

FILED

COPY

1 JOHN ANDREW SINGER

2 Federal Trade Commission

3 600 Pennsylvania Ave., N.W.

4 Washington, D.C. 20580

5 (202) 326-3234

6 Fax (202) 326-2477

7 Email: jsinger@ftc.gov

2008 JUL 16 PM 2:49
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

8 STACY PROCTER (Local Counsel)

9 CA Bar No. 221078

10 Federal Trade Commission

11 10877 Wilshire Blvd., Suite 700

12 Los Angeles, CA 90024

13 (310) 824-4366

14 Fax: (310) 824-4380

15 Email: sprocter@ftc.gov

16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA
18 WESTERN DIVISION

19 FEDERAL TRADE COMMISSION,
20 600 Pennsylvania Avenue, NW
21 Washington, DC 20580

22 Petitioner,

23 v.

24 DINAMICA FINANCIERA LLC,
25 7857 E. Florence Avenue, Suite 201
26 Downey, California 90240

27 Respondent.

WDCV No.

CV08-04649 MMM PJW

28 MEMORANDUM IN SUPPORT OF EMERGENCY PETITION OF THE
FEDERAL TRADE COMMISSION FOR AN ORDER TO ENFORCE
A CIVIL INVESTIGATIVE DEMAND

TABLE OF CONTENTS

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

- Preliminary Statement.....1
- Jurisdiction.....4
- Statement of Facts.....4
- The Civil Investigative Demand’s Written Interrogatory Specifications.....7
- The Civil Investigative Demand’s Requests for Production of Documents.....10
- Argument.....14
 - I. The Scope of Issues Considered in Proceedings to Enforce Compulsory Process Is Narrow.....14
 - II. The Civil Investigative Demand Should Be Enforced.....15
 - A. The Civil Investigative Demand is Within the Authority of the Commission.....15
 - B. The Procedural Requirements were Followed.....16
 - C. The CID Seeks Information That is Reasonably Relevant to the Commission’s Investigation.....16
- Conclusion.....19

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

TABLE OF AUTHORITIES

Cases

Appeal of FTC Line of Business Report Litigation, 595 F.2d 685 (D.C. Cir.1978).....4

FTC v. Adams, 296 F.2d 861 (8th Cir. 1961)..... 15

FTC v. Carter, 636 F.2d 781 (D.C. Cir. 1980).....15

FTC v. Green, 252 F. Supp. 153 (S.D.N.Y. 1966).....16

FTC v. Invention Submission Corp., 965 F.2d 1086 (D.C. Cir. 1992).....16, 18

FTC v. MacArthur, 532 F.2d 1135 (7th Cir 1976).....4

FTC v. Texaco, 555 F.2d 862 (D.C. Cir. 1977) (*en banc*)14, 16

FTC v. United States Pipe & Foundry Co., 304 F. Supp. 1254 (D.D.C. 1969).....15

EEOC v. Children’s Hosp. Med. Ctr of N. Calif., 719 F.2d 1426 (9th Cir. 1983) (*en banc*)..... 14, 15

EEOC v. Karuk Tribe Housing Auth., 260 F.3d 1071 (9th Cir. 2001)..... 15

NLRB v. Bakersfield Californian, 128 F.3d 1339 (9th Cir.1994)..... 14, 15

United States v. Litton Industries, Inc., 462 F.2d 14 (9th Cir. 1972).....4

United States v. Markwood, 48 F.3d 969 (6th Cir. 1995).....4

United States v. Morton Salt Co., 338 U.S. 632 (1950).....14

Statutes

15 U.S.C. § 41 *et seq.*.....1, 3, 4, 5, 6, 16

1	15 U.S.C. § 43.....	5
2		
3	15 U.S.C. § 45(a).....	3, 5, 6, 16
4	15 U.S.C. § 53(b).....	1, 3
5		
6	15 U.S.C. § 57b-1.....	1, 4, 5
7	15 U.S.C. § 57b-1(e).....	4
8	15 U.S.C. § 57b-1(h).....	4
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

