

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

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,  
Plaintiff,

v.

DINAMICA FINANCIERA LLC,  
a California limited liability company;

SOLUCIONES DINAMICAS, INC.,  
a California corporation;

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

ERIC DOUGLAS JOHNSON,  
an individual;

VALENTIN BENITEZ,  
an individual;

JOSE MARIO ESQUER,  
an individual; and

ROSA ESQUER  
an individual,

Defendants.

) CASE NO. CV 09-03554 MMM (PJWx)

) ORDER GRANTING PLAINTIFF'S  
) MOTION FOR SUMMARY JUDGMENT

---

Following a civil investigation of defendants' business practices, the Federal Trade Commission ("FTC") filed this action against three California corporations – Dinamica Financiera LLC, Soluciones Dinamicas, Inc., and Oficinas Legales de Eric Douglas Johnson, Inc. – and their

1 respective principals – Valentin Benetiz, Jose Mario Esquer, and Eric Douglas Johnson.<sup>1</sup> Plaintiff  
2 contends that defendants violated Section 5(a) of the Federal Trade Commission Act, 15 U.S.C.  
3 § 45(a), by making material misrepresentations to consumers seeking assistance in modifying their  
4 home mortgage loans.<sup>2</sup> The FTC has now moved for summary judgment and entry of an order  
5 granting injunctive and equitable monetary relief.<sup>3</sup> Defendants have not opposed the FTC’s  
6 motion.<sup>4</sup> The court held a hearing on the FTC’s motion on August 16, 2010. Defendants did not  
7 appear.

## 8 9 I. FACTUAL BACKGROUND

### 10 A. Dinamica Financiera LLC

11 Having previously worked together at a company that assisted homeowners at risk of  
12 foreclosure, defendants Valentin Benetiz and Jose Mario Esquer formed Dinamica Financiera LLC  
13 (“Dinamica”) in August 2000 to work with consumers who were behind on their mortgage  
14

---

15 <sup>1</sup>First Amended Complaint (“FAC”), Docket No. 47 (Nov. 25, 2009). Plaintiff FTC is  
16 an independent agency of the U.S. Government, authorized to enforce Section 5(a) of the Federal  
17 Trade Commission Act by initiating federal claims against alleged violators. See 15 U.S.C.  
§§ 41–58.

18 <sup>2</sup>*Id.*, ¶¶ 29–33. On June 3, 2009, the court entered a temporary injunction barring  
19 defendants from involvement in this type of business activity and from transferring or  
20 encumbering their assets. (Preliminary Injunction, Docket No. 30 (June 3, 2009)).

21 <sup>3</sup>Motion for Summary Judgment (“Motion”), Docket No. 86 (May 24, 2010). The FTC  
22 originally sought judgment on a second claim, alleging that defendant Jose Mario Esquer  
23 fraudulently transferred real property to his wife, co-defendant Rosa Esquer, to hinder collection  
24 of any potential judgment in this matter. (FAC, ¶¶ 34–35). The parties subsequently settled this  
claim. (Final Order, Docket No. 103 (July 15, 2010)). Therefore, this order addresses only  
plaintiff’s first claim under 15 U.S.C. § 45(a), which is not asserted against Rosa Esquer.

25 <sup>4</sup>The court granted defendants’ request for a thirty-day extension of time to oppose  
26 plaintiff’s motion to July 7, 2010. (Order Granting *Ex Parte* Request to Continue, Docket No.  
27 100 (June 10, 2010)). Because defendants Valentin Benetiz, Jose Mario Esquer, and Rosa Esquer  
28 are proceeding *pro se*, the court also provided notice of the standards governing motions for  
summary judgment. (Notice to *Pro Se* Defendants, Docket No. 93 (May 28, 2010)). No  
opposition or further requests for extension were received from any defendant.

1 payments.<sup>5</sup> Esquer, who was president of the company, supervised customer service agents  
2 working at Dinamica.<sup>6</sup> He worked with clients, accepted payments, issued refunds, signed state-  
3 mandated filings, signed the office lease, received profit distributions, and was a signatory on  
4 Dinamica's bank accounts.<sup>7</sup> Benitez was a manager at Dinamica, responsible for hiring, firing,  
5 training, and directing many of its employees.<sup>8</sup> Benitez was also responsible for much of the sales  
6 activity at Dinamica, drafting the company's contracts, conducting staff meetings, and authorizing  
7 commission payments.<sup>9</sup> Acting alone and in concert, Esquer and Benitez formulated, directed,  
8 controlled, and participated in Dinamica's sales and business practices.<sup>10</sup>

9 Based in Downey, California, Dinamica worked primarily with clients who spoke Spanish  
10 and who did not understand the foreclosure process or the notices they received in connection  
11 therewith.<sup>11</sup> In addition to magazine advertisements, Dinamica advertised its mortgage assistance  
12

13  
14 <sup>5</sup>Statement of Uncontroverted Facts and Conclusions of Law ("SUF"), Docket No. 86,  
15 May 24, 2010), ¶¶ 3-4, 20. As noted, defendants have not disputed the facts set forth in the  
16 FTC's statement of uncontroverted facts. Where the FTC's facts are supported by declarations,  
17 admissions, or other admissible evidence, the court deems them uncontroverted. Cf. *Hopkins v.*  
18 *Blommer Chocolate Co.*, No. 02-5335 EDL, 2003 WL 22416474, \*1 (N.D. Cal. Oct. 14, 2003)  
19 ("On September 4, 2003, Defendant filed this motion for summary judgment, urging the Court  
20 to grant summary judgment on the ground that Plaintiff had failed to meet his burden of showing  
21 intentional discrimination. Plaintiff has not filed an opposition to Defendant's motion. On October  
22 14, 2003, the Court held a hearing on this matter. Charles Goldstein represented Defendant.  
23 Plaintiff did not appear, nor did he contact the Court in advance regarding his absence.  
24 Accordingly, the motion for summary judgment is unopposed and the facts set forth by Defendant,  
25 which are supported by declarations and deposition testimony, are uncontroverted").

22 <sup>6</sup>SUF, ¶¶ 43-46.

23 <sup>7</sup>*Id.*, ¶¶ 25-53.

24 <sup>8</sup>*Id.*, ¶¶ 70, 88.

25 <sup>9</sup>*Id.*, ¶¶ 79-82, 89, 103. The FTC estimates that Benitez was responsible for 43 percent  
26 of the sales made by Dinamica. (*Id.*, ¶ 80).

27 <sup>10</sup>*Id.*, ¶¶ 21, 70.

28 <sup>11</sup>*Id.*, ¶¶ 2, 167-68.

1 services primarily through radio advertisements.<sup>12</sup> These advertisements typically ran on Spanish-  
2 language radio stations, and were broadcast frequently between September 2005 and October  
3 2009.<sup>13</sup> The advertisements stated that Dinamica could help consumers keep their homes by  
4 arranging deferred payments for borrowers who “need[ed] some time to continue making [their]  
5 payments” or by negotiating “new,” “reduced,” or “smaller” monthly mortgage payments.<sup>14</sup>  
6 Consumers understood from the advertisements that Dinamica would help people avoid  
7 foreclosure by obtaining “breaks” from required monthly payments or loan modifications that  
8 would lower their mortgage payments.<sup>15</sup>

9 Benitez drafted and placed the advertisements, and spoke on each advertisement.<sup>16</sup> Esquer  
10 knew of the radio advertisements and heard them while he was working at Dinamica.<sup>17</sup> When  
11 consumers called in response to the advertisements, they were typically told to come to  
12 Dinamica’s offices for an in-person consultation.<sup>18</sup> During these calls, Dinamica’s agents  
13 represented that clients’ homes would not be lost to foreclosure if they engaged Dinamica and  
14 followed the advice they were given.<sup>19</sup>

15 During the first six years of its operation, the primary service Dinamica offered was to  
16  
17

---

18 <sup>12</sup>*Id.*, ¶¶ 83, 139–47, 150, 152. Prior to 2005, Dinamica called consumers who were  
19 behind on their mortgage payments. (*Id.*, ¶ 151).

20 <sup>13</sup>*Id.*, ¶ 139, 152.

21 <sup>14</sup>*Id.*

22 <sup>15</sup>*Id.*, ¶¶ 153–56.

23 <sup>16</sup>*Id.*, ¶¶ 83–84.

24 <sup>17</sup>*Id.*, ¶¶ 61–62.

25 <sup>18</sup>*Id.*, ¶ 157.

26  
27 <sup>19</sup>*Id.*, ¶¶ 173–75. When an undercover FTC employee called Dinamica, for example, a  
28 sales agent represented that “[i]f we start the process, of course, there is no reason to fear losing  
the house.” (*Id.*, ¶ 175).

