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

<p>18 FEDERAL TRADE COMMISSION,</p> <p>19 20 Plaintiff,</p> <p>21 v.</p> <p>22 LUCASLAWCENTER “INCORPORATED”,</p> <p>23 <i>et al.,</i></p> <p>24 Defendants.</p>	}	<p>Case No. SACV 09-0770 DOC (ANx)</p> <p>PLAINTIFF’S REPLY TO DEFENDANTS’ OPPOSITION TO MOTION FOR SUMMARY JUDGMENT</p> <p>Date: May 24, 2010 Time: 8:30 a.m. Courtroom 9D</p>
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1 **I. INTRODUCTION**

2 On April 26, 2010, Plaintiff Federal Trade Commission (“FTC”) filed its
3 Notice of Motion and Motion for Summary Judgment, Dkt. #141 (“Motion”),
4 seeking summary judgment under Fed. R. Civ. P. 56(c) against Defendants
5 LucasLawCenter “incorporated” (“Lucas Law Center”), Future Financial Services,
6 LLC (“FFS”), Paul Jeffrey Lucas (“Lucas”), Christopher Francis Betts (“Betts”),
7 and Frank Sullivan (“Sullivan”) (collectively, “Defendants”). In support of its
8 Motion, the FTC filed its Memorandum of Points and Authorities in Support of
9 Plaintiff’s Motion for Summary Judgment, Dkt. #142 (“FTC’s Memo.”); its
10 Statement of Uncontroverted Facts & Conclusions of Law in Support of Plaintiff’s
11 Motion for Summary Judgment, Dkt. #143 (“Uncontroverted Facts”)¹; the
12 transcripts of five consumer depositions, Dkt. #145-149; and numerous exhibits
13 comprised of Defendants’ business records, Dkt. #151. The FTC also supported its
14 Motion with stipulations, consumer declarations, consumer complaints, the
15 Receiver’s reports, and other evidence previously filed with the Court in this case.

16 In response to the FTC’s Motion, on May 3, 2010, Defendants filed two
17 documents: (1) Defendants’ Opposition to Motion for Summary Judgment, Dkt.
18 #153 (“Opp. to MSJ”); and (2) Defendants’ Opposition to State of Uncontroverted
19 Facts & Conclusions of Law, Dkt. #153-1 (“Opp. to UF&CL”) (collectively,
20 “Oppositions”). These documents, at best, merely reiterate Defendants’ denials of
21 the FTC’s allegations, and they fail to dispute the FTC’s uncontroverted facts with
22 any specific, admissible evidence. In stark contrast, the FTC has amassed
23 overwhelming, uncontroverted evidence in support of its Motion, which should
24 now be granted.

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¹ Citations in this Reply to the separately-numbered uncontroverted facts are abbreviated as “UF #__.”

1 **II. DEFENDANTS FAILED TO MEET THEIR BURDEN FOR**
2 **SURVIVING SUMMARY JUDGMENT**

3 **A. Defendants’ Burden in Responding to Summary Judgment**

4 Defendants’ Oppositions fail to properly respond to the FTC’s Motion.

5 Under Fed. R. Civ. P. 56(e)(2):

6 When a motion for summary judgment is properly made and
7 supported, an opposing party may not rely merely on allegations or
8 denials in its own pleading; rather, its response must—by affidavits or
9 as otherwise provided in this rule—set out specific facts showing a
10 genuine issue for trial. If the opposing party does not so respond,
11 summary judgment should, if appropriate, be entered against that
12 party.²

13 The Supreme Court has held that “[t]he mere existence of a scintilla of evidence
14 . . . will be insufficient; there must be evidence on which the jury could reasonably
15 find for [the opposing party].” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252,
16 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214, *quoted and followed in Maceachern*
17 *v. City of Manhattan Beach*, 623 F. Supp. 2d 1092, 1097 (C.D. Cal. 2009). As this
18 Court has held, the opponent cannot rest on its pleadings: “There must be specific,
19 admissible evidence identifying the basis for the dispute.” *Maceachern*, 623 F.
20 Supp. 2d at 1097 (citing *S.A. Empresa de Viacao Aerea Rio Grandense v. Walter*
21 *Kidde & Co.*, 690 F.2d 1235, 1238 (9th Cir. 1982)); *see also SEC v. Murphy*, 626

23 ² Similarly, Local Rule 56-3 states:

24
25 In determining any motion for summary judgment, the Court will
26 assume that the material facts as claimed and adequately supported by
27 the moving party are admitted to exist without controversy except to
28 the extent that such material facts are (a) included in the “Statement of
Genuine Issues” [required by L.R. 56-2] and (b) controverted by
declaration or other written evidence filed in opposition to the motion.