PRELIMINARY STATEMENT

1
2
3 The Federal Trade Commission ("Commission") petitions this Court, pursuant to
4 Section 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 57b-1, for an
5 order requiring respondent, Dinamica Financiera LLC ("Dinamica"), to produce
6 responses to written interrogatories and to document requests, and a sworn verification
7 as to these responses, in response to a Commission Civil Investigative Demand ("CID"),
8
9 a type of administrative subpoena.
10

11 This petition is filed on an emergency basis because of the immediacy and
12 magnitude of consumer harm that is at issue. Dinamica's failure fully to comply with
13 the CID is impeding the Commission's investigation into what appears to be a large-
14 scale scam that charges consumers the equivalent of one monthly mortgage payment, in
15 exchange for services that Dinamica represents will help them avoid foreclosure on their
16 homes. Instead of assisting consumers, it appears that Dinamica provides few or none of
17 the promised services, costing consumers thousands of dollars paid to Dinamica and
18 increased penalties from their mortgage lenders, and putting consumers at greater risk of
19 foreclosure on their homes. If, based on its investigation, the Commission has reason to
20 believe that Section 5(a) is being violated, it can apply to the Court for equitable relief,
21 including a temporary restraining order and/or preliminary injunction, under Section
22
23
24
25
26
27
28 13(b) of the FTC Act, 15 U.S.C. § 53(b), to prevent further harm to consumers. The

1 Commission's ability to obtain such injunctive relief is being impeded by Dinamica's
2 failure fully to comply with the CID.
3

4 The violations under investigation arise from deceptive radio broadcast
5 advertisements throughout Southern California that target Spanish-speaking
6 homeowners who have fallen behind or are about to fall behind on their mortgage
7 payments. These broadcast advertisements promise, among other things, "options for
8 each situation," "peace of mind," and to "speak your own language," and specifically
9 represent that Dinamica can negotiate a one- to six-month delay of its clients' mortgage
10 payments. The overall impression is that Dinamica's services will allow its clients to
11 protect their homes from foreclosure. Commission staff believes that Dinamica's
12 broadcast advertisements have attracted numerous clients.
13
14
15
16

17 In the course of subsequent sales presentations, Dinamica has represented, among
18 other things, that it will immediately engage in negotiations with its clients' mortgage
19 lenders or servicing companies and, as a result of its negotiations, will (a) obtain a
20 suspension of its clients' mortgage payments, often for one to six months, and (b) obtain
21 an agreement or plan whereby its clients can repay their mortgage arrears and/or
22 suspended payments. Dinamica has also represented that it will immediately engage in
23 negotiations with its clients' mortgage lenders or servicing companies to modify the
24 terms of its clients' mortgages, seeking lower mortgage payments on its clients' behalf.
25
26
27
28

1 Dinamica has represented that mortgage lenders or servicing companies lower
2
3 Dinamica's clients' mortgage payments more than 50 percent of the time and around 60
4 to 65 percent of the time.

5 Dinamica charges its clients the equivalent of one month's mortgage payment
6
7 (often between \$1,700 and \$3,500) for its services. Based on the evidence gathered by
8
9 the Commission's staff to date, it does not appear that Dinamica is able to effect a
10
11 suspension of its clients' mortgage payments and does not engage in negotiations that
12
13 are reasonably calculated to lead to the results promised to consumers. Dinamica also
14
15 advises its clients to ignore calls from their lenders. As a result, Dinamica's clients not
16
17 only lose the thousands of dollars they pay Dinamica, but are subjected to substantial
18
19 mortgage fees and penalties, and many face foreclosure. It also appears that Dinamica
20
21 offers to prepare bankruptcy filings, to remove bankruptcy filings from all legal records,
22
23 or to raise its clients' post-bankruptcy credit scores, for additional fees.

24 Dinamica's failure fully to comply with the CID has impeded the Commission's
25
26 investigation into Dinamica's possible violations of Section 5(a) of the FTC Act, 15
27
28 U.S.C. § 45(a), and the Commission's ability, if it has reason to believe that such
29
30 violations are occurring, to obtain injunctive relief, pursuant to Section 13(b) of the FTC
31
32 Act, 15 U.S.C. § 53(b), to halt such practices and obtain consumer redress.