1 secure a temporary deferral of a client’s mortgage payments.<sup>20</sup> Dinamica promised clients that  
2 it would secure the lender’s agreement to allow them to forego making mortgage payments for five  
3 to six months, and that the payments that had been deferred could be made at the end of the  
4 mortgage term.<sup>21</sup> Dinamica guaranteed that deferral agreements would be immediate and  
5 represented that they carried no risk.<sup>22</sup>

6 Beginning in 2006, Dinamica also began offering loan modification services.<sup>23</sup> Dinamica’s  
7 sales agents guaranteed clients that the company would be able to negotiate more favorable  
8 mortgage terms with lenders, and specifically promised clients lower payments, fixed interest  
9 rates, lower principal balances, or combined mortgage payments.<sup>24</sup> Benitez and other Dinamica

---

10  
11 <sup>20</sup>*Id.*, ¶¶ 179–89.

12 <sup>21</sup>*Id.*, ¶¶ 180, 186. Former Dinamica client, Javier Benitez, testified that Dinamica agent  
13 “Arreola explained that Dinamica would make an arrangement with [the lender] to grant me a  
14 suspension of my mortgage payments for seven months. He said this suspension would give me  
15 time to save money for when I would resume making my monthly mortgage payments in March  
16 2008. . . . Mr. Arreola explained that the seven monthly mortgage payments missed would be  
17 added at the end of my loan, which I understood as extending the term of my loan by seven  
18 months.” (Plaintiff’s *Ex Parte* Application for a Temporary Restraining Order (“TRO App.”),  
19 Docket No. 6 (May 19, 2009), Exh. 2 (Declaration of Javier Benitez), ¶¶ 6–7).

20 <sup>22</sup>*Id.*, ¶¶ 182–85. Former Dinamica client, Celia Argueta, testified that Benitez said “he  
21 could put all the missed payments at the end of our loans once they came to an agreement with the  
22 bank. He was very insistent that he could do this for us. . . . Because I had some doubts about  
23 the promises made by Mr. Benitez, I asked if he was sure that he could help us. He told me to  
24 trust him, that he had a lot of experience and that he had been doing this for many years. He told  
25 us that we shouldn’t worry about the house, to relax, to take the children to the park, that he  
26 would fix everything with the bank.” (TRO App., Exh. 1 (Declaration of Celia Argueta),  
27 ¶¶ 7–8). Dinamica sales agent Manuel Pozo similarly told an FTC employee that “we will  
28 negotiate with the banks an extension or stopping the payments so that this person can . . . have  
five months without making any house payments.” (SUF, ¶ 185).

24 <sup>23</sup>SUF, ¶ 192.

25 <sup>24</sup>*Id.*, ¶¶ 193–95. Argueta testified that after telling Benitez she and her husband could  
26 not meet their mortgage payments, “Mr. Benitez said that he could help us by talking with the  
27 bank and arranging for a reduced payment, and that he was going to save our house.” (TRO  
28 App., Exh. 1 (Declaration of Celia Argueta), ¶ 7). Similarly, former Dinamica client, Elsa  
Espinoza, stated that she “told Mr. Benitez that my ex-husband had not been able to find a job

1 sales agents promised clients that they would secure these modifications, and assured them that  
2 Dinamica would handle all issues that their lenders raised.<sup>25</sup> In fact, Dinamica representatives told  
3 clients not to speak with their lenders as it might disrupt negotiations; they suggested that clients  
4 simply convey any communications to Dinamica.<sup>26</sup>

5 Typically, Dinamica charged clients the equivalent of one month's mortgage payment for  
6 its services; in some instances, it instructed clients to pay Dinamica rather than the lender.<sup>27</sup>  
7 Despite Dinamica's assurances, many of its clients ultimately lost their homes through  
8 foreclosure.<sup>28</sup> Although it told clients who inquired that it was in negotiations with their lender,  
9 Dinamica often waited months before contacting lenders, if it contacted them at all.<sup>29</sup> Dinamica

10 \_\_\_\_\_  
11 and that we were struggling to make my mortgage payments. . . . I remember that Mr. Benitez  
12 said words to the effect of, 'Don't worry about that. . . . Everything is going to be fixed.' . . .  
13 Mr. Benitez told us that if we made our monthly mortgage payment to Dinamica Financiera, I  
14 would be able to remain in my house without making any further payments until February 2009.  
15 Mr. Benitez said that the payment of \$3,184.29 would guarantee that he would act in my name  
16 and that Dinamica Financiera would negotiate a lower mortgage payment with my lender. He said  
17 that the efforts of Dinamica Financiera would result in my lender reducing the amount of my  
18 monthly mortgage payments to the original amount of \$2,200." (TRO App., Exh. 3 (Declaration  
19 of Elsa Espinoza), ¶ 6).

20 \_\_\_\_\_  
21 <sup>25</sup>SUF, ¶¶ 193–206.

22 <sup>26</sup>*Id.*, ¶¶ 210–11. Former Dinamica client, Javier Benitez, stated that a Dinamica agent told  
23 him "that I would not have to send another mortgage payment to Wilshire [his lender] until March  
24 2008, and advised me not to contact Wilshire during this time because that would get in the middle  
25 of his negotiations." (TRO App., Exh. 2 (Declaration of Javier Benitez), ¶ 7).

26 <sup>27</sup>*Id.*, ¶¶ 162–63.

27 <sup>28</sup>*Id.*, ¶¶ 213, 215–18. Defendants knew that many of their clients' homes had been sold  
28 at foreclosure sales as the files were marked "sold." (*Id.*, ¶ 225).

<sup>29</sup>*Id.*, ¶¶ 222–23. Argueta stated that she and her husband hired Dinamica in May 2008  
after being assured by Benitez that he would negotiate an agreement with the bank to save their  
house from foreclosure. Although Dinamica assured them that negotiations were in progress,  
Argueta received a call from the bank regarding missed mortgage payments and was told that no  
one had contacted the bank on her behalf. After Argueta received notice of a scheduled  
foreclosure sale in June, Benitez told her not to worry because that things were in process.  
Subsequently, another Dinamica employee called to say that nothing could be done to stop the

1 did not failed to obtain the lender’s agreement to defer payments to the end of a client’s mortgage  
2 term.<sup>30</sup> After relying on Dinamica’s assurance that they could defer payments, some of the  
3 company’s clients had to negotiate forbearance agreements or make large lump sum payments that  
4 included late fees to avoid foreclosure.<sup>31</sup> Others who had relied on Dinamica’s assurance of a  
5 deferral of payments lost their homes to foreclosure.<sup>32</sup>

6 Dinamica also failed in numerous instances to obtain promised loan modifications for  
7 clients.<sup>33</sup> Despite the assurances Dinamica gave many clients, the FTC’s investigation uncovered  
8 no evidence that the company tried to obtain modification of loan terms or indeed that it attempted  
9 to negotiate loan terms.<sup>34</sup> generally just gathered the relevant information from their clients and  
10 forwarded it the lenders, sometimes failing to even do that properly.<sup>35</sup> In fact, Dinamica’s efforts  
11 at times resulted in higher mortgage payments for their clients.<sup>36</sup> Contrary to the guarantees made,  
12 both Benitez and Esquer knew that any decision regarding a loan modification was ultimately up  
13  
14

---

15  
16 foreclosure sale. Argueta’s house was sold at auction on July 15, 2010. Dinamica subsequently  
17 refused to return the \$979 the Arguetas had paid for its services. (TRO App., Exh. 1 (Declaration  
18 of Celia Argueta), ¶¶ 14–20).

18 <sup>30</sup>*Id.*, ¶ 226.

19 <sup>31</sup>*Id.*, ¶ 227.

20 <sup>32</sup>*Id.*, ¶ 230. Former Dinamica client Samuel Meza explained that “My lender told me that  
21 I would have to make a lump-sum payment of \$8,000 and continue making my monthly payments  
22 if I wanted to save my home. Apparently my lender could not simply move my missed payments  
23 to the end of my loan as Mr. Benitez said would happen. Although I could continue making my  
24 mortgage payments, I did not have sufficient cash to make a payment as large as required by my  
25 lender. . . . In early 2008 I lost my home to foreclosure.” (*Id.*, ¶ 231).

25 <sup>33</sup>*Id.*, ¶ 233.

26 <sup>34</sup>*Id.*, ¶¶ 237–39.

27 <sup>35</sup>*Id.*, ¶¶ 240–42.

28 <sup>36</sup>*Id.*, ¶ 234.

