not deceptive because contract
23 disclaimed any guarantee); see also *FTC v. Connelly*, No. SACV 06-701 DOC
24 (RNBx), 2006 U.S. Dist. LEXIS 98263, at *33 (C.D. Cal. Dec. 20, 2006)
25 (“[D]isclaimers are particularly inadequate when they appear in a different context
26 than the claims they purport to repudiate.”). Similarly, Defendants’ success claims
27 were not cured by providing refunds to some consumers who did not receive
28 modifications. It is well settled that providing refunds does not sanitize
misrepresentations. *FTC v. Think Achievement Corp.*, 312 F.3d 259, 261 (7th Cir.
2002) (argument that misrepresentations are cured by refunds has been “repeatedly
rejected”); *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999)
 (“[t]he existence of a money-back guarantee . . . is neither a cure for deception nor a
remedy for consumer injury.”).

1 Law Center routinely denied consumers' requests for full refunds. Some
2 consumers received partial refunds, but only after making multiple calls and
3 experiencing lengthy delays. While a few consumers obtained full refunds after
4 complaining to government agencies and the BBB, other consumers' requests for
5 full refunds were continuously denied or simply ignored. *See* discussion *supra* pp.
6 14-15. The evidence establishing Defendants' violation of Section 5 of the FTC
7 Act has not be controverted.

8 **E. The Receiver's Reports Confirm the FTC's Uncontroverted**
9 **Evidence**

10 The Report of Temporary Receiver's Activities For the Period of July 9,
11 2009 Through July 13, 2009 ("Receiver's 1st Report") shows that Defendants used
12 Lucas Law Center to circumvent the California statute prohibiting advance fees.
13 Lucas Law Center had only one attorney on staff, Defendant Lucas. UF #116-17.
14 The little work that was being done on behalf of consumers was done by non-
15 attorneys performing non-legal tasks, paid by FFS. UF #17. While Lucas claims
16 to have personally trained the employees working in the intake department of
17 Lucas Law Center, he is careful to refer to them as "Legal Aids" rather than
18 paralegals. UF #36. Although Defendants' Web sites claim Lucas Law Center
19 used attorneys to negotiate for the consumer (UF #75, 78), the Receiver was unable
20 to account for any expenditures related to providing loan modification services by
21 any attorney other than Lucas, UF #117.

22 The Receiver also analyzed the numerous complaints that had been received
23 by Lucas Law Center from the BBB and directly from consumers. UF #142. The
24 Receiver's analysis corroborates the FTC's uncontroverted evidence. The
25 Receiver's analysis revealed that (1) consumers complained about infrequent or
26 sporadic contact from Lucas Law Center and very little or no progress toward
27 modifying their mortgages; (2) Lucas Law Center advised consumers to stop
28 making mortgage payments in order to pay the fee or because lenders would not

1 modify their loans unless they were delinquent; and (3) Lucas Law Center
2 promised consumers significant reductions in the principal amount of their loans
3 and specific reductions in interest rates. UF #143.

4 The Receiver's review of Lucas Law Center's files also shows that few
5 consumers received full refunds when Lucas Law Center was unsuccessful in
6 modifying their loans. UF #145-46. The Receiver reviewed 77 client files for
7 which Lucas Law Center's efforts to obtain a modification were cancelled or
8 discontinued to determine if full refunds were given. UF #146. Of these 77 files,
9 only 23 received full refunds, while 53 received only a partial refund or no refund
10 at all. *Id.*²⁹ This review by the Receiver supports the FTC's uncontroverted
11 evidence that Lucas Law Center failed to provide promised refunds when they
12 were unable to modify consumers' loans.

13 **F. The Number of Loans Defendants Claim to Have Modified Is**
14 **Inaccurate, Unreliable, and Irrelevant**

15 In answering Plaintiff's Complaint, Defendants claim to have successfully
16 modified a number of loans.³⁰ However, the Receiver's reports refute the number
17 of loans Defendants claim to have modified. The Receiver requested Lucas Law
18 Center to provide it with documentation for all completed loan modifications. UF
19 #147. Lucas Law Center staff could only locate 421 files they claimed were
20 completed modifications. *Id.* Of those purportedly completed loan files, the
21 Receiver reviewed a random sample of 63 files and determined that only 43
22
23

24
25 ²⁹ One file was indeterminate. UF #146.

26 ³⁰ *See* Defendants LucasLawCenter Incorporated, Future Financial
27 Services LLC, Paul Jeffrey Lucas, Christopher Francis Betts, and Frank Sullivan
28 First Amended Answer / Brief in Opposition to Plaintiff's Complaint for Permanent
Injunctive Order, Dkt. #105, at 8-9 ¶ 34.

1 evidenced modifications of interest rates, payments, or both. *Id.*³¹ The Receiver
2 concluded that Lucas Law Center obtained loan modifications for far fewer
3 consumers than the number claimed by Defendants. UF #149.³² Furthermore, the
4 Receiver's review of consumer complaints revealed that some consumers reported
5 receiving modifications resulting in *higher* monthly payments, leaving them in
6 even worse financial condition. UF #144.³³ Therefore, the number of loans
7 Defendants claim to have modified is inaccurate and unreliable.

8 Defendants' claim to have modified some loans is also irrelevant.
9 Defendants' claim is irrelevant because regardless of the small percentage of
10 consumers who may have received actual loan modifications, Defendants
11 represented, without qualification, that they will assist *all* consumers. As in *Five-*
12 *Star Auto Club*, 97 F. Supp. 2d at 528-31, it was reasonable for all consumers to
13 believe that the promised loan modifications were obtainable by them. Moreover,
14 the fact that the Defendants may have obtained loan modifications for some
15 consumers does not negate their liability. Settled law holds that "[t]he existence of
16 some satisfied customers does not constitute a defense under the FTC [Act]." *Amy*
17 *Travel*, 875 F.2d at 572, *quoted with approval in FTC v. Stefanichik*, 559 F.3d 924,
18
19
20

21 ³¹ Of the random sample of 63 files, 13 represented only structured
22 repayments of past due balances not modifications. UF #148. Seven contained no
23 evidence of a modification. *Id.*

24 ³² Plaintiff does not concede that the modifications identified by the
25 Receiver were in fact obtained by Lucas Law Center. Defendants took credit for
26 some modifications consumers obtained on their own. *See* UF #129-30. This further
27 supports the argument that the number of loan modifications Defendants claim to
28 have obtained is inaccurate and unreliable.