33 This proceeding is properly instituted by a petition and order to show cause (rather
34

1 than by complaint and summons) and is summary in nature; discovery or evidentiary
2 hearings may be granted only upon a showing of exceptional circumstances. *E.g., FTC*
3 *v. Carter*, 636 F.2d 781, 789 (D.C. Cir. 1980); *FTC v. MacArthur*, 532 F.2d 1135, 1141-
4 42 (7th Cir. 1976); *United States v. Litton Industries, Inc.*, 462 F.2d 14, 17 (9th Cir.
5 1972); *see also United States v. Markwood*, 48 F.3d 969, 981-82 (6th Cir. 1995); *Appeal*
6 *of FTC Line of Business Report Litigation*, 595 F.2d 685, 704-05 (D.C. Cir. 1978).

10 JURISDICTION

11 The authority of the Commission to issue a CID and the jurisdiction and venue of
12 this Court to enter an order enforcing it are conferred by Section 20 of the FTC Act, 15
13 U.S.C. § 57b-1, which empower the Commission to issue CIDs to compel, *inter alia*, the
14 production of documentary evidence and responses to written interrogatories. Sections
15 20(e) and (h) of the FTC Act, 15 U.S.C. §§ 57b-1(e) and (h), authorize the Commission
16 to invoke the aid of the United States district courts in enforcing such CIDs and confers
17 jurisdiction on any district court where the person subject to the CID “resides, is found,
18 or transacts business.” They also authorize the Commission to seek enforcement of its
19 administrative subpoenas in federal court in its own name using its own counsel. *Id.*

24 STATEMENT OF FACTS

25 The Commission is an administrative agency of the United States government,
26 organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission
27
28

1 is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit
2
3 unfair methods of competition and unfair or deceptive acts or practices in or affecting
4 commerce.

5 The Commission has authority to conduct investigations under, *inter alia*: Section
6
7 3 of the FTC Act, 15 U.S.C. § 43, that empowers the Commission to prosecute any
8
9 inquiry necessary to its duties in any part of the United States; and Section 20 of the
10
11 FTC Act, 15 U.S.C. § 57b-1, that empowers the Commission, *inter alia*, to compel the
12
13 production of documents and responses to written interrogatories.

14 Dinamica is a California limited liability company formed on August 28, 2000. Its
15
16 members include Jose Mario Esquer and Valentin Benetiz. Dinamica is located at 7857
17
18 E. Florence Avenue, Suite 201, Downey, California, 90240. Dinamica is engaged in,
19
20 and its business affects, "commerce" as that term is defined in Section 4 of the FTC Act,
21
22 15 U.S.C. § 44.

23 The Commission's ongoing investigation is intended to determine whether
24
25 Dinamica's business practices violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
26
27 Pet. Exh. 1, ¶¶ 1, 3, 9.

28 On April 22, 2008, the Commission served on Dinamica the CID that is the subject
of this petition. Pet. Exh. 2. The CID directed the production of certain documents and
responses to written interrogatories. The CID was issued pursuant to the authority of

1 Commission resolutions dated April 17, 2006 (attached to Pet. Exh. 2.). The 2006
2 resolution directed that compulsory process be used to investigate, among other things,
3 possible “unfair or deceptive acts or practices in or affecting commerce in violation of
4 Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.” Pet. Exh.2.
5
6

7 The return date for the responses to the CID was May 12, 2008. Pet. Exh 1, ¶ 10;
8 Pet. Exh. 2. On May 9, 2008, Dinamica, through its counsel, submitted a partial
9 response to the CID and requested an extension of time until June 11, 2008, to complete
10 its responses. Pet. Exh. 3. Dinamica has not filed any petition to quash or limit the CID
11 as mandated by Commission Rule 2.7, 16 C.F.R. § 2.7. *Id.*
12
13

14 On June 16, 2008, an attorney from the Commission’s Office of the General
15 Counsel, Marilyn E. Kerst, sent a letter to counsel for Dinamica indicating that the
16 Commission would bring an enforcement action concerning the CID unless full
17 responses were received by July 2, 2008. Pet. Exh 1, ¶ 21; Pet Exh. 9.
18
19