1 F.2d 633, 640 (9th Cir. 1980). Thus, any opposition to the FTC’s Motion must set
2 forth admissible evidence that is significantly probative, and not merely colorable,
3 of any fact that is claimed to be disputed. *Murphy*, 626 F.2d at 640.

4 **B. Defendants Failed to Meet Their Burden**

5 Defendants have failed to put forth any specific, admissible, and
6 significantly probative evidence that disputes the FTC’s Uncontroverted Facts.
7 Defendants’ “object” to the 153 uncontroverted facts that the FTC filed in support
8 of its Motion,³ yet provide no evidence to support their objections. In fact,
9 Defendants already admitted or stipulated to 60 of the FTC’s uncontroverted facts.⁴
10 Defendants invoked the Fifth Amendment privilege against self incrimination as to
11 an additional 70 of the FTC’s uncontroverted facts, all of which are corroborated
12 by independent evidence.⁵ Another eight of the FTC’s uncontroverted facts are
13 supported by Defendants’ own business records,⁶ which Defendants stipulated may
14 be admitted into evidence.⁷ Defendants have produced no evidence disputing those
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19 ³ See Opp. to UF&CL at 1. In this Reply, citations to page numbers
20 within Defendants’ Oppositions will correspond to the page numbers created by the
21 Court ECF system at the top of each document.

22 ⁴ See UF #1-15, 17, 19-20, 22-28, 30-32, 34-39, 41-46, 56-59, 60 (in
23 part), 68-84, 118-19, 140.

24 ⁵ See UF #16, 18, 21, 29, 33, 47, 50-53, 55, 60 (in part), 64-66, 85-99,
25 101, 103-07, 109, 111-14, 116-17, 120-23, 124 (in part), 125-39, 142-45, 147-48,
26 150, 152.

27 ⁶ See UF #40, 48, 49, 61-63, 67, 153.

28 ⁷ See Deposition of Paul J. Lucas as Rule 30(b)(6) Designee for
Defendant LucasLawCenter “incorporated”, March 22-23, 2010, Dkt. #150-1, at
45:4-25, 48:4-12.

1 facts. Defendants have also produced no evidence disputing the few remaining
2 uncontroverted facts.⁸

3 Instead of disputing the FTC's Uncontroverted Facts with specific,
4 admissible, and significantly probative evidence, Defendants resort to making
5 numerous irrelevant arguments that serve only as red herrings with no relation to
6 the FTC's Motion.⁹ Defendants also inappropriately claim that this Court's
7 standard motion practice is "harassing and burdensome." Opp. to UF&CL at 1, 5;
8 *see* Opp. to MSJ at 1-2. On the contrary, Defendants had ample notice of the
9 deadline to file responses to motions.¹⁰ Instead of seeking relief from these well-
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11 ⁸ See UF #54, 100, 102, 108, 110, 115, 124 (in part), 141, 146, 149, 151.

12 ⁹ These include Defendants' discussions of the FTC's pending motion to
13 strike their expert designation, *see* Opp. to MSJ at 1-2, Ex. A at 5-9; Opp. to UF&CL
14 at 2, Ex. A at 7-11, and Defendants' misleading allegation that the FTC "shopped"
15 this case to criminal authorities, *see* Opp. to UF&CL at 4. The FTC objects to these
16 extraneous arguments. Another red herring is Defendants' claim that Lucas Law
17 Center's employees were the same "sincere and motivated" employees of two
18 corporate defendants in another FTC case in this district before Judge Stotler. *See*
19 Opp. to UF&CL at 3-4; *FTC v. Data Med. Capital, Inc.*, 2010 U.S. Dist. LEXIS
20 3344, at *19 ¶ 39, *21 ¶ 43, 2010-1 Trade Cas. (CCH) ¶ 76,885 (C.D. Cal. Jan. 15,
21 2010). Defendants provide no evidentiary support for this claim. Regardless, the
22 subjective intent of Defendants' employees in making misrepresentations is not an
23 element of deception under the FTC Act. *FTC v. Bay Area Bus. Council, Inc.*, 423
F.3d 627, 635 (7th Cir. 2005) (citations omitted). Notably, Judge Stotler has already
found, by clear and convincing evidence, that the corporate defendants in *Data*
Medical were in contempt of a prior FTC order by misrepresenting their mortgage
loan modification services. *See* 2010 U.S. Dist. LEXIS 3344, at *71 ¶ 47.

