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FEDERAL TRADE COMMISSION

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12
13 FEDERAL TRADE COMMISSION,
Plaintiff,

14 v.

15 DINAMICA FINANCIERA LLC,
16 a California limited liability company;

17 SOLUCIONES DINAMICAS, INC.,
a California corporation;

18 OFICINAS LEGALES DE ERIC-
19 DOUGLAS JOHNSON, INC.,
a California corporation;

20 ERIC DOUGLAS JOHNSON,
21 an individual;

22 VALENTIN BENITEZ,
an individual;

23 JOSE MARIO ESQUER,
24 an individual; and

25 ROSA ESQUER,
an individual

26 Defendants.
27
28

Case No. 09-CV-03554 MMM
(PJWx)

MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT OR IN
THE ALTERNATIVE SUMMARY
ADJUDICATION OF THE ISSUES
AGAINST DEFENDANTS
DINAMICA FINANCIERA LLC,
SOLUCIONES DINAMICAS, INC.,
OFICINAS LEGALES DE ERIC-
DOUGLAS JOHNSON, INC., ERIC
DOUGLAS JOHNSON,
VALENTIN BENITEZ, JOSE
MARIO ESQUER AND ROSA
ESQUER

Date: July 12, 2010
Time: 10:00 am
Judge: Hon. Margaret M. Morrow
Location: Courtroom No. 780,
Roybal Federal Bldg., 255 E. Temple
Street, Los Angeles

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1 **I. INTRODUCTION¹**

2 Dinamica Financiera LLC (Dinamica), run by Valentin Benitez (Benitez)
3 and Jose Mario Esquer (Esquer), preyed on Spanish-speaking home-owners facing
4 foreclosure. Assuring success, they charged their clients an up-front fee equivalent
5 to an entire monthly mortgage payment to stop foreclosure or obtain mortgage loan
6 modifications. After learning of Plaintiff's investigation, Dinamica moved
7 locations and continued to make the same promises as Soluciones Dinamicas, Inc.
8 (Soluciones) before transforming the business, yet again, into Oficinas Legales de
9 Eric-Douglas Johnson, Inc. (Oficinas), which was controlled by Eric Douglas
10 Johnson (Johnson) and Benitez. Despite their silver-tongued assurances,
11 Defendants more often than not failed their clients. Many of Defendants' clients
12 did not receive the modifications they paid for. A significant number of their
13 clients ultimately lost their homes or saved their homes only through their own
14 efforts. Between January 2005 and October 2009, Defendants siphoned
15 approximately \$4,093,579 from consumers.

16 The uncontroverted facts show that Defendants' actions were deceptive in
17 violation of Section 5(a) of the Federal Trade Commission Act (FTC Act).
18 Plaintiff respectfully requests that this Court enter summary judgment against
19 Defendants as to count one of Plaintiff's First Amended Complaint. To redress
20 consumers who have been harmed by Defendants' deceptive conduct and to
21 prevent it from happening again, Plaintiff requests that the Court exercise its full
22 equitable powers by permanently enjoining Defendants from engaging in mortgage
23 foreclosure rescue services and making misrepresentations in connection with the
24 sale or marketing of goods and services, imposing a monetary judgment equal to
25 the amount of money Defendants took from consumers, and imposing other

26 ¹In support of this motion, Plaintiff is concurrently filing 20 exhibits,
27 including 10 consumer declarations, declarations of five FTC employees and four
28 third parties, and one non-paper physical exhibit, and is lodging three deposition
transcripts. Plaintiff is also relying on evidence submitted in support of its
application for a temporary restraining order and preliminary injunction.

1 equitable relief as set forth in the proposed judgment accompanying this motion.

2 Because the uncontroverted facts also show that Esquer fraudulently
3 transferred real property to his wife, defendant Rosa Esquer, in violation of Section
4 3304(b)(1)(A) of the Federal Debt Collection Procedure Act (FDCPA), Plaintiff
5 FTC respectfully requests that this Court enter summary judgment as to count two
6 of the Complaint and set aside the transfer of ID#1² from Esquer to Rosa Esquer.

7 In the alternative, Plaintiff FTC respectfully requests that the Court
8 summarily adjudicate issues for which there are no genuine issues of material fact.

9 **II. PROCEDURAL HISTORY**

10 On May 19, 2009, the FTC filed its original complaint in this matter naming
11 Dinamica, Soluciones, Esquer, Benitez, and Rosa Esquer as defendants. That day,
12 the FTC also applied for a temporary restraining order (TRO) and order to show
13 cause why a preliminary injunction (PI) should not issue against the same
14 defendants. The court issued a TRO on May 20, 2009 (Dkt # 14) and a PI on June
15 3, 2009 (Dkt # 30). On November 25, 2009, the FTC filed its First Amended
16 Complaint adding Oficinas and Johnson as defendants. Dkt # 47.

17 **III. PARTIES**

18 **A. Plaintiff**

19 Plaintiff FTC is an independent agency of the United States Government. 15
20 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcement of Section 5(a)
21 of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or
22 practices in or affecting commerce. The FTC is authorized to initiate federal
23 district court proceedings, by its own attorneys, to enjoin violations of the FTC
24 Act, and to secure such equitable relief as may be appropriate in each case,
25 including restitution and disgorgement. 15 U.S.C. § 53(b).

26
27
28 ²ID#1 is identified in the “Personal Data Identifiers Reference List,” filed
under permanent seal. *See* Dkt # 35.

1 **B. Defendants**

2 **Dinamica Financiera LLC** is a California limited liability company that
3 operated from 7857 East Florence Avenue, Suite 201, Downey, CA 90240. *UF 1-*
4 *2.*³ Esquer and Benitez, colleagues from a previous foreclosure rescue business,
5 created Dinamica in August 2000. *UF 3, 20, 69.* Dinamica operated until May
6 2008, when it was relocated and rebranded as Soluciones. *UF 5-6.*

7 **Soluciones Dinamicas, Inc.** is a California corporation that operated from
8 9550 Firestone Blvd, Suites 101, 201-203, Downey, CA 90241. *UF 7-8.*
9 Soluciones operated from May 2008 until April 2009, when it became Oficinas
10 Legales de Eric-Douglas Johnson, Inc. *UF 9-10.*

11 **Oficinas Legales de Eric-Douglas Johnson, Inc.** is a California corporation
12 that also operated from 9550 Firestone Blvd, Suites 101, 201-203, Downey, CA
13 90241. *UF 11-12.* In April 2009, believing it was necessary to have a lawyer run
14 the business, Soluciones became Oficinas. *UF 13-18.* Oficinas operated until
15 November 6, 2009, when the State Bar of California assumed jurisdiction over
16 Johnson's practices. *UF 19.*