20 As of the filing date of the Commission’s Petition, Dinamica still has not produced
21 either the full responses or verification. Pet. Exh 1, ¶ 24.
22
23
24
25
26
27
28

1 THE CIVIL INVESTIGATIVE DEMAND'S
2 WRITTEN INTERROGATORY SPECIFICATIONS

3 The CID contains 13 written interrogatory specifications:¹

4
5 1. For the Company:

- 6 a. state its legal name(s) and address(es), and the dates during which the
- 7 Company operated from each address;
- 8 b. state the date and state of formation;
- 9 c. state the name(s) of the state(s) in which the Company is licensed to
- 10 do business or in which the Company conducts or has conducted
- 11 business;
- 12 d. state all names under which the Company does or has done business,
- 13 including but not limited to each name for which the Company has
- 14 filed a fictitious business name statement;
- 15 e. identify each member and manager of the Company;
- 16 f. state the date on which the Company commenced doing business; and
- 17 g. identify all parent, subsidiary or affiliated businesses or companies,
- 18 including any joint ventures and partnerships.
- 19

20 2. Describe the relationship between the Company and each parent, subsidiary, or
21 affiliated business or company, including any joint venture or partnership,
22 identified in response to Interrogatory 1.g., and Identify each overlapping officer,
23 director, principal stockholder, owner, member, and manager. Indescribing any
24 relationship, make sure to describe any agreement or obligation between or among
25 the Company and any identified entity; any position held by the Company or any
26 identified entity; and any service provided or received by the Company or any
27 identified entity.

27 ¹The Definitions and Instructions for the CID's written interrogatories and
28 document production requests are set out in Pet. Exh. 2.

- 1 3. Describe the relationship between the Company and (a) Valentin Benitez and (b)
2 Jose Mario Esquer. In describing any relationship, make sure to describe any
3 agreement or obligation between or among the Company and Valentin Benitez or
4 Jose Mario Esquer; any positions held by Valentin Benitez or Jose Mario Esquer;
5 and any service provided or received by the Company, Valentin Benitez, or Jose
6 Marion Esquer.
- 7 4. Identify any business or other entity in which Valentin Benitez or Jose Marion
8 Esquer is or was an owner, director, officer, member, manager, or an equity holder
9 of at least 20 percent. For each business or entity identified (a) describe each line
10 of business in which the business or entity was or is engaged; and (b) describe the
11 relationship between Valentin Benitez and/or Mario Esquer and the business or
12 entity for which that Person is or was an owner, director, officer, member, manager,
13 or equity holder. In describing any relationship, make sure to describe any
14 agreement or obligation between or among each business or entity and Valentin
15 Benitez or Jose Mario Esquer; any positions held by Valentin Benitez or Jose
16 Marion Esquer; and any service provided or received by the business or entity,
17 Valentin Benitez, or Jose Mario Esquer.
- 18 5. Identify each Person (other than an employee of the Company) with whom the
19 Company shares or shared an office space or other location. For each Person
20 identified:
 - 21 a. state the address of each location that is or was shared with the
22 Company;
 - 23 b. state the dates during which the Company and the identified Person
24 shared each location; and
 - 25 c. describe the relationship between the Company and each identified
26 Person. In describing any relationship make sure to describe any
27 agreement or obligation between or among the Company and the
28 Person; any position held by the Company or any [sic] the Person; and
any service provided or received by the Company or the Person.
6. Identify each Person currently employed by the Company and (a) describe his or
her duties; (b) explain whether that Person earns an hourly wage, a salary, and/or a
commission; and (c) to the extent applicable, state the total amount of wages,

1 salary, and commission made or earned by each Person.