24 ¹⁰ Defense counsel should have been aware that the Court imposes a
25 deadline to file responses to motions. *See* Local Rules 6-1 and 7-9. This was
26 reiterated in the Court's Scheduling Order, Dkt. #107, at 3. Defense counsel was
27 given 24 days' notice that the FTC would file its Motion. FTC's Motion at 4. At
28 that time, defense counsel also was notified of, and did not oppose, the FTC's
intention to seek leave to exceed the page limitation for the FTC's Memo. Plaintiff's
Unopposed *Ex Parte* Motion for Leave to Exceed Page Limitation, Dkt. #134, at 4.

1 known deadlines, Defendants object to them now as “harassing and burdensome.”
2 This objection should bear no weight in the Court’s determination of the FTC’s
3 Motion.

4 Importantly, Defendants’ Oppositions fail to dispute the FTC’s
5 uncontroverted facts. The FTC has established that there are no triable issues as to
6 the following: (1) Defendants violated Section 5 of the FTC Act, 15 U.S.C. § 45,
7 by engaging in a pattern or practice of misrepresenting that Defendants could
8 obtain loan modifications for consumers and that consumers would receive refunds
9 if Defendants were unable to modify consumers loans; (2) the corporate
10 Defendants are jointly and severally liable as a common enterprise; (3) each
11 individual Defendant participated in, had the authority to control, and had
12 knowledge of the deceptive activities, subjecting each of them to liability for
13 injunctive and monetary relief; and (4) the FTC’s proposed Final Order, Dkt. #141-
14 1, is appropriate to enter against Defendants. Because none of these facts are
15 disputed by Defendants’ Oppositions, as more fully discussed below, the FTC is
16 entitled to summary judgment as a matter of law on all counts of its Complaint, and
17 it is entitled to the requested monetary and injunctive relief.

18 **III. SECTION 5 OF THE FTC ACT**

19 **A. The FTC Act Was Properly Enacted by Congress and Is** 20 **Constitutional**

21 Contrary to the unsupported claims in Defendants’ Oppositions,¹¹ the FTC
22 was properly constituted and empowered by Congress. *FTC v. Am. Nat’l Cellular,*
23 *Inc.*, 810 F.2d 1511, 1513-14 (9th Cir. 1987) (discussing, *inter alia*, *Humphrey’s*
24 *Ex’r v. United States*, 295 U.S. 602, 55 S. Ct. 869, 79 L. Ed. 1611 (1935)); *see*

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26 ¹¹ *See* Opp. to MSJ, at 3; Opp. to UF&CL, at 2. Defendants’ claims that
27 the FTC and the FTC Act are unconstitutional are particularly puzzling (and
28 untimely) considering that Defendants previously admitted and stipulated to these
matters in this case. *See* UF #5, 8.

1 Federal Trade Commission Act, 63 Cong. Ch. 311, 38 Stat. 717 (1914) (codified as
2 amended at 15 U.S.C. §§ 41-58). In 1938, the Section 5(a) of the FTC Act was
3 amended by Congress to declare unlawful “unfair or deceptive acts or practices in
4 commerce.” Act of Mar. 21, 1938, 75 Cong. Ch. 49, 52 Stat. 111 (codified as
5 amended at 15 U.S.C. § 45(a)).

6 **B. Defendants Fail to Dispute the Standard for Deception**

7 While claiming that Section 5(a) of the FTC Act is “vague,”¹² Defendants
8 fail to cite any authority that disputes the clearly articulated standards for deception
9 discussed by the FTC. *See* FTC’s Memo. at 16-17.