1 to the lender.<sup>37</sup> Indeed, Dinamica would accept clients who the defendants did not believe would  
2 actually qualify for loan modifications.<sup>38</sup>

3 As a result of Dinamica's general failure to live up to the promises made, many clients  
4 sought refunds.<sup>39</sup> Dinamica rarely gave full refunds, however.<sup>40</sup> Many clients filed complaints  
5 about the company to the FTC, the Better Business Bureau, and the Los Angeles Department of  
6 Consumer Affairs.<sup>41</sup> Esquer and Benitez were both aware of the many complaints filed by their  
7 former clients.<sup>42</sup> In fact, Dinamica and/or Benitez were sued on multiple occasions by former  
8 clients.<sup>43</sup>

9 **B. Soluciones Dinamicas, Inc.**

10 The FTC served Dinamica with a Civil Investigative Demand ("CID") on April 22, 2008.<sup>44</sup>  
11 From May 1 to May 2, 2008, Dinamica destroyed at least eighty-eight client files that were  
12 responsive to the CID and refused to respond to the FTC's requests for information.<sup>45</sup> Dinamica  
13 subsequently transferred its entire business operation – including files, equipment, clients, and  
14 employees – to a new location in Downey, reopening as Soluciones Dinamicas, Inc.

---

15  
16  
17 <sup>37</sup>*Id.*, ¶ 237.

18 <sup>38</sup>*Id.*, ¶ 161. Dinamica would not take on clients if they had already lost their houses to  
19 foreclose or if foreclosure sales were scheduled in the near future. (*Id.*, ¶ 160).

20 <sup>39</sup>*Id.*, ¶ 250.

21 <sup>40</sup>*Id.*, ¶ 259–60. Between 2005 to 2008, Dinamica took in \$3,363,385.20 in income and  
22 issued \$150,077.02 in refunds. (*Id.*, ¶¶ 253–56).

23 <sup>41</sup>*Id.*, ¶¶ 261–65.

24 <sup>42</sup>*Id.*, ¶¶ 68, 85.

25 <sup>43</sup>*Id.*, ¶ 267.

26 <sup>44</sup>*Id.*, ¶ 285.

27 <sup>45</sup>*Id.*, ¶¶ 286–87. The court ultimately issued an order to show cause why Dinamica should  
28 not be held in contempt.

1 (“Soluciones”) on May 22, 2008.<sup>46</sup>

2 Benitez was the primary decision maker behind the move to Soluciones, and was its  
3 “owner in fact.”<sup>47</sup> Benitez held the same management role at Soluciones as at Dinamica,  
4 supervising staff, directing advertising, working with clients, and directing operations.<sup>48</sup> Esquer  
5 worked with Benitez to transfer Dinamica’s business operations to Soluciones.<sup>49</sup> Although Esquer  
6 apparently did not have an ownership interest in the new entity, he continued to serve as a  
7 manager, signing the lease for the new office, supervising employees, signing financial statements,  
8 and tracking sales.<sup>50</sup> Acting alone and in concert, Benitez and Esquer continued to formulate,  
9 direct, control, and participate in Soluciones’ sales and business practices, as they had in  
10 Dinamica’s.<sup>51</sup>

11 These practices included offering loan deferral and modification services,<sup>52</sup> and  
12 broadcasting advertisements offering to help consumers avoid foreclosure.<sup>53</sup> Benitez continued  
13 to draft and appear in the advertisements, which Esquer regularly heard.<sup>54</sup> Soluciones’ agents  
14 continued to promise clients that their loan payments would be deferred and their mortgages

---

16 <sup>46</sup>*Id.*, ¶¶ 6–10.

17 <sup>47</sup>*Id.*, ¶¶ 74–77.

18 <sup>48</sup>*Id.*, ¶¶ 72–89.

19 <sup>49</sup>*Id.*, ¶ 76.

20 <sup>50</sup>*Id.*, ¶¶ 35–50.

21 <sup>51</sup>*Id.*, ¶¶ 21, 70.

22 <sup>52</sup>*Id.*, ¶¶ 173–96. Former client Wendy Romo testified that Soluciones agent Argelia  
23 Zambrano told her and her husband that “the payments [they] had already missed . . . would  
24 simply be tacked on to the back end of our loan.” Romo stated that, “[t]he way Ms. Zambrano  
25 explained it, we would simply make up all of our missed payments at the end of our mortgage  
26 term.” (*Id.*, ¶ 190).

27 <sup>53</sup>*Id.*, ¶ 83–84.

28 <sup>54</sup>*Id.*, ¶¶ 63, 83–84.

1 modified.<sup>55</sup> As with Dinamica, however, Soluciones rarely lived up to the promises it made to  
2 its clients, and many of them lost their homes in foreclosure.<sup>56</sup> Both Esquer and Benitez were well  
3 aware of continuing complaints from their clients.<sup>57</sup>

4 **C. Oficinas Legales de Eric Douglas Johnson, Inc.**

5 The FTC continued to investigate defendants' business practices throughout 2008, and  
6 personally served Esquer with court orders enforcing the CID.<sup>58</sup> Believing that he needed a  
7 lawyer or a real estate license to continue Soluciones's loan modification business, Benitez began  
8 negotiating with attorney Eric Douglas Johnson in March 2009 to transfer all operations to  
9 Johnson's newly formed law practice.<sup>59</sup> In April 2009, Soluciones paid Johnson \$5,000 to assume  
10 responsibility for its operations, including all of its clients.<sup>60</sup> Johnson ended an association with  
11 a different loan modification business, and incorporated Oficinas Legales de Eric Douglas  
12 Johnson, Inc., on April 15, 2009, to take over Soluciones' operations.<sup>61</sup> On April 18, 2009,  
13 Johnson moved into the Soluciones office, which was renamed Oficinas Legales de Eric Douglas  
14 Johnson, Inc. ("Oficinas"). Johnson advised the employees that he was in charge and that they  
15 now worked for Oficinas.<sup>62</sup>

16 Nearly all of the Soluciones employees, including the sales agents, remained with  
17

---

18  
19 <sup>55</sup>*Id.*, ¶¶ 179–96. For example, Soluciones' agent Argelia Zambrano guaranteed Wendy  
20 and Carlos Romo that Soluciones would obtain a substantially reduced mortgage payment for  
21 them. (*Id.*, ¶ 196).

22 <sup>56</sup>*Id.*, ¶¶ 213–42.

23 <sup>57</sup>*Id.*, ¶¶ 64–68, 85–87.

24 <sup>58</sup>*Id.*, ¶¶ 285–96.

25 <sup>59</sup>*Id.*, ¶¶ 18, 90, 113.

26 <sup>60</sup>*Id.*, ¶¶ 14–15, 116, 119.

27 <sup>61</sup>*Id.*, ¶ 13.

28 <sup>62</sup>*Id.*, ¶¶ 120–21.

1 Oficinas.<sup>63</sup> Although Esquer worked at Oficinas, the FTC has not alleged that he maintained  
2 active involvement in the business once Johnson took control.<sup>64</sup> By contrast, Benitez maintained  
3 an active role in operating the mortgage loan deferral and modification business at Oficinas,  
4 working on a full-time basis.<sup>65</sup> Benitez, in fact, was responsible for ensuring the continuity of the  
5 business during the transition from Soluciones to Oficinas.<sup>66</sup> Benitez continued to manage the  
6 sales staff, authorize commissions, grant or deny refund requests, and work with clients while at  
7 Oficinas.<sup>67</sup> He thus continued to formulate, direct, control, and participate in the sales and  
8 business practices of Oficinas, both alone and in concert with Johnson.<sup>68</sup>

9 Benitez also appeared in new radio advertisements for Oficinas, which he drafted and  
10 arranged to have air.<sup>69</sup> These commercials offered the same mortgage services as prior Dinamica  
11 and Soluciones advertisements, and also promised that clients would be assisted by an attorney.<sup>70</sup>  
12 As a result, new Oficinas' clients believed they had hired an attorney to represent them.<sup>71</sup>

13 Johnson, who was a member of the State Bar of California at the time, was the president  
14

---

15 <sup>63</sup>*Id.*, ¶ 17. Benitez testified that Manuel Pozo and Argelia Sambrano were the primary  
16 sales agents from Soluciones who continued to work for Oficinas. (Deposition of Valentin  
17 Benitez at 74:21-75:5). Pozo was also a sales agent at Dinamica. (SUF, ¶ 185).

18 <sup>64</sup>The FTC thus alleges that Esquer should be held jointly and severally liable for  
19 misrepresentations made by Dinamica and Soluciones, but not for misrepresentations made by  
20 Oficinas. (SUF at 54). While the FTC allege that Esquer was actively involved in running  
21 Oficinas, he testified that he worked at that company until October 27, 2009. (Deposition of Jose  
22 Mario Esquer at 12:14-19).

23 <sup>65</sup>SUF, ¶¶ 91-103.