³³ Lucas Law Center refused to refund even these consumers, callously
justifying their refusal by stating that a modification was obtained. UF #144.

1 929 n.12 (9th Cir. 2009) (affirming summary judgment in favor of the FTC).³⁴
2 Therefore, Defendants’ claim to have successfully modified some loans is
3 irrelevant.

4 **G. Plaintiff Is Entitled to the Adverse Inference Created by**
5 **Defendants’ Assertion of the Fifth Amendment Privilege Against**
6 **Self-Incrimination**

7 Defendants’ assertion of the Fifth Amendment privilege against self-
8 incrimination does not preclude the Court from holding that Plaintiff is entitled to
9 judgment as a matter of law. The Fifth Amendment privilege against self-
10 incrimination cannot be used as a substitute for the evidence required for a
11 summary judgment opponent to meet its burden. *SEC v. Interlink Data Network of*
12 *L.A., Inc.*, 1993 U.S. Dist. LEXIS 20163, at *32, Fed. Sec. L. Rep. (CCH) ¶ 98,049
13 (C.D. Cal. Nov. 15, 1993) (quoting *United States v. Rylander*, 460 U.S. 752, 758,
14 103 S. Ct. 1548, 1553, 75 L. Ed. 2d 521, 529 (1983)) (other citations omitted).
15 Plaintiff is entitled to the adverse inference that Defendants’ silence supports the
16 allegations in the Complaint. *See id.* at *35 & n.98 (citation omitted); *N.Y. Dist.*
17 *Council of Carpenters Pension Fund v. Perimeter Interiors, Inc.*, 657 F. Supp. 2d
18 410, 415 (S.D.N.Y. 2009) (“Plaintiffs are entitled to an adverse inference regarding
19 [defendant’s] stipulated invocation of her Fifth Amendment right against self-
20 incrimination to 268 separate questions, . . .”).³⁵ Therefore, Defendants’ assertion

21
22 ³⁴ *See also Gill*, 71 F. Supp. 2d at 1049 n.21 (“Even assuming that
23 defendants do have thousands of satisfied consumers, it does not excuse their
24 violation of the law.”); *FTC v. Silueta Distribs., Inc.*, 1995 U.S. Dist. LEXIS 22254,
25 at *16 n.6, 1995-1 Trade Cas. (CCH) ¶ 70,918 (N.D. Cal. Feb. 24, 1995) (“[T]he
existence of some satisfied consumers is not a defense to liability.”).

26 ³⁵ *See also Nationwide Life Ins. Co. v. Richards*, 541 F.3d 903, 911 (9th
27 Cir. 2008) (“When a party asserts the privilege against self-incrimination in a civil
28 case, the district court has discretion to draw an adverse inference from such
assertion.”) (citing *Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1264 (9th

1 of the Fifth Amendment privilege against self-incrimination cannot preclude, and
2 in fact supports, Plaintiff's motion for summary judgment.

3 As shown in the Uncontroverted Facts filed by Plaintiff in support of this
4 motion, Defendants have either stipulated to or asserted their Fifth Amendment
5 privilege against self-incrimination in response to each uncontroverted fact. For
6 each uncontroverted fact where Defendants have asserted their Fifth Amendment
7 privilege against self-incrimination, Plaintiff asks the Court to draw the adverse
8 inference. In each instance, Plaintiff has independent corroborating evidence to
9 support the uncontroverted fact.³⁶

10 **VII. THE CORPORATE AND INDIVIDUAL DEFENDANTS ARE**
11 **SUBJECT TO JOINT AND SEVERAL LIABILITY**

12 **A. The Corporate Defendants Are Subject to Joint and Several**
13 **Liability as a Common Enterprise**

14 Corporate defendants may be held jointly and severally liable if they operate
15 as a common enterprise. *FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1202
16 (C.D. Cal. 2000) (citation omitted).³⁷ To determine whether a common enterprise

17 _____
18 Cir. 2000)); *Nat'l Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924, 929-30 (7th Cir.
19 1983) (plaintiff would be entitled to adverse inference at trial); *FTC v. Rainbow*
20 *Enzymes, Inc.*, No. 87-1522 PHX WPC, 1988 U.S. Dist. LEXIS 16173, at *19 (D.
21 Ariz. Nov. 7, 1988) (“[I]t is entirely proper to consider the invocation of the Fifth
22 Amendment as circumstantial evidence of wrongdoing in this civil case.”) (citing,
inter alia, *Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S. Ct. 1551, 1558, 47 L. Ed.
2d 810, 821 (1976))

23 ³⁶ Defendants asserted the Fifth Amendment privilege against self-
24 incrimination for each of the following undisputed facts: UF #1-7, 9-10, 12-39, 41-
25 47, 50-53, 55-60, 64-66, 68-99, 101, 103-07, 109, 111-14, 118, 120-40, 142-45, 147-
26 48, 150, 152.

27 ³⁷ See *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir.
28 1973); *FTC v. SkyBiz.com, Inc.*, 2001 WL 1673649, at *5, 2001-2 Trade Cas. (CCH)
¶ 73,495 (N.D. Okla. Aug. 2, 2001); *FTC v. Think Achievement Corp.*, 144 F. Supp.