17 **Jose Mario Esquer** worked in the foreclosure rescue business between 1996
18 and 2009. *UF 20.* Esquer formed Dinamica in August 2000 and was a member,
19 manager, and supervisor for Dinamica for nearly eight years. *UF 21, 23-26.* As a
20 member and manager of Dinamica, Esquer responded to subpoenas (*UF28*), signed
21 various corporate filings (*UF 29*), was a signer on each of its bank accounts (*UF*
22 *30-31*), entered into its lease (*UF 32*), shared in its profits (*UF 33*), and had refund
23 authority (*UF 34*). Esquer was a manager and supervisor at Soluciones. *UF 21,*
24 *35-36.* Esquer also entered into leases for both of Soluciones' suites (*UF 37-38*),
25 was a signer on one of Soluciones' bank accounts (*UF 39*), and responded to
26 Plaintiff's CID and submitted information responsive to the TRO on Soluciones'

27 _____
28 ³"*UF*" refers to Plaintiff's Statement of Uncontroverted Facts and
Conclusions of Law filed herewith.

1 behalf (*UF 40-41*). At both Dinamica and Soluciones, Esquer supervised and
2 regularly interacted with the employees (*UF 42-46*), processed client contracts and
3 sales reports (*UF 47-48*), accepted payments and foreclosure paperwork from
4 clients (*UF 49-51*), filed bankruptcy petitions to stay foreclosure proceedings (*UF*
5 *52-53*), and was familiar with the businesses' services and advertising (*UF 43-63*).
6 Esquer was also aware of complaints and lawsuits (*UF 65-68*), and processed
7 clients' cancellation and refund requests (*UF64*).

8 **Valentin Benitez** has been in the foreclosure rescue business since at least
9 2000. *UF 69-71*. Benitez was a member and manager of Dinamica for nearly
10 eight years, and a manager, supervisor and "owner in fact" of Soluciones. *UF 71-*
11 *74*. Benitez obtained loans for the businesses and was the mastermind behind
12 transforming the business into Soluciones. *UF 75-77*. At both Dinamica and
13 Soluciones, Benitez sold services and accepted clients' payments (*UF 78-81*),
14 designed contracts and created advertising (*UF 82-84*), received complaints and
15 authorized refunds (*UF 85-87*), authorized commissions (*UF 89*), and supervised
16 and trained employees (including the sales agents and negotiators) (*UF 88*).
17 Benitez also engineered the reformation of Soluciones as Oficinas (*UF 90*), and
18 helped manage Oficinas by bringing "continuity" to the transition (*UF 91-92*),
19 supervising its employees (*UF 93-95*), creating advertisements (*UF 96-98*), selling
20 services (*UF 99-101*), and authorizing and denying refunds (*UF 102*).

21 **Eric Douglas Johnson**, an attorney admitted to the State Bar of California,
22 is the incorporator and president of Oficinas. *UF 107-08*. After Johnson
23 terminated his association with another loan modification business, Johnson agreed
24 to continue the Soluciones business as Oficinas, taking responsibility for all of its
25 clients and envisioning a "mushrooming" of new business. *UF 110-21*. Under
26 Johnson's tenure, Oficinas continued the same practices as Soluciones and
27 Dinamica, even after receiving the TRO. *UF 122-26*. Johnson was aware of
28 Oficinas' advertising (*UF 128-29*), managed its employees (*UF 130-33*), was a

1 signer on its bank accounts (*UF 134*), and authorized refunds (*UF 135*).

2 **Rosa Esquer** is the wife of Esquer. *UF 138*. On August 30, 2008, Esquer
3 gifted the home he and Rosa held in joint tenancy since 1987 to Rosa Esquer as her
4 sole and separate property. *UF 297-98, 300*.

5 **IV. DEFENDANTS' DECEPTIVE PRACTICES**

6 **A. Defendants used deceptive advertisements to lure desperate** 7 **homeowners into their offices**

8 Defendants marketed foreclosure rescue services to vulnerable homeowners,
9 primarily via Spanish-language radio and magazine advertisements. *UF 140-50*.
10 Their radio advertisements represented that consumers would “keep,” “not lose”
11 their homes, continue their payments at a later date, and obtain “new” “reduced”
12 mortgage payments. *UF 140-44*. Defendants’ radio advertisements also touted
13 their “experience” and “professionalism,” emphasized Defendants’ affinity with
14 the Spanish-speaking community, and boasted of their purported success, even
15 going so far as to claim that “thousands have already qualified to reduce their
16 payments” and promising assistance even when consumers’ lenders had already
17 refused to help them. *UF 145-48*. Oficinas’ advertisements further promised the
18 assistance and experience of an attorney. *UF 149*.

19 Defendants’ advertisements were frequently broadcast on several radio
20 stations between September 2005 and October 2009. *UF 150-52*. Consumers who
21 heard Defendants’ radio advertisements understood them to mean that Defendants
22 obtained “breaks,” “suspension(s),” or “extension(s)” of mortgage payments (*UF*
23 *153*), as well as loan modifications that would lower mortgage payments (*UF 154-*
24 *55*), and that Defendants saved consumers’ homes from foreclosure (*UF 156*).

25 **B. Defendants’ sales agents promised to save consumers’ homes from** 26 **foreclosure and/or obtain mortgage loan modifications**

27 Consumers who contacted Defendants were instructed to come into their
28

1 office and meet with one of their “financial consultants” or agents. *UF 157-58*.⁴

2 At the in-person consultations, Defendants gathered information from
3 consumers about their mortgages and financial needs, including consumers’ ability
4 to pay their mortgages. *UF 159*. Defendants’ agents then assured consumers, on
5 numerous occasions and through multiple sales agents, that they would save their
6 homes and/or obtain loan modifications. *See* Sections IV.B.1-3, *supra*.

7 Defendants typically accepted any client who had not yet lost their home (even
8 those they believed would not qualify for a loan modification) (*UF 160-61*),
9 usually charging them the equivalent of one monthly mortgage payment (often
10 thousands of dollars) (*UF 162*).⁵

11 Many of Defendants’ clients were desperate. *UF 166*. Most did not speak
12 English or understand the foreclosure process. *UF 167-68*. Many were afraid or
13 unable to speak with their lenders, and some had already tried working with their
14 lenders, to no avail. *UF 169-70*. As a result, Defendants’ clients relied heavily on
15 Defendants’ “expert” advice. *UF 171*. This was even more so in the case of
16 Oficinas, where consumers believed they had hired an attorney. *UF 172*.