10 **C. The Court May Infer a Widespread Pattern of Deception from a**
11 **Small Number of Consumers**

12 Defendants’ Oppositions also fail to cite any authority that disputes the
13 overwhelming case law, including Ninth Circuit precedent, holding that the FTC is
14 not required to show reliance by each deceived consumer, and holding that the
15 court can infer a pattern or practice of deceptive behavior based on a small number
16 of consumers. *See* FTC’s Memo. at 17-19. Furthermore, Defendants cite to no
17 authority disputing the admissibility of the consumer declarations and consumer
18 complaints discussed by the FTC. *See* FTC’s Memo. at 18-19.

19 **IV. UNCONTROVERTED FACTS ESTABLISH DEFENDANTS’**
20 **VIOLATIONS OF THE FTC ACT**

21 **A. Defendants Fail to Dispute the Overwhelming Evidence**
22 **Establishing Their Violations of the FTC Act**

23 In their Oppositions, Defendants claim that the FTC’s allegations are only
24 supported by fewer than ten consumers.¹³ Defendants curiously (and conveniently)
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26 ¹² *See* Opp. to UF&CL at 4. This claim is also puzzling (and untimely)
27 considering Defendants’ previous admissions and stipulations. *See supra* n.11.

28 ¹³ *See* Opp. to MSJ at 2-3; Opp. to UF&CL at 3.

1 ignore the fact that the FTC's Motion is supported by the deposition testimony of
2 five consumers, by sworn declarations from nine consumers, and by complaints
3 sent to the FTC, the BBB, and State Bar of California from more than 100
4 additional consumers.¹⁴ The FTC's Motion is further supported, among other
5 evidence, by Defendants' own admissions, stipulations, and business records, and
6 by the corroborated adverse inferences the Court may draw from the individual
7 Defendants' invocation of the Fifth Amendment privilege against self-
8 incrimination. Furthermore, the Receiver's reports have corroborated the FTC's
9 overwhelming evidence. Courts have relied on far less evidence in previous
10 cases.¹⁵

11 The overwhelming evidence amassed by the FTC establishes the
12 uncontroverted facts necessary to find violations of Section 5 of the FTC Act.
13 Uncontroverted facts show that Lucas Law Center representatives represented that
14 Lucas Law Center's efforts would result in a satisfactory loan modification, often
15 claiming high success rates and specific results, typically within three months. UF
16 #85-92; FTC's Memo. at 10.¹⁶ Uncontroverted facts show that these

18 ¹⁴ More than 200 additional consumer complaints alleging
19 misrepresentations against Defendants are being filed concurrently with this Reply in
20 the Fifth Declaration of FTC Investigator Brent D. McPeck.

21 ¹⁵ See, e.g., *FTC v. Jordan Ashley, Inc.*, 1994 U.S. Dist. LEXIS 7494, at
22 *5-9, 1994-1 Trade Cas. (CCH) ¶ 70,570 (S.D. Fla. Apr. 5, 1994) (finding
23 misrepresentations based on the testimony of only four consumers); *FTC v. Kitco of*
24 *Nev., Inc.*, 612 F. Supp. 1282, 1294 (D. Minn. 1985) (inferring "widespread"
25 misrepresentations from the testimony of only eight consumers and contracts from
26 17 non-witnesses).

27 ¹⁶ To bolster these claims, Lucas Law Center's Web sites and
28 representatives touted the experience and expertise of the purported "law firm" and
the advantages of using attorneys to negotiate directly with the people at the lenders
who decided whether to modify consumers' mortgage loans. See UF #74-83, 93-97;
FTC's Memo. at 9-11.

1 representations were false. *See* UF #123-25; FTC’s Memo. at 13-14.
2 Uncontroverted facts also show that Lucas Law Center’s Web sites, its contracts,
3 and its representatives represented that Lucas Law Center offered a money-back
4 guarantee if it could not obtain a loan modification for the consumer. UF #84,
5 103-04; FTC’s Memo. at 10-12. Uncontroverted facts show that these
6 representations were false. *See* UF #129, 132-37; FTC’s Memo. at 14-15. These
7 uncontroverted facts establish that Defendants, by and through Lucas Law Center,
8 engaged in a widespread pattern of making material misrepresentations in violation
9 of Section 5 of the FTC Act.