1 exists, “the pattern and frame-work of the whole enterprise must be taken into
2 consideration.” *Del. Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964)
3 (quotations omitted), *quoted in J.K. Publ’ns*, 99 F. Supp. 2d at 1202. A host of
4 factors may demonstrate the existence of a common enterprise, including: common
5 control, shared officers, shared office space, commingling of funds, unified
6 advertising, a maze of interrelated companies, use of the joint operation to
7 perpetrate a fraud, whether unjust loss or injury would result from separate
8 treatment, and “any other evidence revealing that no real distinction existed
9 between the corporate defendants.” *FTC v. Neovi, Inc.*, 598 F. Supp. 2d 1104, 1116
10 (S.D. Cal. 2008) (citing, *inter alia*, *Del. Watch Co.*, 332 F.2d at 746; *J.K. Publ’ns*,
11 99 F. Supp. 2d at 1201-02); *FTC v. Inv. Devs., Inc.*, No. 89-642, 1989 U.S. Dist.
12 LEXIS 6502, at *30 (E.D. La. June 9, 1989) (citation omitted); *see FTC v. Data*
13 *Med. Capital, Inc.*, 2010 U.S. Dist. LEXIS 3344, at *62, 2010-1 Trade Cas. (CCH)
14 ¶ 76,885 (C.D. Cal. 2010) (citations omitted).³⁸

15 Many of those factors are present here, demonstrating that the two corporate
16 Defendants operated as a common enterprise. First, pursuant to a Management
17 Agreement, Lucas Law Center and FFS jointly operated out of a shared office
18 space using a common work force. *See* UF #12-21. According to the agreement,
19 FFS provided the staff and facilities. UF #14-15. The agreement states that FFS
20 was a company that had experience in delivering “foreclosure avoidance services,”
21 including marketing, customer service, and negotiating. UF #16. The agreement

22 _____
23 2d 993, 1011 (N.D. Ind. 2000), *aff’d in part, rev’d in part on other grounds*, 312
24 F.3d 259 (7th Cir. 2002); *see also FTC v. Para-Link Int’l, Inc.*, No. 8:00-CV-2114-
25 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).

26 ³⁸ *See also FTC v. U.S. Oil & Gas Corp.*, No. 83-1702-CIV-WMH, 1987
27 U.S. Dist. LEXIS 16137, at *60 (S.D. Fla. July 10, 1987) (“The fact . . . that the
28 companies’ records permit the segregation of each company’s sales, refunds, and
assets, does not outweigh the other factors” used to determine common enterprise.).

1 provided that Lucas Law Center would be responsible for the delivery of legal
2 services, but it delegated much of the delivery of these services to non-attorneys
3 employed by either company. UF #17. The agreement further required FFS to
4 train and supervise these employees according to Lucas Law Center's guidelines
5 and policies. UF #19. According to the agreement, FFS employees were required
6 to represent themselves as "being with [Lucas Law Center]," or "employees of the
7 law firm." UF #18. Use of a shared office space and a common work force
8 demonstrates there is no separation of companies or distinction between the
9 corporate Defendants.

10 Second, while Defendant Betts owned FFS, he also played a prominent role
11 in the management of Lucas Law Center. *See* UF #45-49. Betts served as a billing
12 and administrative contact for Lucas Law Center. UF #45-46. Both he and Lucas
13 described Betts as one of Lucas Law Center's top managers. UF #47, 49. These
14 facts demonstrate that there is no real distinction between the individual
15 Defendants and their companies.

16 Finally, the common enterprise is used to perpetuate a fraud, and unjust loss
17 and injury would result from treating the corporate Defendants separately because
18 both companies are involved actively in the deception. FFS received more than
19 half of Lucas Law Center's revenues during the life of the scam. *Compare* UF #26
20 (Lucas Law Center paid over \$4 million to FFS as management fees), *with* UF
21 #139 (Lucas Law Center earned over \$7 million in revenue).³⁹ However, FFS
22 remained in the shadows with only the name Lucas Law Center provided to the
23 public by the joint operation. UF #18, 21. Clearly, FFS cloaked itself in the guise
24 of the purported "law firm" Lucas Law Center in order to extract illegal advance
25
26
27

28 ³⁹ This was FFS's sole source of income. UF #25.

1 fees from distressed homeowners.⁴⁰ To treat the corporate Defendants separately
2 would serve only to frustrate the consumer protection purpose of the FTC Act.⁴¹

3 **B. Lucas, Betts, and Sullivan Can and Should Be Held Individually**
4 **Liable for the Acts and Practices of the Corporate Defendants**

5 Individuals can be held liable for corporate violations of Section 5 of the
6 FTC Act. *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1202 (9th Cir. 2006);
7 *FTC v. Am. Standard Credit Sys., Inc.*, 874 F. Supp. 1080, 1087 (C.D. Cal. 1994).
8 Individual liability for injunctive relief is appropriate where the individual
9 defendant directly participated in or had the authority to control corporate
10 deceptive acts and practices. *Am. Standard*, 874 F. Supp. at 1087 (citations
11 omitted). Authority to control can arise from assuming the duties of a corporate
12 officer. *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573-74 (7th Cir. 1989),
13 followed in *Am. Standard*, 874 F. Supp. at 1089. This is especially true when the
14 corporate defendants, as those in this case, are small, closely held corporations.
15 See *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973) (“A
16 heavy burden of exculpation rests on the chief executive and primary shareholder
17 of a closely held corporation whose stock-in-trade is overreaching and
18 deception.”), followed in *FTC v. Freecom Commc’ns, Inc.*, 401 F.3d 1192, 1205
19 (10th Cir. 2005). Individual defendants are further subject to monetary liability if
20 they had knowledge of the practices at issue. *Am. Standard*, 874 F. Supp. at 1089
21
22

23 ⁴⁰ This becomes especially apparent considering that Lucas Law Center
24 was only incorporated in June 2008 (UF #12), and that its sole attorney, Defendant
25 Lucas (UF #116-17), only regained active status with the state bar the same month
26 (UF #38). During this time, the only legal services Lucas Law Center provided were
27 mortgage loan modification services. UF #24.

28 ⁴¹ See *U.S. Oil & Gas*, 1987 U.S. Dist. LEXIS 16137, at *61-63 (citing,
inter alia, *P.F. Collier & Son Corp. v. FTC*, 427 F.2d 261, 267 (6th Cir. 1970)).

1 (citations omitted).⁴² “[T]he degree of participation in business affairs is probative
2 of knowledge.” *Amy Travel*, 875 F.2d at 574 (citation omitted), *followed in FTC v.*
3 *Affordable Media, LLC*, 179 F.3d 1228, 1235 (9th Cir. 1999). An individual
4 defendant’s awareness of a high volume of consumer complaints can further
5 demonstrate knowledge of deceptive practices. *Amy Travel*, 875 F.2d at 574-75.