24 <sup>66</sup>*Id.*, ¶ 92.

25 <sup>67</sup>*Id.*, ¶¶ 93-103.

26 <sup>68</sup>*Id.*, ¶ 70.

27 <sup>69</sup>*Id.*, ¶¶ 96-98.

28 <sup>70</sup>*Id.*, ¶¶ 142-49.

<sup>71</sup>*Id.*, ¶ 172.

1 and sole officer of Oficinas.<sup>72</sup> He functioned as an on-site attorney for the loan modification  
2 operation, working with prior clients of Soluciones as well new clients attracted by Benitez’s  
3 advertising.<sup>73</sup> Johnson supervised the sales staff and negotiators at Oficinas, and conducted staff  
4 meetings.<sup>74</sup> He also issued and approved refunds to clients and was a signatory on each of  
5 Oficinas’s bank accounts.<sup>75</sup>

6 Oficinas offered the same loan deferral and modification services as Dinamica and  
7 Soluciones had.<sup>76</sup> While Johnson made some cosmetic changes to the way the business operated,<sup>77</sup>  
8 Oficinas continued to make misrepresent to consumers that their homes would be saved from  
9 foreclosure through loan modifications or payment deferrals.<sup>78</sup> As Benitez stated, “we kept on  
10 working, basically, the same way, with the difference that supposed[ly] it was now legal because

---

11  
12 <sup>72</sup>*Id.*, ¶¶ 107–108.

13 <sup>73</sup>*Id.*, ¶¶ 116–18, 129.

14 <sup>74</sup>*Id.*, ¶¶ 131–33.

15 <sup>75</sup>*Id.*, ¶¶ 134–35.

16 <sup>76</sup>*Id.*, ¶¶ 180–99. While working for Oficinas, Benitez told client Ana Carrillo “not to  
17 worry about the late payments. He said that my bank would put the money that I owed at the back  
18 of my loan.” Carrillo subsequently had to pay more than \$25,000 in back payments and penalties  
to prevent foreclosure. (*Id.*, ¶ 191).

19 <sup>77</sup>*Id.*, ¶ 125. Benitez testified that “[Johnson] made several recommendations, several  
20 recommendations. He changed the forms. He changed some forms. He said things had to be  
21 done in this way. And yes, he made some small changes, but generally, it was practically – he  
gave continuity to everything that we were doing before.” (Benitez Deposition at 79:16–24).  
22 Johnson testified that he gradually assumed control of Soluciones’ operations. (Deposition of Eric  
23 Douglas Johnson at 88:22–89:18 (“I guess you’d call it gradulaism, so to speak”).)

24 <sup>78</sup>SUF, ¶¶ 180–99. For example, agent Manuel Pozo assured client Silvia Benavidez that  
25 “Oficinas . . . could help me.” Benavidez stated that Pozo “made it sound like getting a reduced  
26 mortgage payment was a certainty, and not once did he say that there was a probability that it  
wouldn’t happen. The only question was how much our mortgage payment would be reduced.”  
27 Although Benavidez had previously paid approximately \$1,680 per month, “Mr. Pozo estimated  
28 [a new payment] between \$900 and \$800.” (SUF, ¶ 199). Similarly, Benitez convinced Oficinas  
client Cipriano Ayala that his lender would reduce the loans on two properties to the current  
market value of the properties. (SUF, ¶ 198).

1 we had the lawyer with us.”<sup>79</sup> For this reason, clients continued to lose their homes despite paying  
2 up-front fees to Oficinas in exchange for promises to secure loan modifications and/or deferrals.<sup>80</sup>  
3 Oficinas also began to charge clients for “deposits” that were supposedly being made to lenders  
4 in connection with modifications.<sup>81</sup> Although Oficinas represented that the deposits would be  
5 applied to clients’ mortgages, defendants did not set the funds aside, and generally paid the  
6 amounts to themselves as additional fees.<sup>82</sup>

7 After being notified in May 2009 that an action had been filed against Benitez, Esquer,  
8 and Soluciones, Johnson briefly closed Oficinas and moved his law practice to a new location  
9 under the name of “Law Offices of Eric Douglas Johnson.”<sup>83</sup> Esquer testified, however, that  
10 Johnson subsequently reopened Oficinas, which functioned as it had previously.<sup>84</sup> Clients who  
11 sought assistance at the new law office were told that they would have to pay an additional fee.<sup>85</sup>  
12 On November 25, 2009, the FTC added Johnson as a defendant in its first amended complaint.<sup>86</sup>  
13 The State Bar of California assumed control of Oficinas and Johnson’s other law practices on  
14 November 6, 2009.<sup>87</sup>

#### 15 **D. Defendants’ Impact on Their Clients**

16 Based on its investigation of the files obtained from Oficinas, and taking into account the  
17

---

18 <sup>79</sup>Benitez deposition at 75:2–5.

19 <sup>80</sup>SUF, ¶¶ 213–42.

20 <sup>81</sup>*Id.*, ¶¶ 243–49.

21 <sup>82</sup>*Id.* Of the \$90,000 of “deposits” collected from clients, Oficinas made a total of three  
22 payments of \$3,212.76 to clients’ lenders. (*Id.*, ¶¶ 243, 248).

23 <sup>83</sup>*Id.*, ¶ 136.

24 <sup>84</sup>Esquer Deposition at 121:3–123:3.

25 <sup>85</sup>SUF, ¶ 137.

26 <sup>86</sup>FAC.

27 <sup>87</sup>SUF, ¶ 19.

1 eighty-eight files admittedly destroyed by Dinamica, the FTC asserts that at least 613 clients hired  
2 defendants.<sup>88</sup> Of this number, 266, or 43 percent, eventually lost their homes to foreclosure.<sup>89</sup>  
3 Even clients who had not missed a single mortgage payment prior to contacting defendants and  
4 who could have continued making mortgage payments lost their homes as a result of working with  
5 defendants.<sup>90</sup> No more than 16.5 percent of defendants' clients obtained loan modifications.<sup>91</sup>  
6 Defendants regularly failed to secure deferrals of mortgage payments or loan modifications as  
7 promised.<sup>92</sup> The clients who managed not to lose their homes to foreclosure often were faced with  
8 late payment penalties and higher mortgage payments as a result of relying on defendants'  
9 promises.<sup>93</sup>

10 From 2001 to 2008, Dinamica had net sales (sales less refunds) of \$3,746,555.70.<sup>94</sup> In  
11 2008 to 2009, Soluciones had net sales of \$1,365,211.90.<sup>95</sup> During its short period of operation  
12  
13

---

14 <sup>88</sup>*Id.*, Exh. 119 (Third Declaration of Bruce Gale), ¶ 23.

15 <sup>89</sup>SUF, ¶ 215. At least seventy of the eighty-eight clients whose files were destroyed by  
16 Dinamica lost their homes to foreclosure. (*Id.*, ¶ 217).

17 <sup>90</sup>*Id.*, ¶ 218. Former Dinamica client, Leopoldo Ramos, first contacted Dinamica, for  
18 example, because his variable rate mortgage was going to adjust in the future, and he was  
19 interested in obtaining a fixed rate mortgage. A Dinamica sales agent assured Ramos that  
20 Dinamica would secure both a fixed rate mortgage and a six-month deferral of his mortgage  
21 payments; the agent's comments convinced Ramos to hire Dinamica with the funds he had planned  
22 to use to make his next mortgage payment. After paying \$2,269.29 to Dinamica, Ramos stopped  
23 making his mortgage payments, believing Dinamica would arrange a suspension of the payments.  
24 Dinamica failed to secure any agreement from Ramos's lender, and he ultimately lost his home  
25 to foreclosure. (TRO App., Exh. 7 (Declaration of Leopoldo Ramos)).

26 <sup>91</sup>SUF, ¶ 236.

27 <sup>92</sup>*Id.*, ¶¶ 226, 233.

28 <sup>93</sup>*Id.*, ¶¶ 228, 231–32.

<sup>94</sup>*Id.*, ¶¶ 274–81.

<sup>95</sup>*Id.*, ¶¶ 282–83.