- 2
- 3 7. Identify each Person formerly employed by the Company and (a) describe his or
4 her duties while employed by the Company; (b) state the dates during which he or
5 she was employed by the Company; (c) explain whether that Person earned an
6 hourly wage, a salary, and/or a commission; (d) to the extent applicable, state the
7 total amount of wages, salary, and commission made or earned by each Person; (e)
8 explain whether he or she quit or was terminated; and (f) explain why he or she
9 quit or was terminated.
- 10 8. Describe each product and service offered, sold, provided or performed by the
11 Company. In describing each product or service (a) discuss all material aspects of
12 the product or service; (b) state the dates during which the Company offered, sold,
13 provided or performed the product or service; and (c) state the price(s) or fee(s)
14 that the Company charged for each product or service.
- 15 9. To the extent not already provided in response to Interrogatory 8, describe any and
16 all Mortgage Assistance Service, Bankruptcy Service, and Credit Repair Service
17 offered, sold, provided, or performed by the Company. In describing each service
18 (a) discuss all material aspects of the service; (b) state the dates during which the
19 Company offered, sold, provided, or performed such service; and (c) state the
20 price(s) or fee(s) that the Company charged for the service.
- 21 10. For any product or service identified in response to Interrogatory 8 or 9, and for
22 which the price or fee charged to any Person has varied, describe how the cost for
23 such product or service is or was set or determined.
- 24 11. Describe each Mortgage Assistance Service, Bankruptcy Service, and Credit
25 Repair Service offered, sold, provided or performed by any business or entity
26 identified in response to Interrogatories 1.g. or 4.
- 27 12. Identify all customers who hired, engaged, contracted with, or paid the Company
28 to provide any Mortgage Assistance Service, Bankruptcy Service, or Credit Repair
Service. In addition to providing the information requested in Definition K.1., also
state (a) the specific service(s) provided to that customer; and (b) the dates during
which each service was provided; and (c) the amount paid, if any, for such service.
13. Identify each Person who assists or has assisted the Company in providing any and

1 all Bankruptcy Services.

2
3 **THE CIVIL INVESTIGATIVE DEMAND'S REQUESTS FOR PRODUCTION**
4 **OF DOCUMENTS**

5 The CID contains 17 document production requests:

- 6 1. Each business license, registration or permit issued to the Company, Valentin
7 Benitez, or Jose Mario Esquer by any state or local government entity.
- 8 2. Each contract or other agreement of a business relationship, including any
9 amendments or addenda, between or among the Company and any parent,
10 subsidiary, affiliated business or company, including any joint venture or
11 partnership identified in response to Interrogatory 1.g.
- 12 3. Each contract or other agreement of a business relationship, including any
13 amendments or addenda, between or among the Company and Valentin Benitez
14 and/or Jose Mario Esquer.
- 15 4. Documents Sufficient to Show all money and other valuable consideration paid by
16 the Company to Valentin Benitez and Jose Mario Esquer.
- 17 5. Each contract or other agreement, including any amendments or addenda, between
18 or among the Company and each business, entity or Person identified in response
19 to Interrogatory 5.
- 20 6. For each product or service offered, sold, provided or performed by the Company;
- 21 a. Produce one copy of every television or radio commercial,
22 infomercial, spot, or advertisement, of any length, used to advertise or
23 promote that service, labeled with dissemination start and end dates,
24 in both audiovisual and written (e.g., transcript) format; and
- 25 b. Produce one copy of every other advertisement that has been used or
26 has been prepared for future use to advertise or promote the service,
27 including but not limited to web pages, facsimiles, promotional
28 materials, and marketing materials.

- 1 7. All scripts, manuals, or other written instructions relating to the content of sales or
2 service pitches, presentations, or consultations that have been provided to or used
3 by any Person offering for sale or selling any Mortgage Assistance Service,
4 Bankruptcy Service, or Credit Repair Service promoted, marketed, offered, sold,
5 provided or performed by the Company.
- 6 8. Complete customer files for each Person who paid the Company to perform any
7 Mortgage Assistance Service or Credit Repair Service, including but not limited to
8 contracts, correspondence records, and records of payments made or recieved.
- 9 9. To the extent not provided in response to Production Request 8, produce:
 - 10 a. All Documents that refer or relate[] to any negotiation or
11 communication by the Company with any mortgage lender or servicer
12 on behalf of any Person.
 - 13 b. All Documents that refer or relate to money or payments make by the
14 Company to any mortgage lender or servicer on behalf of any Person.
 - 15 c. Documents that refer or relate to any loan modification, repayment
16 plan, or workout plan requested, negotiated, or obtained by the
17 Company on behalf of any Person.
 - 18 d. All Documents that refer or relate to any effort by the Company to
19 improve a Person's credit record, credit history, or credit rating.
- 20 10. All files and Documents that support the following express or implied claims,
21 whether or not the Company agrees that these claims have been made. If You do
22 not possess files or Documents that support a claim, explain why You do not have
23 such files or Documents for that claim.
 - 24 a. The Company will begin to negotiate immediately with its client's
25 mortgage lender(s) or servicer(s).
 - 26 b. As a result of the Company's negotiation(s) with its client's mortgage
27 lender(s) or servicer(s), the client will receive a one- to six-month
28 suspension or deferral of his or her mortgage payments.