6 Here, all three of the individual defendants are liable for both injunctive and
7 monetary relief. Lucas is listed as the CEO, CFO, and Secretary, and a director of
8 Lucas Law Center. UF #30. He signed Lucas Law Center’s refund checks and
9 signed the contracts with consumers. UF #34. Lucas Law Center’s American
10 Express merchant account was opened in the name of Lucas Law center using
11 Lucas’ Social Security Number. UF #31. Lucas discussed the status of loan
12 modification applications with consumers, and, on at least one occasion, agreed to
13 provide a consumer a refund. UF #35. Additionally, Lucas was the only attorney
14 listed on either Lucas Law Center Web site. UF #33. His name was prominently
15 displayed in email correspondence with consumers and, along with his California
16 Bar number, on the Web sites. UF #32. These factors demonstrate his authority to
17 control, and demonstrate his knowledge of the deceptive acts and practices of
18 Lucas Law Center.

19 Defendant Betts owned and operated, and was an officer of, FFS. UF #43.
20 He signed the Management Agreement on behalf of FFS. UF #20. Betts was the
21 face of FFS, which operated under the terms of the Management Agreement as
22 Lucas Law Center. *See* UF #18, 21. He was the registrant and served as the
23 administrative contact for one of the Lucas Law Center Web sites. UF #45.

24
25 ⁴² 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 Additionally, one of Defendants' toll-free telephone numbers used by a consumer
2 had Betts' residence as its billing address. UF #46. Betts interacted with
3 consumers after they contracted with Lucas Law Center. *See* UF #47. He told
4 consumers that he was "at the top" of the Lucas Law Center hierarchy, right under
5 Lucas. *Id.* A Lucas Law Center employee described Betts as the company's
6 "Marketing Director." UF #48. Lucas himself described Betts as his "partner" and
7 "hiring manager." UF #49. Betts' actions demonstrate his authority to control and
8 his knowledge of the deceptive acts and practices of Lucas Law Center and FFS.

9 Defendant Sullivan directly participated in and had the authority to control
10 Lucas Law Center's deceptive practices. He was paid over \$165,000 by Lucas
11 Law Center and FFS in little over a year. UF #57-58. Sullivan had an office at
12 Lucas Law Center, not a simple cubicle like other Lucas Law Center employees.
13 UF #59. He told a consumer that he was the "manager." UF #60. A Lucas Law
14 Center representative transferred a call to Sullivan after the consumer asked to
15 speak to a "supervisor." *Id.* In emails to consumers, Lucas Law Center
16 representatives described Sullivan as the "manager," as "in charge of our
17 underwriting department," as the person who "approves" or "accepts" cases, and as
18 "in touch with the major lenders on a regular basis and knows what they will and
19 won't accept." *Id.* Sullivan had the authority to waive part of Lucas Law Center's
20 fixed fees. *See* UF #61. Sullivan also directly participated in instructing
21 consumers to stop paying their mortgages, and claimed that Lucas Law Center
22 could modify their mortgages. UF #62.⁴³

23 Defendant Sullivan demonstrated his authority to control Lucas Law Center
24 by handling consumer concerns, complaints, and refund requests, and deciding
25 whether to issue refunds. UF #64-67. In some instances where consumers

26
27 ⁴³ Sullivan also deceived at least one consumer into believing that Lucas
28 Law Center had negotiated a benefit from her lender, but the lender confirmed that
Lucas Law Center had never contacted them. *See* UF #63.

1 complained about the status of their loan modification applications, Sullivan
2 became involved in the matters. UF #64. Representatives forwarded consumer
3 complaints and refund requests to him via email. UF #65. Sullivan decided
4 whether to issue refunds, or to deny them in whole or in part. UF #66-67. These
5 facts also demonstrate that Sullivan was well aware of the deceptive practices of
6 Lucas Law Center.⁴⁴ Sullivan has demonstrated his participation in, his authority
7 to control, and his knowledge of the deceptive practices of Lucas Law Center.

8 The individual Defendants' positions with and actions in furtherance of the
9 business demonstrate their ability to control the common enterprise, subjecting
10 each to injunctive liability. Additionally, the individual Defendants have the
11 requisite knowledge of Lucas Law Center's deceptive acts and practices to be
12 subject to monetary liability. Defendants' knowledge of the deceptive acts and
13 practices is demonstrated by their own advertisements, their Web site contents,
14 Lucas Law Center's representations, contract terms, consumer complaints to Lucas
15 Law Center and to the BBB, and private lawsuits. The knowledge of Defendant
16 Lucas is further demonstrated by the fact that he allowed Lucas Law Center to
17 operate using his name and California Bar number. Moreover, Lucas, Betts, and
18 Sullivan knew of mounting consumer complaints arising from Lucas Law Center's
19 marketing practices. Based on the overwhelming, uncontroverted evidence, all
20 three individual Defendants participated in, had authority to control, and had
21 knowledge of the corporate Defendants' deceptive acts and practices, and they can
22 and should be held liable for both injunctive and monetary relief.

23 **VIII. REQUESTED RELIEF**

24 To remedy Defendants' blatant violations of the FTC Act, the FTC seeks
25 injunctive, monetary, and ancillary relief against Defendants, pursuant to Section
26

27 ⁴⁴ Sullivan even admitted to one consumer that Lucas Law Center had no
28 attorneys, just "underwriters." UF #114.

1 13(b) of the FTC Act, 15 U.S.C. § 53(b). The Second Proviso of Section 13(b)
2 provides that “in proper cases the [FTC] may seek, and, after proper proof, the
3 court may issue, a permanent injunction.” *Id.*⁴⁵ The FTC may seek a permanent
4 injunction against violations of “any provision of law enforced” by the FTC. *Id.*;
5 *see also FTC v. Evans Prods. Co.*, 775 F.2d 1084, 1086-87 (9th Cir. 1985). A
6 deception case, such as this one, involving misrepresentations of material facts in
7 violation of Section 5 of the FTC Act, is a “proper case.” *H.N. Singer*, 668 F.2d at
8 1111.

9 Once the equitable power of a federal court has been invoked, the full
10 breadth of the court’s authority is available, including such ancillary final relief as
11 rescission of contracts and restitution. *H.N. Singer*, 668 F.2d at 1113. Section
12 13(b) empowers courts to exercise the full breadth of their equitable authority:

13 Congress, when it gave the district court authority to grant a
14 permanent injunction against violations of any provisions of law
15 enforced by the Commission, also gave the district court authority to
16 grant any ancillary relief necessary to accomplish complete justice
17 because it did not limit that traditional equitable power explicitly or
18 by necessary and inescapable inference.