1 in 2009, Oficinas had net sales of \$394,493.26.<sup>96</sup>

## 3 II. DISCUSSION

### 4 A. Standard Governing Motions for Summary Judgment

5 A motion for summary judgment must be granted when “the pleadings, the discovery and  
6 disclosure materials on file, and any affidavits show that there is no genuine issue as to any  
7 material fact and that the movant is entitled to judgment as a matter of law.” FED.R.CIV.PROC.  
8 56(c). A party seeking summary judgment bears the initial burden of informing the court of the  
9 basis for its motion and of identifying those portions of the pleadings and discovery responses that  
10 demonstrate the absence of a genuine issue of material fact. See *Celotex Corp. v. Catrett*, 477  
11 U.S. 317, 323 (1986). Where the moving party will have the burden of proof on an issue at trial,  
12 the movant must affirmatively demonstrate that no reasonable trier of fact could find other than  
13 for the moving party. On an issue as to which the nonmoving party will have the burden of proof,  
14 however, the movant can prevail merely by pointing out that there is an absence of evidence to  
15 support the nonmoving party’s case. See *id.* If the moving party meets its initial burden, the  
16 nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56, “specific facts  
17 showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
18 250 (1986); FED.R.CIV.PROC. 56(e)(2).

19 Evidence presented by the parties at the summary judgment stage must be admissible.  
20 FED.R.CIV.PROC. 56(e)(1). In reviewing the record, the court does not make credibility  
21 determinations or weigh conflicting evidence. Rather, it draws all inferences in the light most  
22 favorable to the nonmoving party. See *T. W. Electric Service, Inc. v. Pacific Electric Contractors*  
23 *Ass’n*, 809 F.2d 626, 630-31 (9th Cir. 1987). Conclusory, speculative testimony in affidavits and  
24 moving papers, however, is insufficient to raise genuine issues of fact and defeat summary  
25 judgment. See *Falls Riverway Realty, Inc. v. Niagara Falls*, 754 F.2d 49, 56 (2d Cir. 1985);  
26 *Thornhill Pub. Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

---

27  
28 <sup>96</sup>*Id.*, ¶ 284.

1 Here, defendants failed to file opposition. A court may not enter summary judgment solely  
2 because the non-movant fails to oppose the motion, however. Instead, the court must review the  
3 sufficiency of plaintiffs’ motion under the summary judgment standard. See *Martinez v. Stanford*,  
4 323 F.3d 1178, 1182-83 (9th Cir. 2003) (holding that a local rule cannot mandate automatic entry  
5 of judgment for a moving party without considering whether the motion satisfies Rule 56); *Henry*  
6 *v. Gill Indus.*, 983 F.2d 943, 950 (9th Cir. 1993) (same).

7 **B. The FTC’s Motion for Summary Judgment Against the Corporate Defendants**

8 Citing uncontroverted evidence that defendants made misrepresentations to their clients,  
9 the FTC asserts that there are no triable issues regarding the fact that Dinamica, Soluciones, and  
10 Oficinas violated of Section 5(a) of the Federal Trade Commission Act (“FTCA”). Section 5(a)  
11 provides, in relevant part:

12 “(1) Unfair methods of competition in or affecting commerce, and unfair or  
13 deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

14 (2) The Commission is hereby empowered and directed to prevent persons,  
15 partnerships, or corporations, . . . from using unfair methods of competition in or  
16 affecting commerce and unfair or deceptive acts or practices in or affecting  
17 commerce.

18 . . .

19 (4)(A) For purposes of . . . this section, the term ‘unfair or deceptive acts or  
20 practices’ includes such acts or practices involving foreign commerce that –

21 (i) cause or are likely to cause reasonably foreseeable injury within the  
22 United States; or

23 (ii) involve material conduct occurring within the United States.” 15 U.S.C.

24 § 45(a).

25 “Under Section 5, the Court will find an act or practice deceptive or misleading if there  
26 is a representation that is likely to mislead consumers acting reasonably under the circumstances,  
27 and the representation is material.” *F.T.C. v. Gill*, 71 F.Supp.2d 1030, 1037 (C.D. Cal. 1999)  
28 (citing *F.T.C. v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994)); see also *F.T.C. v. World*

1 *Travel Vacation Brokers*, 861 F.2d 1020, 1029 (7th Cir. 1988) (“[M]isrepresentations of material  
2 facts made for the purpose of inducing consumers to purchase services constitute unfair or  
3 deceptive practices forbidden by Section 5(a),” quoting *F.T.C. v. Kitco of Nevada, Inc.*, 612  
4 F.Supp. 1282, 1291 (D. Minn. 1985)). “The FTC need not prove a willful, knowing or deliberate  
5 act in order to prove a violation of 15 U.S.C. § 45.” *Removatron Int’l Corp. v. F.T.C.*, 884 F.2d  
6 1489, 1495 (1st Cir. 1989); see also *Chrysler Corp. v. F.T.C.*, 561 F.2d 357, 363 (D.C. Cir.  
7 1977) (“[I]ntent to deceive is not a required element for a section 5 violation”).

8 **1. Whether Dinamica, Soluciones, and Oficinas Made Misleading**  
9 **Representations**

10 To establish that “representations were likely to mislead, the FTC must show probable  
11 deception (‘likely to mislead,’ not ‘tendency and capacity to mislead’).” *Gill*, 71 F.Supp.2d at 1037  
12 (citing *Southwest Sunsites, Inc. v. F.T.C.*, 785 F.2d 1431, 1436 (9th Cir. 1986)). A court thus  
13 examines the representation to determine whether the “net impression” is such that it would be  
14 likely to mislead reasonable consumers. See *F.T.C. v. Cyberspace.com, LLC*, 453 F.3d 1196,  
15 1200 (9th Cir. 2006) (“A solicitation may be likely to mislead by virtue of the net impression it  
16 creates even though the solicitation also contains truthful disclosures”); *Removatron Int’l Corp.*,  
17 884 F.2d at 1497 (examining the “common-sense net impression” of an allegedly false and  
18 deceptive advertisement); see also *F.T.C. v. Colgate-Palmolive Co.*, 380 U.S. 374, 385 (1965)  
19 (“the words ‘deceptive practices’ set forth a legal standard and they must get their final meaning  
20 from judicial construction”). Misrepresentations can be either express or implied. See *F.T.C.*  
21 *v. Figgie Int’l, Inc.*, 994 F.2d 595, 604 (9th Cir. 1993); *Gill*, 71 F.Supp. 2d at 1043 (“There is  
22 nothing in the case law which protects from liability those who merely imply their deceptive  
23 claims”).

24 Each of Dianamica, Soluciones, and Oficinas ran radio advertisements claiming that they  
25 would save clients’ homes from foreclosure.<sup>97</sup> The advertisements stated that defendants would  
26

---

27 <sup>97</sup>All of the radio advertisements for each of the corporate defendants was drafted and  
28 arranged for by Benitez. (SUF, ¶¶ 83, 84, 96).

1 arrange payment deferrals for borrowers who “need[ed] some time to continue making [their]  
2 payments” or negotiate “new,” “reduced,” or “smaller” monthly mortgage payments so that  
3 consumers would not lose their homes.<sup>98</sup> The FTC has proffered numerous declarations from  
4 consumers who understood the advertisements to mean that defendants could obtain “breaks” from  
5 required mortgage payments and negotiate lower future mortgage payments for their clients.<sup>99</sup>

6 Additionally, defendants’ agents repeatedly assured prospective clients who called or came  
7 into the office that if retained, defendants would secure an agreement from the clients’ lender that  
8 would allow them to forego making mortgage payments for five to six months, and make the  
9 deferred payments at the end of the mortgage term.<sup>100</sup> To induce financially distressed potential  
10 clients to pay for defendants’ services, the agents repeatedly promised they could secure loan  
11 modifications that would reduce future mortgage payments.<sup>101</sup> Once again, the FTC has proffered

---

12  
13 <sup>98</sup>*Id.*, ¶¶ 139, 152.

14 <sup>99</sup>*Id.*, ¶¶ 153–56.

15 <sup>100</sup>*Id.*, ¶¶ 180–89. For example, former Dinamica client, Javier Benitez, states that  
16 Dinamica agent “Arreola explained that Dinamica would make an arrangement with [Benitez’s  
17 lender] to grant me a suspension of my mortgage payments for seven months. He said this  
18 suspension would give me time to save money for when I would resume making my monthly  
19 mortgage payments in March 2008. . . . Mr. Arreola explained that the seven monthly mortgage  
20 payments missed would be added at the end of my loan, which I understood as extending the term  
21 of my loan by seven months.” (TRO App., Exh. 2 (Declaration of Javier Benitez), ¶¶ 6–7).  
22 While working for Oficinas, Benitez told client Ana Carrillo “not to worry about the late payments.  
He said that my bank would put the money that I owed at the back of my loan.” Carrillo  
subsequently had to pay more than \$25,000 in late payments and penalties to prevent foreclosure.  
(*Id.*, ¶ 191).