17 1. Defendants explicitly represented they would stop foreclosure
18 and save consumers’ homes

19 During the in-person consultations, Defendants explicitly represented to
20 consumers that, by hiring Defendants and following their advice, Defendants
21 would save consumers’ homes from foreclosure. *UF 173*. In an undercover call
22 conducted by FTC employee Rosa Aldama, Dinamica agent Manuel Pozo
23 represented “that is why the banks are accepting these negotiations. . . . So that
24 there are no foreclosure[s], in order to reduce a bit the number of foreclosures

25
26 ⁴Many of the in-person consultations at Dinamica and Soluciones, and some
at Oficinas, were conducted by defendant Benitez himself. *UF 79-80*.

27 ⁵In addition (and as discussed *supra*), starting in July 2009, Oficinas also
28 collected a “deposit” (typically \$2,500) in addition to their fee, telling clients it
would pay their mortgage payments after a modification was obtained.

1 taking place.” *UF 174*. He later assured her that “[i]f we start the process, of
2 course, there is no reason to fear losing the house.” *UF 175*.

3 While selling services for Oficinas, Benitez himself told consumer Ana
4 Carrillo that Johnson was going to stop her foreclosure as soon as she paid
5 Oficinas’ fee and assured her that she “was in ‘good hands’ and that [she] would
6 not lose her home.” *UF 176*. Benitez then sent someone to her home within the
7 hour to collect \$2,347 in cash from Ms. Carrillo to stop her foreclosure. *Id.*
8 Similarly, Soluciones’ agent Manuel Pozo assured Brenda Pena that she would not
9 lose her home (*UF 177*) and while selling services for Dinamica, Benitez promised
10 to save the home of Celia Argueta (*UF 178*).

11 Defendants’ in-person representations that they would save consumers’
12 homes from foreclosure were consistent with their ads that told consumers they
13 would “keep” and “not lose” their homes. *See Section IV.A, infra*.

14 2. Defendants promised mortgage payment deferrals and to move
15 mortgage arrears to the end of consumers’ mortgage terms

16 Defendants, especially early on, often guaranteed as the first (and sometimes
17 only) step to saving consumers’ homes, that Defendants would immediately obtain
18 agreements whereby consumers’ lenders would relieve them of paying their
19 mortgages for a specific period of time (often five to six months). *UF 179-84*. As
20 sales agent Pozo explained during an undercover call, “we will negotiate with the
21 bank an extension or stopping the payments so that this person can . . . have five
22 months without making any mortgage payments.” *UF 185*. Defendants
23 represented that these deferred payments would be paid at the end of a consumer’s
24 mortgage term (*UF 186*), or in some instances, in small monthly payments (*UF*
25 *187*). These representations were consistent with advertisements promising to
26 negotiate delays for consumers who “need some time to continue making the[ir]
27 payments.” *UF 144*.

28 Throughout their operations, Defendants also assured consumers that their

1 mortgage arrears would be moved to the end of their mortgage terms. *UF 186*,
2 *188-89*. As one consumer explained, “the payments we had already missed . . . , as
3 well as the ones we would not have to pay . . . , would simply be tacked onto the
4 back end of our loan. The way Ms. Zambrano explained it, we would simply make
5 up all of our missed payments at the end of our mortgage term.” *UF 190*.
6 Similarly, as another declarant explained, “[Benitez] told me not to worry about the
7 late payments. He said that my bank would put the money that I owed at the back
8 of my loan.” *UF 191*.

9 3. Defendants represented they would obtain loan modifications

10 In recent years, Defendants represented to consumers, in many instances,
11 that they would obtain loan modifications. *UF 192*. Defendants typically assured
12 clients they would lower their payments (*UF 193*) and guaranteed specific
13 modifications, including fixed interest rates, lower principal balances, and
14 combined mortgage payments. *UF 194, 198*. For example, Dinamica told
15 consumer Elsa Espinoza that her lender would reduce her payment from \$3,184 to
16 \$2,200 (*UF 195*), and Soluciones guaranteed substantially reduced mortgage
17 payments to Wendy and Carlos Romo (*UF 196*). Similarly, Oficinas assured
18 Cipriano Ayala that his lender would reduce his interest rate on two of his loans
19 from seven to four percent, and that his lender would adjust the value of his
20 property to reflect the current market. *UF 197*. As another consumer explained,

21 Mr. Pozo assured me that Oficinas . . . could help me. He made it
22 sound like getting a reduced mortgage payment was a certainty, and
23 not once did he say that there was a probability that it wouldn’t
24 happen. The only questions was how much our mortgage payment
25 would be reduced. Mr. Pozo estimated between \$900 and \$800 [from
26 \$1,680]. *UF 199*.

27 The in-person representations by Defendants’ sales agents were also
28 consistent with Defendants’ radio advertisements promising “new,” “reduce[d]”

1 and “smaller” payments, and encouraging consumers to contact Defendants if their
2 modification requests had been ignored or denied. *UF 143, 148.*

3 4. Defendants’ sales agents made additional claims that assured
4 consumers that Defendants would do what they promised

5 Defendants made additional representations during the sales consultation
6 that assured consumers of Defendants’ ultimate success. Defendants assured
7 consumers that they were experienced (*UF 200*), had been in business for a long
8 time (*UF 201*), had helped numerous other clients (*UF 202*), and would handle
9 everything and that consumers should not worry (*UF 203*). Defendants further
10 assured consumers of their success by explaining that lenders agreed to
11 Defendants’ plans because lenders were trying to reduce the number of
12 foreclosures (*UF 204*), by representing that consumers’ lenders were working well
13 with the Defendants (*UF 205*), and by emphasizing that government plans were
14 available to the consumers and, in some cases, were mandatory (*UF 206*).

15 In finalizing the sale, Defendants then executed a contract that set forth the
16 months during which consumers were to be relieved from paying their mortgages
17 and/or when they were to resume paying their mortgage payments. *UF 207.*
18 Defendants’ contracts frequently and explicitly stated “continue with payments in”
19 (or language of similar import) and noted the dates consumers were to resume their
20 often “new” “reduced” payments (*UF 208*), and Defendants’ agents orally
21 estimated what their new payments or interest rates would be (*UF 209*), leading
22 consumers to believe that Defendants’ services were a sure thing. Having secured
23 the sale, Defendants then isolated their clients from their lenders by encouraging
24 them not to speak with their lenders. *UF 210.* Consumers often complied for fear
25 of jeopardizing the negotiation. *UF 211.*

26 **C. Despite their assurances, Defendants failed to stop foreclosure**
27 **or obtain mortgage loan modification in numerous instances**

28 Having taken their clients’ money and lulled them into a false sense of

1 security, Defendants often failed to stop foreclosure or obtain loan modifications.
2 *See* Section IV.C.1-3, *infra*. After learning that Defendants failed to deliver on
3 their promises, some consumers saved their homes by negotiating directly with
4 their lenders and without Defendants' assistance. *UF 212-14*. Others lost their
5 homes. *UF 213, 230*.