19 *Id.*; *see also FTC v. Elders Grain Inc.*, 868 F.2d 901, 907 (7th Cir. 1989); *FTC v.*
20 *U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984); *FTC v. Sw. Sunsites,*
21 *Inc.*, 665 F.2d 711, 718-19 (5th Cir. 1982).

22 Because the public interest is implicated, this Court’s equitable powers
23 “assume an even broader and more flexible character.” *H.N. Singer*, 668 F.2d at
24

25 ⁴⁵ Because the FTC seeks preliminary and permanent injunctive relief
26 under the Second Proviso of Section 13(b), its Complaint is not subject to the
27 procedural conditions set forth in the First Proviso of Section 13(b) for the issuance
28 of preliminary injunctions in aid of administrative proceedings. *FTC v. H.N. Singer,*
Inc., 668 F.2d 1107, 1110-11 (9th Cir. 1982).

1 1112 (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398, 66 S. Ct. 1086,
2 1089, 90 L. Ed. 1332, 1337 (1946)); *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 469
3 (11th Cir. 1996) (also quoting *Porter*); *see also Sw. Sunsites*, 665 F.2d at 718 (also
4 quoting *Porter*).

5 **A. Injunctive Relief**

6 **1. The Court has the authority to issue broad injunctive relief**

7 Section 13(b) of the FTC Act expressly authorizes the issuance of a
8 permanent injunction to prevent further violations of the FTC Act. 15 U.S.C.
9 § 53(b); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir. 1994). Such an
10 injunction is necessary when there is a “cognizable danger of recurrent violation,”
11 *United States v. W.T. Grant Co.*, 345 U.S. 629, 633, 73 S. Ct. 894, 898, 97 L. Ed.
12 1303, 1309 (1953),⁴⁶ or “some reasonable likelihood of future violations,” *FTC v.*
13 *Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1017 (N.D. Ind. 2000) (quoting
14 *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979)), *aff’d in part, rev’d in part on*
15 *other grounds*, 312 F.3d 259 (7th Cir. 2002). The commission of past illegal
16 conduct is highly suggestive of the likelihood of future violations. *CFTC v.*
17 *CoPetro Mktg. Group, Inc.*, 502 F. Supp. 806, 818 (C.D. Cal. 1980) (quoting *Hunt*,
18 591 F.2d at 1220), *aff’d*, 680 F.2d 573 (9th Cir. 1982); *see also FTC v. Five-Star*
19 *Auto Club, Inc.*, 97 F. Supp. 2d 502, 536 (S.D.N.Y. 2000) (citing *SEC v. Mgmt.*
20 *Dynamics, Inc.*, 515 F.2d 801, 807 (2d Cir. 1975)); *Think Achievement*, 144 F.
21 Supp. 2d at 1017 (quoting *Hunt*, 591 F.2d at 1220). A court should be more
22 willing to find a possibility of recurrence “[w]hen the violation has been founded
23 on systematic wrongdoing, rather than an isolated occurrence.” *Hunt*, 591 F.2d at
24 1220; *Gill*, 71 F. Supp. 2d at 1047 (quoting *CoPetro Mktg.*, 502 F. Supp. at 818).

27 ⁴⁶ *See also FTC v. Gill*, 71 F. Supp. 2d 1030, 1047 (C.D. Cal. 1999)
28 (following *W.T. Grant*), *aff’d*, 265 F.3d 944 (9th Cir. 2001).

1 Without an injunction, “the defendant is free to return to his old ways.” *W.T.*
2 *Grant*, 345 U.S. at 632.

3 **a. Court has the authority to issue “fencing-in” relief**

4 In addition to enjoining the specific conduct at issue in the Complaint, the
5 Court has broad authority to enjoin unlawful acts that may be anticipated from
6 Defendants’ past conduct, and to model injunctive orders to fit the exigencies of
7 the case. *Five-Star Auto Club*, 97 F. Supp. 2d at 536 (citing *FTC v. Kitco of Nev.,*
8 *Inc.*, 612 F. Supp. 1282, 1296 (D. Minn. 1985)). As the court noted in *FTC v.*
9 *Wolf*, “Broad injunctive provisions are often necessary to prevent transgressors
10 from violating the law in a new guise.” 1996 U.S. Dist. LEXIS 1760, at *26, 1997-
11 1 Trade Cas. (CCH) ¶ 71,713 (S.D. Fla. 1996) (citing *FTC v. Ruberoid Co.*, 343
12 U.S. 470, 473, 72 S. Ct. 800, 803, 96 L. Ed. 1081, 1087 (1952)).

13 The Supreme Court has recognized the necessity of “fencing-in relief” in
14 FTC orders:

15 The Commission is not limited to prohibiting the illegal practice in the
16 precise form in which it is found to have existed in the past. Having
17 been caught violating the Act, respondents must expect some fencing
18 in.

19 *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 395, 85 S. Ct. 1035, 1048, 13 L. Ed.
20 2d 904, 920 (1965) (citations omitted); *see FTC v. J.K. Publ’ns, Inc.*, 99 F. Supp.
21 2d 1176, 1209 (C.D. Cal. 2000). “These ‘fencing in’ provisions are needed to
22 prevent similar and related violations from occurring in the future.” *Trans World*
23 *Accounts, Inc. v. FTC*, 594 F.2d 212, 215 (9th Cir. 1979) (citing *FTC v. Mandel*
24 *Bros., Inc.*, 359 U.S. 385, 392, 79 S. Ct. 818, 824, 3 L. Ed. 2d 893, 899 (1959)).

25 **b. The Court may impose occupational bans**

26 The fencing-in relief the Court is authorized to impose includes ordering
27 occupational bans. The Ninth Circuit approved and explained the need for this
28 type of relief in *Sterling Drug, Inc. v. FTC*:

1 In drafting the [FTC] Act, Congress recognized that “there is no limit
2 to human inventiveness in [the advertising] field.” Accordingly, it
3 authorized the Commission to draft orders encompassing all of an
4 advertiser’s products or all products in a broad product category in
5 order to “fence in” known violators of the Act. “Fencing-in
6 provisions serve to ‘close all roads to the prohibited goal, so that [the
7 FTC’s] order may not be by-passed with impunity.””