10 **B. Contractual Disclaimers and Refunds Do Not Cure Defendants’**
11 **Deception**

12 Defendants attempt to excuse their deception by pointing to Lucas Law
13 Center’s retainer agreements and to the amount of refunds they paid.¹⁷ This
14 misguided attempt ignores, and fails to cite any authority to dispute, the well
15 settled case law cited by the FTC holding that contractual disclaimers and refunds
16 are no cure for deception. *See* FTC Memo. at 20 n.28.¹⁸

17 **C. Purported Evidence of Allegedly Satisfied Consumers Is**
18 **Irrelevant to Disproving Defendants’ Deception**

19 Defendants attempt to create a triable issue about the number of
20 modifications allegedly obtained.¹⁹ This attempt is also misguided. As fully
21 discussed by the FTC, the number of allegedly obtained modifications is irrelevant
22 to disproving their deception. *See* FTC’s Memo. at 23-24 & n.34. Defendants do
23

24 ¹⁷ *See* Opp. to MSJ at 2; Opp. to UF&CL at 3-4.

25 ¹⁸ Defendants’ argument also ignores the uncontroverted fact that
26 frequently consumers did not receive the retainer agreements until after paying
27 Defendants’ fee, in whole or in part. *See* UF #101.

28 ¹⁹ *See* Opp. to MSJ at 2.

1 not cite to any authority disputing the well settled law cited by the FTC. *See id.*
2 That Defendants allegedly obtained some modifications has no bearing on the
3 uncontroverted facts showing that they failed to obtain the promised modifications
4 for other consumers.²⁰

5 In support of their misguided attempt to create a triable issue, Defendants
6 cite to what they purport to be a list of the names of clients who received loan
7 modifications (“Defendants’ Exhibit B”). *See Opp. to UF&CL*, at 3, Ex. B at 12-
8 20. Insofar as Defendants’ Exhibit B purports to be evidence of “satisfied”
9 consumers, it is irrelevant to disproving Defendants’ deception. *See discussion*
10 *supra* pp. 8-9 & n.20. Furthermore, Defendants fail to authenticate Defendants’
11 Exhibit B, fail to provide any explanation for its origins, and fail to provide any
12 substantiation for the alleged “modifications” it purports to show.²¹ Defendants’
13
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15 ²⁰ *See Basic Books, Inc. v. FTC*, 276 F.2d 718, 721 (7th Cir. 1960) (“That
16 a person or corporation, through its agents, may have made correct statements in one
17 instance has no bearing on the fact that they made misrepresentations in other
18 instances.”).

19 ²¹ Notably, this list of 545 allegedly completed “modifications” contains
20 60 duplicate names and another 119 names with no explanation as to what
21 “modification” was allegedly obtained. Another 17 entries indicate that a
22 “modification” was obtained through a government program, including Making
23 Home Affordable. Any indications that Defendants’ Exhibit B is reliable is belied by
24 the very first entry, which claims that consumer Carolyn Adkins received a “mod”
25 for 12 months that “can bew [sic] revisited then.” *Opp. to UF&CL*, Ex. B at 13.
26 This plainly states that the “modification” was only temporary. Furthermore, Ms.
27 Adkins’ deposition testimony shows that the temporary “modification” she received
28 was for her second mortgage only and was not the promised interest rate and
monthly payment reductions in a fixed consolidation of her two mortgages. Adkins
Depo., Dkt. #145-1, at 16:7-17, 26:21-27:13. Another 67 entries in Defendants’
Exhibit B plainly state that they are only temporary, not permanent modifications.
Defendants fail to substantiate that any of the remaining 279 alleged “modifications”
in Defendants’ Exhibit B were as promised or otherwise beneficial to the consumers.

1 Exhibit B should be disregarded by the Court as inadmissible under Fed. R. Evid.
2 402, 802, and 901.

3 **V. DEFENDANTS ARE JOINTLY AND SEVERALLY LIABLE**

4 Defendants' Oppositions claim that the FTC's Motion improperly refers to
5 all five Defendants collectively, and that Defendant Sullivan is only an employee.²²
6 However, the FTC's Uncontroverted Facts establish that all Defendants meet the
7 requisite standards for joint and several liability, as discussed below.