6 1. Defendants failed to stop foreclosure in numerous instances

7 Tragically, a significant number and percentage of Defendants' clients lost
8 their homes through foreclosure. At least 266 (approximately 43 percent) of
9 Defendants' clients for whom Defendants' work had been concluded, including
10 196 (approximately 37 percent) of Defendants' clients who sought refunds and 70
11 (approximately 79 percent) of the clients whose files Dinamica destroyed lost their
12 homes through foreclosure. Even consumers who had not missed a single
13 mortgage payment before seeking Defendants' assistance or who could have
14 continued or resumed making their mortgage payments lost their homes or nearly
15 lost their homes after hiring Defendants. *UF 215-78*. While Defendants did not
16 track their failure rate (*UF 219*), they tracked their clients' sale dates, waited for
17 months before contacting their clients' lenders (frequently allowing their homes to
18 go into foreclosure)⁶ and often knew their clients homes had been sold. *UF 220-*
19 *22, 224-25*.

20 Consumers often lost the money they paid Defendants (including money
21 Defendants represented would be remitted to their lenders) as well as time and the
22 opportunity to pursue other solutions (*UF 268-70*). Many consumers ended up in a
23 worse financial situation than when they hired Defendants (*UF 271*). As Cirpiano
24 Ayala, a man whose rental properties were his only source of income, explained,

25 By using Soluciones (then Oficinas) I lost time and money; and now
26 there is a strong possibility that my wife and I will lose our four

27 _____
28 ⁶Throughout this time, Defendants consistently assured their clients that
everything was fine. *UF 223*.

1 properties for which we had worked so hard to obtain. . . . My wife
2 and I paid Soluciones and Oficinas more than \$16,000 and we
3 received nothing in exchange. Now we could even wind up homeless,
4 without any source of income. *UF 272*.

5 Similarly, as consumer Nancy Lopez explained,

6 In the end, I paid Soluciones and Oficinas more than \$4,000, but they
7 did not deliver on their promises. . . . Ultimately, Soluciones/Oficinas
8 left me in a much worse position than I was in before I signed up with
9 them. I almost lost my house in a foreclosure sale not once, but two
10 times. I am out thousands of dollars Even worse, because they
11 advised me to stop paying my mortgage, and I did, my credit is
12 ruined. *UF 273*.

13 2. Defendants failed to obtain deferral agreements or to move
14 arrears to the end of clients' mortgage terms

15 Contrary to their representations, Defendants did not deferred their clients'
16 mortgage payments or obtained agreements that simply moved consumers' arrears
17 to the end of their mortgage term. *UF 226*. As a result, consumers were forced to
18 pay months of accumulated mortgage arrears (as well as fines, penalties and
19 interest), which was often over \$15,000. *UF 227*. While lenders sometimes
20 agreed to add these arrears to the consumers' principal loan balance through a
21 modification or agreed that consumers could pay these amounts through special
22 forbearance agreements (*UF 228*), consumers could not always accept the plans
23 because they resulted in increased mortgage payments that were contrary to what
24 Defendants promised or because they included a significant payment that
25 Defendants did not tell them they would need to pay (*UF 229*).

26 For some consumers, Defendants' failure to obtain the guaranteed deferrals
27 and/or to move their arrears to the end of their loans resulted in the loss of their
28 homes. As consumer Samuel Meza explained,

1 My lender told me that I would have to make a lump-sum payment of
2 \$8,000 and continue making my monthly payments if I wanted to save
3 my home. Apparently my lender could not simply move my missed
4 payments to the end of my loan as Mr. Benitez said would happen.
5 Although I could continue making my mortgage payments, I did not
6 have sufficient cash to make a payment as large as required by my
7 lender. In early 2008 I lost my home to foreclosure. *UF 231.*

8 Similarly, when Oficinas failed to move her payments to the end of her loan and
9 obtain a modification, declarant Carrillo was only able to save her home by paying
10 off over \$25,000 in arrears, penalties, and fees. *UF 232.*

11 3. In numerous instances, Defendants failed to obtain the loan
12 modifications they assured to consumers

13 Defendants also failed, in numerous instances, to obtain the loan
14 modifications they assured their clients, including loan modifications that resulted
15 in lower mortgage payments. *UF 233.*⁷ Numerous clients report this and
16 Defendants' client files show that consumers obtained modifications *no more than*
17 *16.5 percent of the time.* *UF 236.* In fact, although they repeatedly assured their
18 clients not to worry, estimated their payment amounts and start dates, and charged
19 them thousands of dollars as "experts," Defendants acknowledge that they
20 generally did not know what their clients' lenders would do. *UF 237.*⁸

21 As additional evidence of their failure to obtain modifications, Defendants
22 made only a handful of their clients' modified mortgage payments. Starting in July
23 2009, Oficinas represented to its clients that they needed to provide a deposit

24
25 ⁷Worse, Defendants sometimes cause their clients' mortgage payments to
26 increase. *UF 234.* As Johnson explained, a successful modification would be one
27 "reducing [a client's] payments . . . [and] that's commensurate with what the[ir]
28 income level is." *UF 235.*

⁸When Defendants finally contacted their clients' lenders, they simply
transmitted paperwork (*UF 240*), never engaging in actual negotiations (*UF 238-*
39). Defendants, however, sometimes failed to even do that properly. *UF 242.*

1 (typically \$2,500) in addition to the fee for its service, which Oficinas would use to
2 pay its clients' modified mortgage payments. *UF 243-44, 246.* In some instances,
3 Oficinas represented that it had already obtained the modifications before
4 requesting these deposits. *UF 245, 247.* Despite collecting over \$90,000 in
5 deposits from approximately 36 consumers, Oficinas likely made no more than
6 three payments totaling \$3,212.76 to its clients' lenders, indicating that Oficinas
7 never obtained the promised modifications or possibly caused their clients to lose
8 the modifications by not making their mortgage payments.⁹

9 4. The number of complaints and cancellations in Defendants'
10 files is indicative of their failure

11 Since March 2006, approximately 407 of Defendants' clients cancelled their
12 services or sought refunds, the vast majority of which had been clients for more
13 than three months. *UF 250-52, 266.* Many consumers also lodged complaints
14 with Defendants, the FTC, the Better Business Bureau (BBB), and the Los Angeles
15 County Department of Consumer Affairs (LACDCA).¹⁰ *UF 261-64.* The
16 complaints corroborate the deceptive practices described by the consumers who
17 signed declarations. *UF 266.* The high volume of complaints and cancellation
18 requests is indicative of Defendants' failure to deliver on their promises.