- 1 c. As a result of the Company's negotiation with its client's mortgage
2 lender(s) or servicer(s), the Company will obtain an agreement,
3 modification. Or other arrangement from its client's mortgage
4 lender(s) or servicer(s) whereby the client's suspended, deferred or
5 otherwise delinquent mortgage payments will be (1) paid at the end of
6 the mortgage or (2) paid over a period of five years.
- 7 d. The Company will negotiate with its client's mortgage lender(s) or
8 servicer(s) and, as a result of those negotiations, will obtain a one- to
9 six-month suspension or deferral of its client's mortgage payments
10 with his or her mortgage lender or servicer and will obtain an
11 agreement, modification, or other arrangement by which such
12 suspended or deferred mortgage payments will either be (1) paid at the
13 end of the client's mortgage or (2) paid over a period of up to five
14 years.
- 15 e. A client will not incur any fees, penalties, or other charges from his or
16 her mortgage servicer(s) or lender(s) as a result of not paying his or
17 her mortgage during the one- to six-month suspension or deferral
18 period negotiated by the Company on his or her behalf.
- 19 f. The one- to six-month suspension or deferral of mortgage payments
20 negotiated by the Company with a client's mortgage lender or
21 servicer will not cause the client's mortgage loan to be reported by
22 that mortgage lender or servicer as delinquent to any credit bureau.
- 23 g. A client's credit record, credit history, or credit rating will not be
24 negatively affected as a result of the suspended or deferred mortgage
25 payments.
- 26 f. The Company will negotiate with its client's mortgage lender(s) or
27 servicer(s) and, as a result of those negotiations, will obtain a lower
28 mortgage payment for its clients around 60-65 percent of the time.
- g. The Company will negotiate with its client's mortgage lender(s) or
servicer(s) and, as a result of those negotiations, will obtain a lower
interest rate or mortgage payment for its client more than 50 percent
of the time.

- 1 h. The price the Company charges to negotiate a suspension or deferral
2 of a client's mortgage payments is an amount set by a third party (e.g.,
3 banking institutions, mortgage lenders or servicers) or by law.
- 4 i. The price the Company charges to negotiate a lower interest rate or
5 mortgage payment on behalf [of] its client is an amount set by a third
6 party (e.g., banking institutions, mortgage lenders or servicers) or by
7 law.
- 8 j. The Company has established business relationships with mortgage
9 servicers, mortgage lenders, or other banking institutions.
- 10 k. The Company can clear bankruptcy records from a clients credit
11 records or histories.
- 12 l. The Company can improve a client's credit record, credit history, or
13 credit rating after its client file[s] for bankruptcy.
- 14 11. With respect to any Mortgage Assistance Service, Bankruptcy Service, or Credit
15 Repair Service offered, sold, provided or performed by the Company, provide all
16 price lists and pricing guidelines for each service.
- 17 12. Documents Sufficient to Show all monies received from pr [aid by any Person for
18 any (a) Mortgage Assistance Service. (b) Bankruptcy Service, or (c)Credit Repair
19 Service offered, sold, provided or performed by the Company. In addition, to the
20 extent not provided in response to Request 12(a), produce Documents Sufficient to
21 Show (d) all monies received from any Person to pay any mortgage lender or
22 servicer and (e) all monies paid to any mortgage lender or servicer.
- 23 13. All Documents that refer or relate to complaints received by the Company from
24 any Person regarding any Mortgage Assistance Service, Bankruptcy Service, or
25 Credit Repair Service, offered, sold, provided or performed by the Company. Such
26 Documents should include, but are not limited to, communications to or from
27 individuals as well as any Better Business Bureau or any government agency, as
28 well as any response by the Company to any complaint.
14. Documents Sufficient to Show for each unique product or service identified in
response to Interrogatories 8, 9, and 11(a) calendar year gross sales; (b) calendar

1 year net sales; and (c) total refunds made to customers for each calendar year.