8 **A. Uncontroverted Facts Establish that the Corporate Defendants**
9 **Are Jointly and Severally Liable as a Common Enterprise**

10 Defendants do not dispute the legal standards cited by the FTC for holding
11 corporate defendants jointly and severally liable as a common enterprise. *See*
12 *FTC's Memo.* at 25-26. Defendants provide no evidence to dispute the
13 uncontroverted facts establishing that the corporate Defendants acted as a common
14 enterprise.²³

15 **B. Uncontroverted Facts Establish that Each Individual Defendant**
16 **Is Liable for Injunctive and Monetary Relief**

17 Defendants also do not dispute the legal standards cited by the FTC for
18 holding individual defendants liable for injunctive and monetary relief. *See* *FTC's*
19 *Memo.* at 28-29. Defendants provide no evidence to dispute the uncontroverted
20 facts establishing that Defendants Lucas and Betts participated in, had the authority
21 to control, and had sufficient knowledge of the deceptive activities.²⁴ Defendants
22 also provide no authority, or evidentiary support, for their contention that
23 Defendant Sullivan's status as a non-owner renders him not liable for the deceptive
24 activities. On the contrary, the uncontroverted facts establish that he participated

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26 ²² *See* *Opp. to MSJ* at 2; *Opp. to UF&CL* at 2-3.

27 ²³ *See* *UF #12-21, 25-26, 45-49, 139; FTC's Memo.* at 26-28.

28 ²⁴ *See* *UF #18, 20-21, 30-35, 45-49; FTC's Memo.* at 29-30.

1 in, had the authority to control, and had sufficient knowledge of the deceptive
2 activities.²⁵

3 **VI. DEFENDANTS FAIL TO DISPUTE THE APPROPRIATENESS OF**
4 **THE FTC’S REQUESTED RELIEF**

5 **A. Uncontroverted Facts Establish Defendants’ Liability for Over**
6 **\$6 Million in Consumer Injury**

7 Defendants’ bare allegation that the Receiver caused consumer injury is
8 unsupported by any evidence.²⁶ Clearly, being unable to dispute the FTC’s
9 overwhelming evidence in support of its Motion, Defendants seek to place the
10 blame for their deception elsewhere. This argument does not refute the authority
11 cited by the FTC or the uncontroverted facts showing that Defendants are liable for
12 over \$6 million in consumer injury. *See* FTC’s Memo. at 39-41.

13 **B. Defendants Fail to Dispute the Appropriateness of the FTC’s**
14 **Requested Injunctive Relief**

15 In opposing the FTC’s Motion, Defendants discuss the imposition of
16 “language that reads like a statute.”²⁷ If Defendants intended this discussion to
17 relate to the injunctive terms of the FTC’s proposed Final Order, Dkt. #141-1, then
18 Defendants have cited to no legal authority or evidentiary support to dispute the
19 necessity and reasonableness of the injunctive terms the FTC requests. In stark
20 contrast, the FTC has fully discussed this issue, including lists of numerous cases
21 imposing similar terms, in the FTC’s Memo. at 31-39, 41-42.

22 **VII. CONCLUSION**

23 In response to the FTC’s Motion, Defendants were required to come forward
24 with specific, admissible, and significantly probative evidence that would support a
25

26 ²⁵ *See* UF #57-67; FTC’s Memo. at 30-31.

27 ²⁶ *See* Opp. to MSJ at 3.

28 ²⁷ *See* Opp. to MSJ at 3.

1 finding in their favor. *See supra* at 2-3. Instead, Defendants “rest on their
2 pleadings” by making unsubstantiated allegations that merely mirror the denials in
3 their Amended Answer, Dkt. #105, or otherwise do not relate to the FTC’s Motion.
4 Failing to meet their burden, Defendants did not place any of the FTC’s
5 uncontroverted facts into question. Therefore, the FTC is entitled to summary
6 judgment as a matter of law on all counts of its Complaint, and it is entitled to the
7 requested monetary and injunctive relief.

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9
10 Respectfully submitted,

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15 Dated: May 10, 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 May 10, 2010, the foregoing document entitled **Plaintiff’s Reply to Defendants’ Opposition to 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 10th day of May, 2010, at Dallas, Texas.

/s/ James E. Elliott
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