8 741 F.2d 1146, 1154 (9th Cir. 1984) (citations omitted; second and third alteration
9 in original); *see also Kraft, Inc. v. FTC*, 970 F.2d 311, 326 (7th Cir. 1992) (“The
10 FTC has discretion to issue multi-product orders, so-called ‘fencing-in’ orders, that
11 extend beyond violations of the Act to prevent violators from engaging in similar
12 deceptive practices in the future.”). To keep defendants from engaging in
13 deceptive activity in the future, numerous courts in this circuit have granted FTC
14 requests for permanent injunctions that ban defendants’ participation in broad
15 categories of activity.⁴⁷

17 ⁴⁷ *See, e.g., FTC v. Gill*, 265 F.3d 944, 957-58 (9th Cir. 2001) (ban on
18 participation in credit-repair business); *FTC v. Universal Premium Servs., Inc.*, No.
19 CV06-0849 SJO (OPx), slip op. at 6-7 (C.D. Cal. Feb. 26, 2007), *aff’d sub nom. FTC*
20 *v. MacGregor*, 2009 U.S. App. LEXIS 28661 (9th Cir. 2009) (ban on telemarketing
21 and on the sale or marketing of program memberships); *FTC v. Medicor, LLC*, 2002
22 U.S. Dist. LEXIS 16220, at *3-4, 2002-2 Trade Cas. (CCH) ¶ 73,759 (C.D. Cal.
23 2002) (ban on telemarketing and on marketing of work-at-home medical billing
24 opportunities); *FTC v. NCH, Inc.*, 1995 U.S. Dist. LEXIS 21096, at *8-9, 1995-2
25 Trade Cas. ¶ 71,114 (D. Nev. 1995), *aff’d*, 106 F.3d 407 (9th Cir. 1997) (ban on
26 prize-promotion telemarketing).

25 Courts in other circuits have issued bans as well. *See FTC v. Global Mktg.*
26 *Group, Inc.*, No. 8:06-cv-2272-T-33TGW, slip op. at 7 (M.D. Fla. Dec. 24, 2008)
27 (bans on telemarketing and payment processing); *FTC v. Tashman*, No. 98-07058-
28 CIV-Ryskamp, slip op. at 19 (S.D. Fla. July 11, 2006) (ban on marketing of
franchises and business opportunities); *FTC v. Check Investors, Inc.*, No. 03-2115
(JWB), 2005 U.S. Dist. LEXIS 37199, at *8 (D.N.J. Jul. 18, 2005), *aff’d*, 502 F.3d

1 **2. The requested bans are appropriate**

2 **a. Section I: Ban on Mortgage Loan Modifications**

3 Section I of the FTC’s proposed Final Order bans Defendants from engaging
4 in, or assisting others engaged in, the advertising, marketing, promoting, offering
5 for sale, and sale of any “mortgage loan modification or foreclosure avoidance
6 service,” as that term is defined in the Definitions section of the Final Order. This
7 ban is narrowly tailored to prevent the Defendants from engaging in the very
8 activity at issue in this case. Without this ban, Defendants may attempt to return to
9 their old ways of systematically deceiving desperate homeowners into paying
10 substantial advance fees with false promises of mortgage loan modifications.

11 Furthermore, Defendants’ deceptive practices were conducted in
12 contravention of state law prohibiting requesting advance fees. While the
13 California statute has since been amended to make it harder for scam artists to

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15 159 (3d Cir. 2007) (ban on engaging in debt collection); *FTC v. World Media*
16 *Brokers Inc.*, No. 02-C-6985, slip op. at 6-7 (N.D. Ill. June 22, 2004) (bans on
17 telemarketing and selling lottery tickets); *FTC v. Bay Area Bus. Council, Inc.*, No.
18 02-C-5762, slip op. at 6 (N.D. Ill. Apr. 14, 2004), *aff’d*, 423 F.3d 627 (7th Cir. 2005)
19 (ban on all telemarketing in U.S. and ban on sale of credit-related products); *FTC v.*
20 *Capital Choice Consumer Credit, Inc.*, No. 02-21050 CIV, 2004 WL 5149998, at
21 *48 (S.D. Fla. Feb. 20, 2004) (ban on marketing credit cards); *FTC v. Consumer*
22 *Alliance, Inc.*, No. 02-C-2429, slip op. at 5-6 (N.D. Ill. Oct. 17, 2003) (bans on
23 telemarketing, selling credit card protection services, and selling credit-related
24 products); *Think Achievement*, 144 F. Supp. 2d at 1018, 1024 (ban on telemarketing
25 and on marketing career-advisory goods and services); *Five-Star Auto Club*, 97 F.
26 Supp. 2d at 536 (ban on all multi-level marketing); *FTC v. Micom Corp.*, 1997 U.S.
27 Dist. LEXIS 3404, at *10-11, 1997-1 Trade Cas. (CCH) ¶ 71,753 (S.D.N.Y. 1997)
28 (ban on offering application-preparation services for licenses or permits issued by
U.S. government and investment opportunities involving such licenses or permits);
FTC v. Wilcox, 926 F. Supp. 1091, 1095 (S.D. Fla. 1995) (affirming magistrate’s
recommended ban on marketing by direct mail); *FTC v. Jordan Ashley, Inc.*, 1994
U.S. Dist. LEXIS 7494, at *17-18, 1994-1 Trade Cas. (CCH) ¶ 70,570 (S.D. Fla.
1994) (ban on marketing of franchises or business opportunities, and bond required
for telemarketing).

1 perpetrate this type of fraud,⁴⁸ Defendants’ activities indicate a specific intent to
2 circumvent state law restrictions. In early 2009, the State Bar of California alerted
3 attorneys, like Lucas, that partnering with “foreclosure consultants” was fraught
4 with ethical violations.⁴⁹ Despite this warning, Lucas continued his joint venture
5 with Betts and Sullivan. Section I of the proposed Final Order makes it clear that
6 Defendants may no longer participate in this industry.