2
3 15. Annual financial statements, including, but not limited to, income statements,
4 balance sheets, statements of retained earnings, statements of cash flows, and all
5 annual and quarterly reports, for the Company.

6
7 16. All filed tax returns for the Company.

8
9 17. Any Document used, referenced, or referred to in answering any of the above
10 Interrogatories and not otherwise requested by any Production Request.

11
12 **ARGUMENT**

13
14 **I. THE SCOPE OF ISSUES CONSIDERED IN PROCEEDINGS TO
15 ENFORCE COMPULSORY PROCESS IS NARROW**

16 Although "the court's function is 'neither minor nor ministerial,' the scope of issues
17 which may be litigated in a [compulsory process] enforcement proceeding must be
18 narrow, because of the important governmental interest in the expeditious investigation of
19 possible unlawful activity." *FTC v. Texaco*, 555 F.2d 862, 872 (D.C. Cir. 1977) (*en*
20 *banc*) (internal citation omitted). *Accord, EEOC v. Children's Hosp. Med. Ctr of N.*
Calif., 719 F.2d 1426, 1428 (9th Cir. 1983) (*en banc*).

21 This Court's role in a CID enforcement proceeding is limited to determining
22 whether the Commission demonstrates: (1) the investigation is within the authority of the
23 agency; (2) the procedural requirements have been followed; and (3) the information
24 sought is reasonably relevant. *NLRB v. Bakersfield Californian*, 128 F.3d 1339, 1341
25 (9th Cir.1994). *See also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950);
26
27
28

1 *Children's Hosp.*, 719 F.2d at 1428.² “As long as the evidence sought is relevant,
2 material and there is some ‘plausible’ ground for jurisdiction, or to phase it another way,
3 unless jurisdiction is ‘plainly lacking’ the court should enforce the subpoena” *EEOC v.*
4 *Karuk Tribe Housing Auth.*, 260 F.3d 1071, 1077 (9th Cir. 2001). “If an agency’s
5 subpoena [CID] satisfies these requirements, [the Court] *must* enforce it.” *Id.*, quoting
6 *Children's Hosp.*, 719 F.2d at 1430 (emphasis in original).
7
8

9 **II. THE CIVIL INVESTIGATIVE DEMAND SHOULD BE ENFORCED**

10 **A. The Civil Investigative Demand is Within the Authority of the** 11 **Commission**

12
13 The Commission's authority to issue the CID is clear. So, too, is the Commission's
14 authority to investigate acts and practices that may violate § 5(a) of the FTC Act. *See*
15 *FTC v. Adams*, 296 F.2d 861, 867-70 (8th Cir. 1961); *FTC v. United States Pipe &*
16 *Foundry Co.*, 304 F. Supp. 1254, 1259 (D.D.C. 1969); *see also Carter*, 636 F.2d at
17 787-88; *FTC v. Green*, 252 F. Supp. 153, 155-56 (S.D.N.Y. 1966).
18
19

20
21 ² A fourth, possible consideration for the Court is whether the subpoenaed party
22 has shown the subpoena is unreasonable because it is overbroad or unduly
23 burdensome. *Bakersfield Californian*, 128 F.3d at 1341. The burden for this
24 consideration would rest with Dinamica. However, even if Dinamica had any such
25 objections they could not properly be presented to the Court because its
26 opportunity to seek administrative relief from the Commission (a predicate to
27 seeking judicial relief) has long passed. Commission Rule 2.7(d)(1), 16 C.F.R.
28 § 2.7(d)(1) (petitions to quash or limit subpoena “shall be filed with the Secretary
of the Commission within twenty (20) days after service of the subpoena . . . , or, if
the return date is less than twenty (20) days after service, prior to the return date.”
Id.