19 **D. Consumers were injured by Defendants' misrepresentations**

20 Between January 2005 and October 2009, Defendants had net sales (total
21 sales less refunds) of \$4,093,581.76. Specifically, Dinamica had net sales of
22 \$2,333,876.56, Soluciones \$1,365,211.94, and Oficinas \$394,493.26. *UF 278-84.*
23 As explained in Section IV.C., *supra*, many consumers also lost their homes.

24
25 ⁹Defendants' promise to pay the modified mortgage payments was likely just
26 another ploy to siphon more money from consumers. In several instances,
27 Defendants lied about having already obtained modifications. *UF 245, 247.*
28 Defendants also never set aside the deposits for its clients' payments, opting
instead to pay themselves. *UF 248-49.*

¹⁰The BBB and LACDCA complaints were sent to the Defendants. *UF 265.*

1 **V. FRAUDULENT TRANSFER**

2 On April 22, 2008, Plaintiff served Dinamica with a CID. *UF 285*. On May
3 1 and 2, 2008, Dinamica destroyed at least 88 client files responsive to the CID.
4 *UF 286*. That month, Benitez and Esquer rebranded Dinamica as Soluciones and
5 moved the business to a new location that Esquer leased on May 13, 2008. *UF 6*,
6 *37*.

7 Dinamica refused to comply with the CID and, in June 2008, Plaintiff
8 notified Dinamica that it would enforce the CID in district court if it did not
9 respond. *UF 287*. Between June 12 and July 3, 2008, Esquer deposited
10 approximately \$97,369 in cash into his and his wife's bank account, and purchased
11 \$93,083 in cashier's checks to pay off the mortgage on the home he and his wife
12 had owned since 1987. *UF 288-90*. On July 16, 2008, Plaintiff petitioned this
13 Court to enforce the CID.¹¹ Plaintiff served Esquer with this Court's July 17, 2008
14 show cause order on July 18, 2008, and served him with this Court's order
15 enforcing the CID on July 31, 2008. *UF 291-93*.

16 On August 22, 2008, Plaintiff personally served Esquer with this Court's
17 August 21, 2008 order to show cause why Dinamica should not be held in civil
18 contempt for its failure to comply with the order enforcing the CID. *UF 294-96*.
19 Approximately eight days later, Esquer and Rosa Esquer transferred title in their
20 South Gate, California home (ID#1) from "Jose Mario Esquer and Rosa Esquer,
21 husband and wife, as joint tenants" to "Rosa Esquer, a married woman, as her sole
22 and separate property." *UF 297*. The transfer of ID#1 was a gift, with Esquer
23 receiving nothing in return. *UF 298*. Esquer has admitted that he transferred the
24 home to his wife because he was afraid of losing it after the FTC served Dinamica
25 with a CID. *UF 299*. He also continued to reside in the home after it was
26 transferred (*UF 300-01*) and at the time of the transfer, had no other significant

27 _____
28 ¹¹See *FTC v. Dinamica Financiera LLC*, CV-08-04649 MMM (PJWx) (C.D. Cal Jul 16, 2008).

1 assets to his name (*UF 302*).

2 **VI. ARGUMENT**

3 Summary judgment is appropriate when the movant shows “there is no
4 genuine issue as to any material fact and that the moving party is entitled to
5 judgment as a matter of law.” Fed. R. Civ. P. 56(c). Summary judgment is proper
6 when a rational trier of fact would not be able to find for the non-moving party on
7 the claims at issue.¹² The moving party bears the initial burden of demonstrating
8 the absence of a genuine issue of material fact for trial, but it need not disprove the
9 other party’s case.¹³ Once Plaintiff supports its motion for summary judgment,
10 Defendants “may not rest upon the mere allegations or denials of their pleadings,
11 but . . . must set forth specific facts showing that there is a genuine issue for trial.”
12 Fed. R. Civ. P. 56(e). Any opposition to this motion must set forth evidence that is
13 “‘significantly probative’ as to any fact claimed to be disputed.”¹⁴

14 **A. The Court should enter summary judgment on count one against** 15 **Defendants for violating the FTC Act**

16 Section 5 of the FTC Act prohibits unfair and deceptive acts and practices in
17 or affecting commerce. 15 U.S.C. § 45. An act or practice is deceptive if “first,
18 there is a representation, omission, or practice that, second, is likely to mislead
19 consumers acting reasonably under the circumstances, and third, the
20 representations, omission, or practice is material.”¹⁵ Intent to defraud and good
21 faith are irrelevant,¹⁶ and the existence of some satisfied customers is not a defense
22

23 ¹²*Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587
24 (1986).

25 ¹³*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Celotex Corp.*
v. Catrett, 477 U.S. 317, 323-25 (1986).

26 ¹⁴*SEC v. Murphy*, 626 F.2d 633, 640 (9th Cir. 1980) (citations omitted).

27 ¹⁵*FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994).

28 ¹⁶*See, e.g., Removatron Int’l Corp. v. FTC*, 884 F.2d 1489, 1495 (1st Cir.
1989); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir.
1988).

1 to liability.¹⁷

2 1. Defendants made misleading representations

3 Misleading statements can be express or implied.¹⁸ In determining if a
4 representation is misleading, the court considers the “overall net impression” of the
5 representations.¹⁹ Representations “capable of being interpreted in a misleading
6 way should be construed against” the person making them.²⁰ Disclaimers or
7 qualifications cannot shield a defendant from liability unless they are so prominent
8 and unambiguous so as to “leave an accurate impression.”²¹

9 The undisputed facts show that Defendants, in numerous instances,
10 represented, expressly or by implication, that they would stop foreclosure or obtain
11 mortgage loan modifications in all or virtually all instances. As discussed in
12 Sections IV.A and B *infra*, Defendants made these representations in their frequent
13 radio advertisements that told consumers to “keep,” “not lose,” their homes and
14 represented that consumers could get “new” “reduced” payments that “thousands”
15 had already qualified for.” Defendants also made these representations during in-
16 person consultations conducted by various sales agents over the course of multiple
17 years. While Defendants did little more than forward information to their clients’
18 lenders and now acknowledge that any decision was up to a client’s lender, they
19 claimed to be “experts,” so confident in their abilities that they promised clients, in
20 writing, when they would resume their payments and estimated their new payment
21 amounts. Even where Defendants’ sales agents did not specifically “guarantee”

22 _____
23 ¹⁷*FTC v. Stefanchik*, 559 F.3d 924, 928 n.12 (9th Cir. 2009) (citations
omitted).

24 ¹⁸*See, e.g., FTC v. Figgie Int’l*, 994 F.2d 595, 604 (9th Cir. 1993); *see also*
FTC v. Gill, 71 F. Supp 2d 1030, 1043 (C.D. Cal. 1999).