23 <sup>101</sup>SUF, ¶¶ 192–97. For example, Soluciones’ agent, Argelia Zambrano, guaranteed  
24 Wendy and Carlos Romo that Soluciones would secure a substantially reduced mortgage payment  
25 for them. (*Id.*, ¶ 196). Oficinas Agent Manuel Pozo assured client Silvia Benavidez that  
26 “Oficinas . . . could help me.” Benavidez testified that Pozo “made it sound like getting a  
27 reduced mortgage payment was a certainty, and not once did he say that there was a probability  
28 that it wouldn’t happen. The only question was how much our mortgage payment would be  
reduced. Although Benavidez had previously paid approximately \$1,680 per month, “Mr. Pozo  
estimated [a new payment] between \$900 and \$800.” (SUF, ¶ 199). Similarly, Benitez convinced  
Oficinas client Cirpiano Ayala that his lender would reduce the loan amount for his two properties

1 numerous declarations from clients who typically paid defendants the equivalent of one-month's  
2 mortgage payment based on these assurances.<sup>102</sup>

3 The "net effect" of defendants' advertisements and the representations made by defendants'  
4 agents led clients to believe that loan deferrals or modifications were guaranteed. Cf. *Gill*, 71  
5 F.Supp.2d at 1043-44 (finding that defendants' statements implied a guarantee that all negative  
6 entries on a consumers' credit report could be removed); *F.T.C. v. US Sales Corp.*, 785 F.Supp.  
7 737, 745-48 (N.D. Ill. 1992) (the net effect of defendants' advertisements led consumers to  
8 believe they would receive information about quality used vehicles at extremely low prices).  
9 Whether express or implied, defendants' promises to prospective clients were clearly misleading  
10 as defendants knew that the lenders would decide whether any adjustment of the clients' mortgages  
11 was appropriate, and thus that they could not guarantee that a modification would be made.<sup>103</sup> See  
12 *F.T.C. v. Five-Star Auto Club, Inc.*, 97 F.Supp.2d 502, 532 (S.D.N.Y. 2000) ("Failure to  
13 disclose pertinent information is deceptive if it has a tendency or capacity to deceive," citing *Trans*  
14 *World Accounts, Inc. v. F.T.C.*, 594 F.2d 212, 214 (9th Cir. 1979)).

15 As noted, no more than 16.5 percent of defendants' clients obtained a loan modification;  
16 43 percent ultimately lost their homes to foreclosure.<sup>104</sup> Although some clients received loan  
17 modifications, the fact that some customers were satisfied with defendants' services is not a  
18 defense. See *F.T.C. v. Amy Travel Serv., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989) ("[T]he FTC  
19 need not prove that every consumer was injured. The existence of some satisfied customers does  
20 not constitute a defense under the FTCA").

21 Given the foreclosure notices sent to them and the repeated complaints they received from  
22 former clients, defendants clearly knew that their promises of mortgage relief were false, yet  
23

24 \_\_\_\_\_  
25 to the properties' current market value. (SUF, ¶ 198).

26 <sup>102</sup>*Id.*, ¶¶ 180, 186, 188-99.

27 <sup>103</sup>*Id.*, ¶ 237.

28 <sup>104</sup>SUF, ¶¶ 215, 236.

1 continued to make the same statements to prospective clients.<sup>105</sup> The FTC has proffered  
2 declarations from multiple clients who were misled by defendants' assurances and relied on  
3 defendants' advice to their detriment after paying defendants significant sums.<sup>106</sup> The FTC does  
4 not need to establish that every client was misled; it need only show that the statements made had  
5 the tendency or capacity to deceive. See *Trans World Accounts, Inc.*, 594 F.2d at 214 ("Proof  
6 of actual deception is unnecessary to establish a violation of Section 5. Misrepresentations are  
7 condemned if they possess a tendency to deceive"). Based on the undisputed evidence proffered  
8 by the FTC, the court finds that defendants' representations were misleading and in violation of  
9 Section 5 of the FTCA.

10 **2. Whether the Corporate Defendants' Misrepresentations Were Material**

11 "A representation or omission is material if it is of the kind usually relied on by a  
12 reasonably prudent person." *F.T.C. v. Transnet Wireless Corp.*, 506 F.Supp.2d 1247, 1267 (S.D.  
13 Fla. 2007) (citing *In re Thompson Medical Co.*, 104 F.T.C. 648, 816 (1984), *aff'd*, 791 F.2d 189  
14 (D.C. Cir. 1986)). "Express claims or deliberately-made implied claims used to induce the  
15 purchase of a particular product or service are presumed to be material." *Id.* (citing *Pantron I*,  
16 33 F.3d at 1096); see also *F.T.C. v. Natural Solution, Inc.*, No. CV 06-6112 JFW (JTLx), 2007  
17 U.S. Dist. LEXIS 60783, \*7-8 (C.D. Cal. Aug. 7, 2007). "A presumption of actual reliance  
18 arises once the Commission has proved that the defendant made material misrepresentations, that  
19 they were widely disseminated, and that consumers purchased the defendant's product." *Figgie*  
20 *Int'l, Inc.*, 994 F.2d at 605.

21 The FTC has proffered evidence from multiple former clients of Dinamica, Soluciones, and  
22 Oficinas that they paid defendants significant sums based on express and implied assurances that  
23 their mortgage payments would either be deferred or substantially modified.<sup>107</sup> Indeed, defendants  
24 assured clients both on the radio and in person that they had a great deal of experience securing

---

25  
26 <sup>105</sup>*Id.*, ¶¶ 51, 58, 225, 250-51, 261-66.

27 <sup>106</sup>*Id.*, ¶¶ 268-268-73.

28 <sup>107</sup>*Id.*, ¶¶ 180, 193, 269, 272-73.

1 such relief and that they had helped many other clients.<sup>108</sup> Oficinas advertised that it offered  
2 clients the assistance and expertise of an attorney.<sup>109</sup> Many of defendants' clients were desperate  
3 to avoid foreclosure and believed defendants' promises that they could help.<sup>110</sup> The undisputed  
4 evidence adduced by the FTC, therefore, establishes that the misrepresentations made by the  
5 corporate defendants was material. See *Cyberspace.com, LLC*, 453 F.3d at 1201 ("A misleading  
6 impression created by a solicitation is material if it 'involves information that is important to  
7 consumers and, hence, likely to affect their choice of, or conduct regarding, a product,'" quoting  
8 *In re Cliffdale Associates, Inc.*, 103 F.T.C. 110, 165 (1984)).

9 **3. Conclusion Regarding the Corporate Defendants' Violation of Section**  
10 **5(a) of the FTCA**

11 The undisputed evidence proffered by the FTC establishes that the representations made  
12 by defendants and their agents to prospective clients were misleading, material, and caused  
13 consumers reasonably to rely to their detriment. There are thus no triable issues fact regarding  
14 the corporate defendants' violation of Section 5(a) of the FTCA. See *F.T.C. v. Tashman*, 318  
15 F.3d 1273, 1283 (11th Cir. 2003) ("Representations violate Section 5 if the FTC proves that,  
16 based on a common sense net impression of the representations as a whole, the representations are  
17 likely to mislead reasonable customers to their detriment," citing *Removatron Int'l Corp.*, 884  
18 F.2d at 1497; *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976); see also *Gill*, 71  
19 F.Supp.2d at 1044 (granting summary judgment to the FTC based on misleading statements  
20 defendants made concerning credit repair services).

21 **C. Liability of the Corporate Defendants**

22 Based on their violation of the FTCA, the FTC requests that Dinamica, Soluciones, and  
23 Oficinas be enjoined from engaging in further deceptive practices and be held jointly and severally  
24 liable with their respective principals for consumer redress. Section 13(b) of the FTCA authorizes

---

25  
26 <sup>108</sup>*Id.*, ¶¶ 145–49; 200–202.

27 <sup>109</sup>*Id.*, ¶ 149.

28 <sup>110</sup>*Id.*, ¶ 166.

1 the court to issue a permanent injunction for a violation of the Act. 15 U.S.C. § 53(b); see also  
2 *F.T.C. v. H.N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982). Further, “[t]he district court  
3 has broad authority under the FTC Act to ‘grant any ancillary relief necessary to accomplish  
4 complete justice,’ including the power to order restitution.” *F.T.C. v. Stefanich*, 559 F.3d 924,  
5 931 (9th Cir. 2009) (quoting *Pantron I*, 33 F.3d at 1102). “A corporation is liable for monetary  
6 relief under section 13(b) if the F.T.C. shows that the corporation engaged in misrepresentations  
7 or omissions of a kind usually relied on by reasonably prudent persons and that consumer injury  
8 resulted.” *Pantron I Corp.*, 33 F.3d at 1102 (citing *Amy Travel Serv., Inc.*, 875 F.2d at 571).