7 **b. Section II: Ban on Financial Related Goods or**
8 **Services for Defendant Betts**

9 Section II of the FTC’s proposed Final Order bans Defendant Betts from
10 engaging in, or assisting others engaged in, the advertising, marketing, promoting,
11 offering for sale, and sale of any “financial related good or service,” as that term is
12 defined in the Definitions section of the Final Order. More specifically, Section II
13 bans Betts from providing, arranging, or assisting consumers in obtaining
14 extensions of credit (including credit cards, debit cards, or stored value cards),
15 credit repair services, and debt settlement or negotiation services. At their core, the
16 abuses in these industries are the same as mortgage loan modification fraud:
17 requesting advance fees and making false promises of assisting desperate
18 consumers improve their financial situation.

19 Betts should be subjected to this more stringent ban due to his history of
20 recidivism in financial related fraud. His involvement in swindling money from
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22 ⁴⁸ See *supra* note 10.

23 ⁴⁹ See *Ethics Alert: Legal Services to Distressed Homeowners and*
24 *Foreclosure Consultants on Loan Modifications*, Committee on Professional
25 Responsibility and Conduct, The State Bar of California (Feb. 2, 2009), available at
26 <http://www.calbar.ca.gov/calbar/pdfs/ethics/Ethics-Alert-Foreclosure.pdf>; McPeck
27 Att. 9 at 104-08. When a Lucas Law Center employee forwarded an email from a
28 consumer concerned about this ethics alert, Lucas emphasized to the employee that
the consumer is “NOT entitled to that type of information.” UF #40 (emphasis in
original).

1 unsuspecting consumers spans two decades. In the mid-1990s, he caused over \$19
2 million in investor injury in a fraudulent securities market manipulation scheme,
3 leading to a criminal conviction in 2000. A few years later, Betts became involved
4 with a bogus “non-profit” credit counseling scheme for which he refuses to return
5 illegally obtained receivership assets. More recently, Betts has turned to deceiving
6 distressed homeowners with false promises of mortgage loan modifications, while
7 conspiring with an attorney to obtain advance fees in contravention of state law.
8 Betts’ new scheme raked in over \$7 million in illegal advance fee revenue in just
9 over a year. Section II of the FTC’s proposed Final Order would prevent
10 Defendant Betts from violating the law in a new guise, including industries that
11 have been rife with abuses.⁵⁰

12 **c. Sections III and IV: Injunctions Preventing**

13 **Defendants from Violating the Law in a New Guise**

14 As a complement to Section II, Section III of the FTC’s proposed Final
15 Order prohibits the corporate Defendants and individual Defendants Lucas and
16 Sullivan from making misrepresentations or collecting advance fees for financial
17 related goods and services. Much of the enjoined activity is already unlawful
18 under the terms of Section 5 of the FTC Act, 15 U.S.C. § 45, the Credit Repair
19 Organizations Act, 15 U.S.C. §§ 1679-1679j, and a proposed amendment to the
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21 _____
22 ⁵⁰ The reasons for this broader ban against Betts are similar to those in
23 *FTC v. Tashman*, No. 98-07058-CIV-Ryskamp, slip op. at 13 (S.D. Fla. July 11,
24 2006). In that case, individual defendant Tashman had a long history of recidivism
25 in SEC and FTC cases where he controlled and participated in misrepresentations
26 resulting in consumers losing thousands of dollars each. *Id.* Due to Tashman’s
27 recidivism, the court found it “unreasonable to expect that he will refrain from such
28 activities in the future,” and broadly banned him from marketing any franchise,
business venture, or investment. *Id.* It is similarly unreasonable to expect that Betts
will refrain from using the tactics he has developed over decades to bilk financially
desperate consumers out of their money.

1 Telemarketing Sales Rule, 16 C.F.R. Part 310.⁵¹ While Section III does not ban
2 these Defendants from these industries, this “fencing-in” relief is necessary to
3 prevent them from violating the law in a new guise.⁵²

4 Section IV of the FTC’s proposed Final Order enjoins all Defendants from
5 making misrepresentations of material fact relating to the marketing or sale of any
6 good, service, plan, or program. A non-exhaustive list of material facts is included
7 as guidance. However, Section IV serves to broadly enjoin Defendants from
8 deceptive activities that would violate, at a minimum, Section 5 of the FTC Act, 15
9 U.S.C. § 45.

10 **B. Monetary Relief**

11 **1. Measure of monetary relief**

12 For the FTC to recover monetary damages in a summary judgment, it “must
13 show that its calculations reasonably approximated the amount of customers’ net
14 losses, and then the burden shifts to the defendants to show that those figures were
15 inaccurate.” *FTC v. Febre*, 128 F.3d 530, 535 (7th Cir. 1997) (citing *SEC v. Lorin*,
16 76 F.3d 458, 462 (2d Cir. 1996); *HUD v. Cost Control Mktg. & Sales Mgmt. of*
17 *Va., Inc.*, 64 F.3d 920, 927 (4th Cir. 1995)). Even when the defendants’ record-
18 keeping prevents distinguishing unlawful gains from the lawful, the risk falls on
19 the wrongdoer whose conduct created the uncertainty. *Febre*, 128 F.3d at 535
20 (citing *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989). In
21 *Febre*, the Seventh Circuit affirmed the district court’s calculation of the
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24 ⁵¹ See 74 Fed. Reg. 41988, 42005-09, 42020 (Aug. 19, 2009) (to be
25 codified at 16 C.F.R. § 310.4(a)(5)), available at
26 <http://www.ftc.gov/opa/2009/07/R411001tsrnprm.pdf>.

27 ⁵² Notably, Defendants’ business records appear to indicate they were
28 involved in referring consumers to another company for debt settlement services. See
UF #153.

1 appropriate amount of monetary relief by starting with total consumer sales and
2 subtracting refunds. *Id.* at 535-36 & n.6.