25 ¹⁹*Gill*, 71 F. Supp 2d at 1043 (*citing FTC v. U.S. Sales Corp.*, 785 F. Supp.
737, 745 (N.D. Ill. 1992)); *see also FTC v. Cyberspace.com*, 453 F.3d 1196, 1200
26 (9th Cir. 2006).

27 ²⁰*Gill*, 71 F. Supp 2d at 1045-46 (*citing Resort Car Rental Sys., Inc. v. FTC*,
518 F.2d 962, 964 (9th Cir. 1975)).

28 ²¹*Removatron Int’l Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989) (*citing*
Giant Food, Inc. v. FTC, 322 F.2d 977, 986 (D.C. Cir. 1963)).

1 their results,²² they implied nearly certain success, repeatedly assuring their clients
2 “not to worry” and bragging of their past successes.

3 Contrary to Defendants’ representations, many consumers did not receive
4 the mortgage loan modifications or foreclosure protection they were promised. In
5 fact, as discussed in Section IV.C. *infra*, approximately 538 of Defendants’ clients
6 sought to cancel their services and get refunds, approximately 43 percent of
7 Defendants’ clients lost their homes through foreclosure, and no more than 16.5
8 percent of their clients who had concluded their services with Defendants obtained
9 modifications. The failure of Oficinas to pay its consumers’ modified mortgage
10 payments as represented is additional evidence that Oficinas failed to obtain
11 modifications for its clients. Quite simply, Defendants did not stop foreclosure or
12 obtain modifications in all or virtually all instances, and they knew it. Thus, their
13 representations that they would were false and misleading.

14 2. Consumers reasonably relied on Defendants’ representations

15 It was reasonable for consumers to rely on Defendants’ claims. Reliance on
16 express claims and deliberately implied claims is presumed to be reasonable.²³
17 Consumers’ reliance was also reasonable as Defendants assured consumers they
18 had hired “professionals,” “experts,” “financial consultants,” and in the case of
19 Oficinas, an attorney. Defendants’ clients were often unfamiliar with the
20 foreclosure process and the English language, and thus turned to Defendants for
21 expertise and guidance. These “experts,” after having interviewed consumers and
22 reviewed their financial situations, then assured consumers that they would not
23 lose their homes and/or would receive the modifications promised. Defendants’
24 clients took Defendants at their word, and it was reasonable to do just that.

25
26 ²²Defendants do not have to use the word “guarantee” to do just that. *See Gill*, 71 F. Supp. 2d at 1044.

27 ²³*In re Thompson Medical Co.*, 104 F.T.C. 648, 788-89 n.6 (1984); *see also Pantron I*, 33 F.3d at 1095-96; *FTC v. Five-Star Auto Club, Inc.*, 97 F.Supp. 2d
28 502, 528 (S.D.N.Y. 2000) (internal citations omitted).

1 3. Defendants' representations were material

2 There can be no question that Defendants' representations were material.
3 Express claims are presumed to be material,²⁴ while a "misleading impression
4 created by a solicitation is material if it 'involves information that is important to
5 consumers and, hence, likely to affect their choice of, or conduct regarding, a
6 product.'"²⁵ Implied claims that go to the heart of the solicitation or the
7 characteristics of the product or service offered are also material.²⁶

8 Clearly, something as important as the probability of saving a home or
9 modifying a mortgage is material to any consumer, especially one who fears losing
10 the home through foreclosure and is willing to pay thousands of dollars to avoid
11 it. As consumer Silvia Benavidez explained, "If Mr. Pozo would have explained to
12 us that there was a possibility that our lender would not agree to change our
13 mortgage, we would not have risked our money with Mr. Johnson's office." *UF*
14 *199*. Indeed, it's hard to imagine financially strapped consumers gambling
15 thousands of dollars and their homes for the mere possibility of saving them or
16 getting a reduced payment.

17 **B. The Court should order equitable relief, including permanent**
18 **bans and a monetary judgment, against each defendant**

19 The second proviso of Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
20 states that "in proper cases the [FTC] may seek, and after proper proof, the court
21 may issue, a permanent injunction" against violations of "any provision of law
22 enforced by the [FTC]." A violation of Section 5 of the FTC Act is a "proper case"
23

24 ²⁴*Pantron*, 33 F.3d at 1095-96.

25 ²⁵*Cyberspace.com*, 453 F.3d at 1201 (citing *In Re Cliffdale Assocs., Inc.*, 103
F.T.C. 110, 165 (1984)).

26 ²⁶*See FTC v. Stefanchik*, 2007 U.S. Dist. LEXIS 25173 at *14-15 (W.D. Wa.
27 2007); *see also Figgie*, 994 F.2d at 604 (law does not protect people who merely
28 imply their deceptive claims); *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir.
1992); *In the Matter of Southwest Sunsites*, 105 F.T.C. 7, 149 (1985), 1980 FTC
LEXIS 86, *375.

1 for injunctive relief under Section 13(b).²⁷

2 1. The individual Defendants are subject to injunctive relief

3 An individual may be held liable for injunctive relief under the FTC Act if a
4 corporate defendant violated the FTC Act and the individual participated directly
5 in the deceptive acts or had authority to control them.²⁸ Authority to control can be
6 evidenced by active involvement in business affairs and the making of corporate
7 policy, including assuming the duties of a corporate office.”²⁹

8 **Valentin Benitez:** As explained in Section III.B., Benitez was intimately
9 involved in every aspect of the businesses, including advertising and sales. As a
10 member and supervisor of Dinamica and the manager and owner in fact of
11 Soluciones, Benitez also had authority to control the representations being made.
12 By creating the advertisements for and managing much of the day-to-day
13 operations at Oficinas, Benitez also had the authority to control the representations
14 made by Oficinas.

15 **Jose Mario Esquer:** As a member, manager, and supervisor at Dinamica,
16 and a supervisor at Soluciones, Esquer had authority to control the representations.
17 Esquer’s control is also evidenced by his active involvement in the entities as
18 discussed in Section III.B. Also, despite later attempting to isolate himself from the
19 business by not assuming a corporate officer position at Soluciones, Esquer
20 continued to be the businesses’ credit-worthy partner, knowingly enabling the
21 continuation of the deceptive practices.

22 **Eric Douglas Johnson:** As an officer, Johnson had authority to control
23 Oficinas’ representations. Johnson also participated in the deceptive practices by
24 sanctioning Oficinas’ advertising and continuing to operate the business in the
25

26 ²⁷*FTC v. H.N. Singer*, 668 F.2d 1107, 1110-11 (9th Cir. 1996).

27 ²⁸*Stefanchik*, 559 F.3d at 931; *see also Cyberspace.com*, 453 F.3d at 1202;
FTC v. Publ’g Clearing House, 104 F.3d 1168, 1170-71 (9th Cir.1997).

28 ²⁹*FTC v. Amy Travel*, 875 F.2d 564, 573 (7th Cir. 1989).