9 Because the undisputed evidence shows that Dinamica, Soluciones, and Oficinas each  
10 violated Section 5(a) of the FTCA by making misleading, material representations to consumers,  
11 it is appropriate to enjoin them from engaging in further deceptive acts. It is also appropriate to  
12 require the corporate defendants to pay restitution to consumers harmed by their  
13 misrepresentations because consumers reasonably relied to their detriment. See *F.T.C. v. Neovi,*  
14 *Inc.*, NO. 06-CV-1952-JLS (JMA), 2009 WL 56130, \*7, 9 (S.D. Cal. Jan. 7, 2009) (enjoining  
15 corporate defendants and holding them liable for restitution).

16 Here, because Dinamica, Soluciones, and Oficinas have each ceased operations, in order  
17 to obtain an injunction, the FTC must show that “there exists some cognizable danger of recurrent  
18 violation.” *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953). Two factors guide the  
19 court’s analysis of this issue: (1) “the deliberateness and seriousness of the present violation,” and  
20 (2) “the violator’s past record.” *Sears, Roebuck & Co. v. FTC*, 676 F.2d 385, 392 (9th Cir.  
21 1982). The corporate defendants committed repeated violations of the FTCA, even after being  
22 put on notice of their misrepresentations. It is a fair inference on this record that they also  
23 transferred their business operations on at least two occasions so that they could continue to  
24 mislead and evade government efforts to protect consumers. The misleading misrepresentations  
25 that were made caused significant harm to the companies’ former clients. Given the egregious  
26 nature of the conduct, there is a sufficient threat of recurrent violation to warrant injunctive relief  
27 against these defendants. See *Neovi, Inc.*, 2009 WL 2009 WL 56130 at \*8 (granting injunction  
28 against a corporate entity that had ceased operations where there was evidence to suggest a danger

1 of a recurrent violation).

2 **D. Liability of Individual Defendants**

3 Based on their positions in one or more of the companies, and the actions they took on  
4 behalf of the companies, however, the FTC asserts that the individual defendants – Valentin  
5 Benitez, Jose Mario Esquer, and Eric Douglas Johnson – should be enjoined from engaging in  
6 further deceptive practices and should be held jointly and severally liable for consumer redress.

7 “Individual defendants may be held liable for injunctive relief for the corporate defendants’  
8 violations of the FTC Act if the FTC demonstrates that the individual defendants participated  
9 directly in the wrongful acts or practices, or had authority to control the corporations.” *F.T.C.*  
10 *v. Neovi, Inc.*, 598 F.Supp.2d 1104, 1117 (S.D. Cal. 2008) (citing *F.T.C. v. J.K. Publ’ns, Inc.*,  
11 99 F.Supp.2d 1176, 1203 (C.D. Cal. 2000)). “Authority to control [a] company can be evidenced  
12 by active involvement in business affairs and the making of corporate policy.” *F.T.C. v.*  
13 *American Standard Credit Sys.*, 874 F.Supp. 1080, 1089 (C.D. Cal. 1994) (citing *Amy Travel*  
14 *Service, Inc.*, 875 F.2d at 573–74).

15 An individual’s status as a corporate officer and/or the authority of that individual to sign  
16 documents on behalf of a corporate defendant is sufficient to show the requisite control. See  
17 *F.T.C. v. Publishers Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997) (“Martin’s  
18 assumption of the role of president of PCH and her authority to sign documents on behalf of the  
19 corporation demonstrate that she had the requisite control over the corporation”).

20 To hold individual defendants liable for restitution, the FTC must additionally show that  
21 they “had knowledge that the corporation or one of its agents engaged in the wrongful acts or  
22 practices.” *Neovi, Inc.*, 598 F.Supp.2d at 1117 (citing *Publishers Clearing House, Inc.*, 104 F.3d  
23 at 1171). To show knowledge, the FTC must demonstrate that the individual defendant “had  
24 actual knowledge of material misrepresentations, [was] recklessly indifferent to the truth or falsity  
25 of a misrepresentation, or had an awareness of a high probability of fraud along with an  
26 intentional avoidance of the truth.” *Publishers Clearing House, Inc.*, 104 F.3d at 1171 (citing  
27 *F.T.C. v. American Standard Credit Sys.*, 874 F.Supp. 1080, 1089 (C.D. Cal. 1994)). The FTC  
28 does not need to show that an individual defendant intended to defraud consumers to hold that

1 individual personally liable. *Id.*

2 **1. Valentin Benitez**

3 While working at Dinamica, Soluciones, and Oficinas, Benitez personally made misleading  
4 representations to many clients.<sup>111</sup> Indeed, the FTC estimates that he personally handled  
5 approximately 43 percent of the sales activity at Dinamica and Soluciones.<sup>112</sup> Benitez also drafted  
6 and placed all radio advertisements aired by the corporations, and personally appeared in a  
7 majority of them.<sup>113</sup>

8 Benitez also controlled the business operations of the three corporations. He was a  
9 founding member of Dinamica, and was the primary decision maker behind the transfer of  
10 Dinamica's business to Soluciones. Benitez was Soluciones' "owner in fact."<sup>114</sup> At both  
11 Dinamica and Soluciones, Benitez was responsible for hiring, firing, training, and directing  
12 employees, including sales agents.<sup>115</sup> He also accepted payments from clients and authorized the  
13 payment of commissions to agents at both companies.<sup>116</sup> Benitez negotiated the transition of the

---

14  
15 <sup>111</sup>For example, former Dinamica client Celia Argueta testified that Benitez said "that he  
16 could put all the missed payments at the end of our loans once they came to an agreement with the  
17 bank. He was very insistent that he could do this for us. . . . Because I had some doubts about  
18 the promises made by Mr. Benitez, I asked if he was sure that he could help us. He told me to  
19 trust him, that he had a lot of experience and that he had been doing this for many years. He told  
20 us that we shouldn't worry about the house, to relax, to take the children to the park, that he  
21 would fix everything with the bank." (TRO App., Exh. 1 (Declaration of Celia Argueta), ¶¶  
22 7-8). Dinamica sales agent Manuel Pozo similarly told an FTC employee that "we will negotiate  
23 with the banks an extension or stopping the payments so that this person can . . . have five months  
24 without making any house payments." (SUF, ¶ 185). Likewise, while working for Oficinas,  
25 Benitez told client Ana Carrillo "not to worry about the late payments. He said that my bank  
26 would put the money that I owed at the back of my loan." Carrillo subsequently had to pay over  
27 \$25,000 in arrears and penalties to prevent foreclosure. (*Id.*, ¶ 191).

28 <sup>112</sup>SUF, ¶ 80.

<sup>113</sup>*Id.*, ¶¶ 83-84, 96-98.

<sup>114</sup>*Id.*, ¶¶ 69-70, 74-77.

<sup>115</sup>*Id.*, ¶¶ 70, 88.

<sup>116</sup>*Id.*, ¶¶ 81, 89.

1 business from Soluciones to Oficinas with Johnson, and was responsible for making sure that  
2 operations were not disrupted.<sup>117</sup> Once at Oficinas, he continued to manage the sales staff and  
3 authorize the payment of commissions.<sup>118</sup> As Benitez himself testified, after Oficinas assumed  
4 control of the business, very little about the business operation or his role in it changed, even  
5 though Johnson was ostensibly in charge.

6 Benitez clearly knew of the misleading representations being made to the companies'  
7 prospective clients because he himself made many of them. He also knew that clients often lost  
8 their houses to foreclosure and that they did not receive the loan deferrals or modifications they  
9 had been promised.<sup>119</sup> Many clients complained directly to Benitez and several sued him.<sup>120</sup>

10 Because the undisputed evidence shows that Benitez was personally involved in and  
11 controlled operations at Dinamica, Soluciones, and Oficinas, it is appropriate to enjoin him from  
12 engaging in further deceptive acts. It is also appropriate to hold Benitez liable for restitution to  
13 consumers harmed by the misrepresentations because he had direct knowledge of the activity. See  
14 *Neovi, Inc.*, 598 F.Supp.2d at 1117 (enjoining individual defendants and holding them liable for  
15 restitution because they "had the authority to control the corporate Defendants' unfair practices,  
16 . . . they participated in those activities, and . . . they knew of those activities").

## 17 2. Jose Mario Esquer

18 Esquer was a founding member and manager of Dinamica.<sup>121</sup> In fact, he held himself out  
19 as president of the company and signed lease agreements and state-mandated filings on the  
20 company's behalf.<sup>122</sup> Although apparently not an owner of Soluciones, Esquer remained a primary

---

22 <sup>117</sup>*Id.*, ¶¶ 90–91.

23 <sup>118</sup>*Id.*, ¶¶ 93–95.

24 <sup>119</sup>*Id.*, ¶¶ 104–105.

25 <sup>120</sup>*Id.*, ¶¶ 85–86.

26 <sup>121</sup>*Id.*, ¶¶ 21–26.