3 In *FTC v. Medicor, LLC*, this district followed the Seventh Circuit’s
4 reasoning in *Febre*. See 217 F. Supp. 2d 1048, 1057-58 (C.D. Cal. 2002). In
5 *Medicor*, the court held that the “full amount lost by consumers is an appropriate
6 measure of damages,” and that “[t]he FTC must show that its calculations
7 reasonably approximate the amount of customers’ net losses.” *Id.* at 1058 (citing
8 *Febre*, 128 F.3d at 535-36). Then, the burden shifts to defendants to prove that the
9 FTC’s approximation is inaccurate. *Id.* In support of its motion for summary
10 judgment in *Medicor*, the FTC presented the declaration of an accountant who
11 determined that defendants’ net sales were \$16,562,364.51, after deducting
12 refunds, charge backs, and returns. *Id.* at 1057. The defendants objected that
13 salaries, cost of product, rent, the cost of the receiver, and other business expenses
14 had not been deducted. *Id.* at 1057. The court overruled this objection: “Section
15 13(b) of the FTC Act permits the Court to order disgorgement regardless of the
16 amount of defendant’s profits.” *Id.* (citing *Febre*, 128 F.3d at 537). The
17 accountant’s calculation of defendants’ net sales was found to reasonably
18 approximate consumers’ net losses. *Id.* at 1057-58. The court held the defendants
19 jointly and severally liable for the full amount of net sales. *Id.* at 1058.⁵³

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22 ⁵³ Even when it is impossible or impracticable to locate and reimburse all
23 of Defendants’ victims, the Court may order Defendants to disgorge their unjust
24 enrichment. *Pantron I Corp.*, 33 F.3d at 1103 n.34, followed in *Gem Merch.*, 87
25 F.3d at 470. Otherwise, a defendant could retain the ill-gotten gains “simply by
26 keeping poor records,” thus undermining the deterrence function of Section 13(b).
27 *Gem Merch.*, 87 F.3d at 470. Likewise, monetary relief should not be reduced to
28 account for those few consumers who obtained a loan modification because
Defendants’ misrepresentations “tainted the customers’ purchasing decisions.”
Figgie, 994 F.2d at 606 (“The fraud in the selling, not the value of the thing sold,” is
what entitles consumers to restitution.)

1 **2. Amount of monetary relief**

2 Defendants deceived thousands of desperate homeowners throughout the
3 United States. After conducting a thorough forensic accounting of the corporate
4 Defendants' finances, the Receiver determined that Defendants received
5 \$7,118,509.40 from their consumer victims during the lifetime of the scam. UF
6 #139. Defendants only refunded \$998,308.97. UF #140. The Receiver thus
7 concluded that Defendants' net sales were \$6,120,200.43. UF #141. Defendants
8 have not controverted the Receiver's calculations. Therefore, the Court should
9 enter a monetary judgment against Defendants for this amount as a reasonable
10 approximation of consumer injury, as set forth in Section V of the FTC's proposed
11 Final Order.

12 **C. Ancillary Equitable Relief Required to Protect Consumers and**
13 **Monitor Compliance**

14 **1. Sections VI and VII provide necessary protections for**
15 **Defendants' consumer victims**

16 Sections VI and VII of the FTC's proposed Final Order protect Defendants'
17 consumer victims from being further victimized. Section VI prohibits Defendants
18 from collecting any accounts receivable from their consumer victims, and from
19 selling or assigning any right to collect payment from those consumers.⁵⁴ Section
20 VII prohibits Defendants from disclosing, using, or otherwise benefiting from
21 consumers' information and requires Defendants to properly dispose of consumers'
22 information. These provisions will prevent Defendants' victims from finding
23 themselves on "sucker lists" sold to other scam artists, and from being forced to
24 contend with debt collectors trying to collect fraudulently obtained debt.

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27 ⁵⁴ This type of provision has been entered by this District in an FTC case
28 before. See *FTC v. Universal Premium Servs., Inc.*, No. CV06-0849 SJO (OPx), slip
op. at 14-15 (C.D. Cal. Feb. 26, 2007).

1 **2. Monitoring, compliance reporting, and record keeping**
2 **provisions are necessary to ensure compliance**

3 The Court should include monitoring, compliance reporting, and record
4 keeping provisions in the Final Order in this case. Section VIII of the proposed
5 Order allows the FTC to monitor the Defendants' compliance with the permanent
6 injunctions. Section IX requires Defendants to inform the FTC of changes in their
7 employment status, residence, or financial status. Section X of the proposed Order
8 requires Defendants to maintain business records for inspection, while Section XI
9 requires Defendants to provides copies of the Order to their employees, agents,
10 representatives, principals, and managers.

11 These provisions are necessary to ensure Defendants' compliance with the
12 permanent injunction, and have been imposed by other courts in Section 13(b)
13 actions. *See Think Achievement*, 144 F. Supp. 2d at 1018 (“Courts may order
14 record-keeping and monitoring to ensure compliance with a permanent
15 injunction.”) (citation omitted); *FTC v. Direct Mktg. Concepts, Inc.*, 648 F. Supp.
16 2d 202, 212 (D. Mass. 2009) (“A permanent injunction serves twin goals: avoiding
17 repeat violations of and monitoring compliance with the law and with the terms of
18 injunction itself.”) (citation omitted); *see, e.g., FTC v. Universal Premium Servs.,*
19 *Inc.*, No. CV06-0849 SJO (OPx), slip op. at 15-20 (C.D. Cal. Feb. 26, 2007)
20 (ancillary relief granted in the form of order distribution, disclosures, FTC
21 monitoring, and recordkeeping); *Medicor*, 2002 U.S. Dist. LEXIS 16220, at *6-13
22 (same).

23 **IX. CONCLUSION**

24 For the foregoing reasons, as set forth in this motion, memorandum, the
25 Uncontroverted Facts, and the overwhelming evidence supporting them, Plaintiff
26 Federal Trade Commission requests that the Court grant summary judgment
27 against the Defendants and enter the requested permanent injunction and order for
28 monetary relief.

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Respectfully submitted,

WILLARD K. TOM
General Counsel

DEANYA T. KUECKELHAN
Regional Director

Dated: April 26, 2010

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CERTIFICATE OF SERVICE

I, James E. Elliott, declare:

1. I am a citizen of the United States, and I am an attorney employed by and representing the Federal Trade Commission. I am not a party to this action.
2. My business address is 1999 Bryan Street, Suite 2150, Dallas, Texas 75201.
3. On April 26, 2010, the foregoing document entitled **Memorandum of Points and Authorities in Support of Plaintiff’s Motion for Summary Judgment** was served by ECF on the following:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 26th day of April, 2010, at Dallas, Texas.

/s/ James E. Elliott
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