1 same manner as Soluciones, even after he received notice of the TRO.³⁰

2 2. Defendants’ extensive deceptive practices necessitate strong
3 injunctive provisions, including a permanent ban

4 A permanent injunction is justified when there is a “cognizable danger of
5 recurrent violation,”³¹ or some reasonable likelihood of future violations.³² Past
6 illegal conduct is highly suggestive of future violations,³³ especially where past
7 violations are systematic.³⁴ Appropriate injunctive remedies available to the Court
8 to ensure effective relief include enjoining the making of misrepresentations,
9 enjoining otherwise permissible practices, reasonable fencing-in provisions, and
10 record-keeping and monitoring provisions.³⁵

11 Over the course their operations, Defendants deceived numerous consumers.
12 As explained above, the deception was widespread and continued even in the face
13 of lawsuits and complaints, through multiple entities,³⁶ and even after the Court
14 issued a TRO. Defendants have shown that they are unwilling to comply with the
15 law and should be permanently enjoined.

17 ³⁰In fact, when Johnson learned of the TRO, he did not ensure that his agents
18 were not making misrepresentations, but abandoned the clients he had agreed to
19 take on and then attempted to recharge them for the same services. *UF 137*.

20 ³¹*U.S. v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953).

21 ³²*CFTC v. CoPetro Marketing Group, Inc.*, 502 F. Supp. 806, 818-19 (C.D.
22 Cal. 1980).

23 ³³*See id.*; *see also SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 807
24 (2d Cir. 1975).

25 ³⁴*See FTC v. Sharp*, 782 F. Supp. 1445, 1454 (D. Nev. 1991).

26 ³⁵*See, e.g., FTC v. Think Achievement*, 144 F. Supp. 2d 1013, 1016-18 (N.D.
27 Ind. 2000). *See also FTC v. Colgate Palmolive Co.*, 380 U.S. 374, 395 (1965)
28 (“Having been caught violating the Act, respondents ‘must expect some fencing
in.’”); *Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1154 (9th Cir. 1984) (*quoting*
FTC v. Ruberoid Co., 343 U.S. 470, 473 (1952)) (“Fencing-in provisions serve to
‘close all roads to the prohibited goal, so that [the FTC’s] order may not be
by-passed with impunity.’”)

³⁶When Dinamica was served with a CID, Dinamica destroyed its
documents, and Benitez and Esquer changed locations and renamed the business
Soluciones. *UF 6, 37, 76, 286-86*. Johnson has also been associated with several
foreclosure rescue operations. *UF 110, 112*.

1 To prevent future illegal conduct, Plaintiff seeks to ban Defendants from
 2 engaging in loan modification or foreclosure relief services, and from making, or
 3 assisting others in making, any material misrepresentation in connection with the
 4 sale of any good or service, including financial related goods or services (*see*
 5
 6 Sections I to III of the Proposed Final Judgment lodged herewith).³⁷ Such
 7 provisions are reasonable, necessary and appropriate considering Defendants'
 8 pattern of attempting to avoid prosecution by changing business names and
 9 locations, and their failure to comply with court orders, including the TRO.
 10 Plaintiff also seeks various fencing-in and compliance monitoring and record-
 11 keeping provisions necessary to ensure compliance with the order (*see* Sections
 12 IV.-V., VII.-IX. of the Proposed Final Judgment).

13 3. The corporate defendants are liable for consumer redress

14 In giving courts authority to grant permanent injunctions, Congress also
 15 gave broad authority to grant “any ancillary relief necessary to accomplish
 16 complete justice,” including redress.³⁸ A corporation is liable for monetary relief if
 17 it “engaged in misrepresentations or omissions of a kind usually relied on by
 18 reasonably prudent persons” and injury resulted.³⁹ The FTC does not need to show
 19 that each consumer relied on the misrepresentations; it is sufficient to show that
 20 misrepresentations were widely disseminated and consumers purchased

21 ³⁷Courts have banned violators of the FTC Act from an array of practices.
 22 *See, e.g., FTC v. Gill*, 265 F.3d 944, 957-58 (9th Cir. 2001) (ban on participation in
 23 credit-repair); *FTC v. Publishing Clearing House, Inc.*, 1995-1 Trade Cas. ¶ 71,006
 24 (1995 U.S. Dist. LEXIS 19659, at *11) (D. Nev. 1995), *aff'd* 106 F.3d 407 (9th
 25 Cir. 1997) (ban on prize-promotion telemarketing); *FTC v. Medicor, LLC*, 2002-2
 26 Trade Cas. (CCH) ¶ 73,759 (2002 U.S. Dist. LEXIS 16220, at *3-4) (C. D. Cal.
 27 2002) (ban on telemarketing and on marketing of work-at-home medical billing
 opportunities). In addition, in *FTC v. Ryan*, 09-00535 (D.D.C. filed Nov. 20,
 2009), the district court entered a stipulated final judgment in a mortgage
 foreclosure rescue case that included a ban which is identical to the ban that the
 FTC seeks here. *UF 303*.

28 ³⁸*Stefanchik*, 559 F.3d at 931 (quoting *Pantron I*, 33 F.3d at 1102).

³⁹*Pantron I* at 1102.

1 Defendants' services.⁴⁰ The proper calculation for consumer redress is the full
2 amount that consumers paid, less any refunds, even if it exceeds Defendants'
3 unjust enrichment.⁴¹

4 As argued above, the Defendants made material misrepresentations of a
5 kind usually relied upon by a reasonably prudent person. Defendants made these
6 misrepresentations through radio advertisements and during in-person
7 consultations conducted by various sales agents over the course of multiple years,
8 clearly making the misrepresentations not just widely disseminated, but systematic.
9 As discussed above, consumers were injured by having paid Defendants millions
10 of dollars. Many consumers also lost their homes.

11 4. The individual defendants are jointly and severally liable for the
12 corporate defendants' consumer redress

13 An individual who is liable for injunctive relief is also liable for restitution if
14 he had knowledge of the deception.⁴² Knowledge can be demonstrated by showing
15 actual knowledge of material misrepresentations, reckless indifference to the truth
16 or falsity of the misrepresentations, or an awareness of a high probability of fraud
17 along with an intentional avoidance of the truth.⁴³ An individual's degree of
18 participation in the corporation's business affairs is probative of knowledge and
19 can be sufficient to establish the requisite knowledge for personal restitutionary
20 liability.⁴⁴

21 ***Valentin Benitez:*** Benitez knew or should have known that Defendants did
22 not stop foreclosure or obtain modifications in all or virtually all instances. Clients

23 ⁴⁰*Figgie*, 994 F.2d at 605; *see also FTC v. Kitco of Nevada*, 612 F. Supp
24 1282, 1293-94 (D. Minn. 1985).