27 <sup>122</sup>*Id.*, ¶¶ 27–32.

1 supervisor and continued to sign documents on the new entity’s behalf, including lease agreements  
2 and financial statements.<sup>123</sup> While Esquer was not as involved in the sales operation of the  
3 companies as Benitez, he spoke with clients on a regular basis at both Dinamica and Soluciones,  
4 tracked sales and reviewed new contracts.<sup>124</sup> Esquer’s supervision of employees at Dinamica and  
5 Soluciones, together with his execution of key corporate documents, establishes he had sufficient  
6 control over the companies to be enjoined from engaging in further deceptive practices. See  
7 *Publishers Clearing House, Inc.*, 104 F.3d at 1170.

8 Esquer knew of the misrepresentations being made to clients at both Soluciones and  
9 Dinamica. He knew of the radio advertisements, spoke with the sales agents about what was being  
10 offered to clients, and spoke with clients about the status of their mortgages.<sup>125</sup> Esquer knew that  
11 the homes of many of the companies’ clients went into foreclosure, he heard the clients’  
12 complaints and processed their refund requests, and read the complaints forwarded by the Better  
13 Business Bureau and Los Angeles Department of Consumer Affairs.<sup>126</sup> Because these facts  
14 demonstrate that he had actual knowledge of the misrepresentations being made, Esquer is liable  
15 for the restitution owed clients of Dinamica and Soluciones.<sup>127</sup> See *Neovi, Inc.*, 598 F.Supp.2d  
16 at 1117; see also *Publishers Clearing House, Inc.*, 104 F.3d at 1171 (holding that an individual  
17 is liable for restitution if he “had actual knowledge of material misrepresentations, [was] recklessly  
18 indifferent to the truth or falsity of a misrepresentation, or had an awareness of a high probability  
19 of fraud along with an intentional avoidance of the truth”).

### 20 3. Eric Douglas Johnson

21 Johnson incorporated Oficinas for the specific purpose of taking over Soluciones’ business

---

22  
23 <sup>123</sup>*Id.*, ¶¶ 35–45.

24 <sup>124</sup>*Id.*, ¶¶ 43–49.

25 <sup>125</sup>*Id.*, ¶¶ 54–61.

26 <sup>126</sup>*Id.*, ¶¶ 64–68.

27 <sup>127</sup>The FTC does not seek to recover restitution from Esquer for injury suffered by  
28 consumers who dealt with Oficinas.

1 operations, and was the president and only officer of Oficinas.<sup>128</sup> He functioned as an on-site  
2 attorney for the loan modification operation, working with Soluciones' clients as well new clients  
3 attracted through Benitez's advertising.<sup>129</sup> Johnson supervised the sales staff and negotiators at  
4 Oficinas, and conducted staff meetings.<sup>130</sup> He also issued and approved refunds to clients and was  
5 a signatory on each of Oficinas's bank accounts.<sup>131</sup> Johnson thus exercised sufficient control over  
6 Oficinas' operations to be enjoined from engaging in further deceptive practices. See *Publishers*  
7 *Clearing House, Inc.*, 104 F.3d at 1170.

8 If not already aware of the misrepresentations being made by agents under his supervision,  
9 Johnson was served with the temporary restraining order and preliminary injunction issued against  
10 the other defendants in this case in May 2009.<sup>132</sup> Despite this clear notification of the FTC's  
11 claims and the court's preliminary view of them, Johnson continued to allow Benitez and Esquer  
12 to run Oficinas under his name without significant changes.<sup>133</sup> The court therefore concludes it  
13 is appropriate to hold Johnson liable for restitution because he knew or should have known that  
14 there was a high probability that sales agents in his office were making material misrepresentations  
15 to clients, was reckless indifferent to this fact and/or intentionally avoided learning the truth. See  
16 *id.* (finding that an individual may be liable for restitution where he "had actual knowledge of  
17 material misrepresentations, [was] recklessly indifferent to the truth or falsity of a  
18 misrepresentation, or had an awareness of a high probability of fraud along with an intentional  
19

---

20 <sup>128</sup>*Id.* ¶¶ 107–108.

21 <sup>129</sup>*Id.*, ¶¶ 116–18, 129.

22 <sup>130</sup>*Id.*, ¶¶ 131–33.

23 <sup>131</sup>*Id.*, ¶¶ 134–35.

24 <sup>132</sup>*Id.*, ¶¶ 122–24.

25  
26 <sup>133</sup>Esquer Deposition at 121:3–123:3. Benitez testified that although Johnson "made several  
27 recommendations, several recommendations," "changed the forms," and "said things had to be  
28 done in this way," he "generally, . . . practically – gave continuity (sic) to everything that we  
were doing before." (Benitez Deposition at 79:16–24).

1 avoidance of the truth”).

2 **D. Scope of Relief Sought**

3 The FTC seeks a permanent injunction against each corporate and individual defendant as  
4 well as restitution to provide consumer redress. The FTCA authorizes imposition of  
5 comprehensive prophylactic injunctive relief after a proper finding that defendants have engaged  
6 in unfair practices and harmed consumers. See, e.g., *F.T.C. v. Ruberoid Co.*, 343 U.S. 470, 473  
7 (1952); *Trans World Accounts, Inc.*, 594 F.2d at 215. The FTC seeks injunctive relief barring  
8 defendants from offering loan modification or foreclosure relief services, as well as from making  
9 material misrepresentations in connection with the sale of any good or service. Given defendants’  
10 repeated prior violations, the court finds such relief warranted and will issue such an order as part  
11 of the judgment in this case. Cf. *F.T.C. v. Gill*, 265 F.3d 944, 957–58 (9th Cir. 2001) (banning  
12 defendants from future participation in credit-repair services); *F.T.C. v. Medicor, LLC*, No. CV  
13 01-1896 CBM (Ex), 2002 U.S. Dist. LEXIS 16220, \*3–4 (C.D. Cal. July 18, 2002) (banning  
14 defendants from engaging in future marketing, specifically telemarketing, of work-at-home  
15 medical billing opportunities).

16 The FTC also seeks unspecified restitution from each of the defendants. The Ninth Circuit  
17 has held that in a case brought under the FTCA, a district court may award “the full amount lost  
18 by consumers rather than limiting damages to a defendant’s profits.” *F.T.C. v. Stefanichik*, 559  
19 F.3d 924, 931 (9th Cir. 2009) (“The district court has broad authority under the FTC Act to  
20 ‘grant any ancillary relief necessary to accomplish complete justice,’ including the power to order  
21 restitution,” quoting *Pantron I*, 33 F.3d at 1102). From 2001 to 2008, Dinamica had net sales  
22 (sales less refunds) of \$3,746,555.70.<sup>134</sup> In 2008 and 2009, Soluciones had net sales of  
23 \$1,365,211.90.<sup>135</sup> During its short period of operations in 2009, Oficinas had net sales of  
24 \$394,493.26.<sup>136</sup> Accordingly, the court awards restitution against each defendant as follows:

---

25  
26 <sup>134</sup>*Id.*, ¶¶ 274–81.

27 <sup>135</sup>*Id.*, ¶¶ 282–83.

28 <sup>136</sup>*Id.*, ¶ 284.

1 Dinamica, Benitz, and Esquer are jointly and severally liable for restitution in the amount of  
2 \$3,746,555.70, which equals all amounts paid to Dinamica by its former clients; Soluciones,  
3 Benitz, and Esquer are jointly and severally liable for resitution in the amount of \$1,365,211.90,  
4 which equals all amounts paid to Soluciones by its former clients; Oficinas, Johnson, and Benitez  
5 are jointly and severally liable for restiution in the amount of \$394,493.26, which equals all  
6 amounts paid to Oficinas by its former clients. See *id.* at 932 (affirming award holding  
7 “defendants liable for the full amount of loss incurred by consumers); *F.T.C. v. Wolf*, No.  
8 94-8119-CIV-FERGUSON, 1996 WL 812940, \*9 (S.D. Fla. Jan. 31, 1996) (ordering joint and  
9 several restitution in amount of customer deposits); *C.F.T.C. v. WorldWide Currency Services,*  
10 *Corp.*, No. Civ.A. 03-80032, 2004 WL 1918793, \*6 (S.D. Fla. August 9, 2004) (default  
11 judgment ordering joint and several restitution in the amount of net customer deposits).

12  
13 **III. CONCLUSION**

14 For the reasons stated, the court grants plaintiff’s motion for summary judgment.

15  
16 DATED: August 19, 2010

17   
18 \_\_\_\_\_  
19 MARGARET M. MORROW  
20 UNITED STATES DISTRICT JUDGE  
21  
22  
23  
24  
25  
26  
27  
28