25 ⁴¹*Stefanchik*, 559 F. 3d at 931-32; *Figgie*, 994 F.2d at 606-07.

26 ⁴²*Publ'g Clearing House*, 104 F.3d at 1171. Individual defendants can be
held jointly and severally liable for restitution. *See Sharp*, 782 F. Supp. at 1449.

27 ⁴³*FTC v. Affordable Media*, 179 F.3d 1228, 1234 (9th Cir. 1999); *see also*
Publ'g Clearing House, 104 F.3d at 1171, *citing FTC v. Am. Standard Credit Sys.*,
28 *Inc.*, 874 F. Supp. 1080, 1089 (C.D. Cal. 1994).

⁴⁴*Affordable Media*, 179 F.3d at 1235.

1 complained to him and even sued him about this, the client files indicated as much,
2 and he has admitted it. *UF 85-87, 102, 104-05*. Indeed, it is hard to imagine how
3 anyone as involved in the business as he was would not know that the
4 representations were false and thus misleading. Despite this, Denitez continued to
5 make and sanction the misrepresentations.

6 ***Jose Mario Esquer:*** Esquer also knew the representations were misleading
7 or was recklessly indifferent to their truth. Esquer knew of the entities' extensive
8 advertising and, at the same time, knew or should have known that Dinamica and
9 Soluciones did not stop foreclosure or obtain modifications in all or virtually all
10 instances. Esquer frequently interacted with the sales agents, received foreclosure
11 notices from clients, filed bankruptcy petitions to stop foreclosure sales, received
12 client complaints, approved refunds, and cancelled client files (many of which said
13 "sold" on them). He was also aware that any decision was up to the bank and
14 heard clients complain that nothing had been done for them and that they had not
15 received their modifications. *UF 59, 65*. Esquer was on sufficient notice of the
16 misleading nature of Dinamica's and Soluciones' representations. If Esquer did
17 not have actual knowledge that their claims were misleading, he was at least
18 recklessly indifferent to or avoided knowing the truth about them.

19 ***Eric Douglas Johnson:*** Johnson also knew or should have known that
20 Defendants' representations were misleading. Johnson knew that lenders do not
21 approve modifications requests in all instances. If Johnson avoided knowing of the
22 misrepresentations when he first assumed the business, he was clearly on notice by
23 the time he was served with the TRO. Despite this, he allowed Oficinas to run as a
24 continuation of Dinamica and Soluciones with virtually no changes to the
25 deceptive practices.

26 C. **The Court should enter summary judgment on count two and set**
27 **aside the fraudulent transfer of ID#1**

28

1 Under FDCPA § 3304(b)(1)(A), a “transfer” is fraudulent as to a “debt”⁴⁵ to
 2 the “United States,”⁴⁶ *regardless of whether the debt arises before or after the*
 3 *transfer is made*, if the debtor made the transfer with actual intent to hinder, delay
 4 or defraud a creditor. The courts recognize that “[w]hether a conveyance was
 5 made with fraudulent intent is a question of fact, and proof often consists of
 6 inferences from the circumstances surrounding the transfer.” *Filip v. Bucurenciu*,
 7 129 Cal. App. 4th 825, 834 (2005).

8 In determining whether a debtor had “actual intent” to hinder, delay, or
 9 defraud a creditor, the Court may consider, among other facts, whether: (1) the
 10 transfer or obligation⁴⁷ was made to an “insider;”⁴⁷ (2) the debtor retained possession
 11 or control of the property transferred after the transfer; (3) before the transfer was
 12 made, the debtor had been sued or threatened with suit; (4) the transfer was of
 13 substantially all of debtor’s assets; or (5) the value of the consideration received by
 14 the debtor was reasonably equivalent to the value of the asset transferred or the
 15 amount of the obligation incurred. 28 U.S.C. § 3304(b)(2).

16 *Transfer to an Insider:* As Esquer’s wife, Rosa Esquer is an insider.

17 *Retaining possession or control over the transferred asset:* Esquer continued
 18 to retain control over ID#1. He has admitted that he continued to reside at ID#1
 19 with his family after transferring it to his wife. *UF 301*.

20 *Existence of lawsuits and investigations, and timing of transfer:* Esquer

21
 22 ⁴⁵The term “debt” is defined to include “an amount that is owing to the
 23 United States on account of a ... fine, ... penalty, restitution, damages, interest ... or
 24 other source of indebtedness to the United States.” 28 U.S.C. §3002 (3)(B). A
 25 money judgment obtained pursuant to Section 5(a) of the FTC Act, 15 U.S.C.
 26 § 45(a), for consumer redress is a “debt,” as defined in the FDCPA. *FTC v.*
 27 *National Business Consultants, Inc.*, 376 F.3d 317, 319-20 (5th Cir. 2004).

28 ⁴⁶“United States” is defined to include “an agency, department, commission,
 board, or other entity of the United States.” 28 U.S.C. § 3002(15). The Federal
 Trade Commission is a commission of the United States. 15 U.S.C. § 41.

⁴⁷The term “insider” includes “a relative of the debtor” and “a corporation of
 which the debtor is a director, officer or person in control.” 28 U.S.C. § 3301(5).
 The term “relative” includes “spouse.” 28 U.S.C. § 3301(7).

1 knew of Plaintiff’s investigation against him and its pending action to enforce the
2 CID in this Court. When he learned of the investigation, he sought to escape
3 liability by moving the business and changing its name. After realizing that
4 Dinamica’s “fresh start” failed and he might, indeed, face substantial liability,
5 Esquer sought to preserve the most valuable asset he had, his home, by transferring
6 it to his wife. In fact, as he admitted, he transferred the home because he was
7 afraid of losing it.

8 *Transfer of substantially all assets:* When Esquer transferred ID#1 to his
9 wife, he had no other substantial assets.

10 *Lack of reasonably equivalent value in consideration:* The transfer of ID#1
11 to Rosa Esquer was a gift, with Esquer having received nothing in return.

12 These factors all point to Esquer having had “actual intent” to hinder, delay
13 or defraud the U.S. Government, including Plaintiff, in making the transfer. The
14 transfer of ID#1 from Esquer to Rosa Esquer was an unabashed attempt to preserve
15 assets in the face of potential liability in contravention of the FDCPA.

16 **VII. CONCLUSION**

17 For the foregoing reasons, Plaintiff respectfully requests that the Court enter
18 a permanent injunction banning Defendants from all mortgage foreclosure rescue
19 services and enjoining them from making material misrepresentations, and
20 awarding equitable monetary relief. Plaintiff respectfully requests that the Court
21 also set aside the transfer of ID#1.

23 Dated: May 24, 2010

Respectfully Submitted,

25 /s/
26 _____
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