1 **B. The Procedural Requirements were Followed**

2 The CID was issued pursuant to valid Commission resolutions authorizing the
3 issuance of compulsory process for possible violations of the FTC Act. The CID was
4 served by a Commissioner and was served by the Commission's Secretary as provided by
5 the Commission's Rules. The procedural requirements for the CID were, therefore,
6 followed.
7

8 **C. The CID Seeks Information That is Reasonably Relevant to the
9 Commission's Investigation**

10 The investigation seeks to determine whether Dinamica is engaged in a foreclosure
11 rescue, credit repair, or other scam, in violation of Section 5(a) of the FTC Act, 15 U.S.C.
12 § 45(a). The information sought by the Commission through the CID is reasonably
13 relevant to the Commission's investigation, and is designed to assist the Commission in
14 ascertaining "whether the law is being violated in some way and . . . to determine whether
15 or not to file a complaint." *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090
16 (D.C. Cir. 1992).
17

18 Dinamica has refused to produce basic information about its business operations.
19 Dinamica has yet to identify its former employees and those persons who assist or
20 assisted Dinamica in providing any bankruptcy service, as well as information about such
21 persons, as required by CID Interrogatories 7 and 13. Such people likely hold substantial
22 information about Dinamica's practices and activities. The Commission anticipates
23
24
25
26
27
28

1 contacting these people in the course of its investigation. Dinamica has similarly refused
2
3 to supply a complete response to CID Interrogatory 6, seeking information about
4 Dinamica's current employees, including a description of their duties and an explanation
5 of how each employee is compensated. Such information is necessary to evaluate
6
7 Dinamica's operations as well as any documents or information the Commission might
8 receive from Dinamica or consumers. Dinamica has also refused to produce documents
9
10 or information indicating the amount of money Dinamica has received from its clients,
11 Dinamica's calendar year sales and refunds, as well as consideration paid to Dinamica's
12 two members (i.e., Valentin Benitez and Jose Mario Esquer), as required by CID
13
14 Production Requests 12, 14, and 4. The FTC is unable to determine the scope of
15
16 Dinamica's operations without such information.

17 Moreover, Dinamica has refused to identify or provide the Commission with
18 information concerning its customers, as required by CID Interrogatory 12 and CID
19
20 Production Requests 8 and 9, and has refused to produce any complaints Dinamica may
21 have received, as required by CID Production Request 13. Dinamica's customers heard
22
23 the representations made by Dinamica's sales staff and experienced, first hand, any harm
24 that may have resulted from hiring Dinamica. It is essential that the Commission speak
25
26 with these consumers. The customer files and documents requested in Production
27
28 Request 9 will provide additional information concerning Dinamica's customers, the
scope of Dinamica's operations, and any money Dinamica received from its customers,

1 as well as evidence of any work Dinamica may have performed for its customers. The
2
3 complaints Dinamica received, as well as documents related to the complaints, will help
4 the Commission identify potential victims of any scam perpetrated by Dinamica and will
5 provide evidence of any corrective actions taken by Dinamica.
6

7 Because the CID seeks information that is "'reasonably relevant,' – or, put
8 differently, "'not plainly incompetent or irrelevant to any lawful purpose' of the
9 [agency]," *Invention Submission*, 965 F.2d at 1089 (citations omitted), it should be
10 enforced. *See also Texaco*, 555 F.2d at 874-76.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

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

For the reasons set forth above, this Court should enter an order requiring Dinamica, within five (5) calendar days of the entry of this Court's order compelling compliance, to provide complete responses to the CID's written interrogatories and document requests, and a sworn certificate of compliance in the form provided in Pet. Exh. 2.

Respectfully submitted,

WILLIAM BLUMENTHAL
General Counsel

JOHN F. DALY
Deputy General Counsel - Litigation



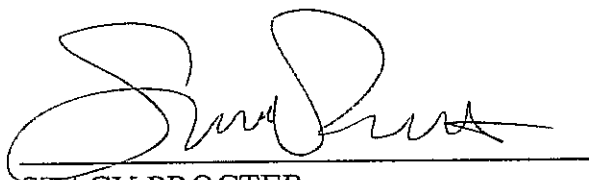
JOHN ANDREW SINGER
Attorneys for Petitioner
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
(202) 326-3234
Fax (202) 326-2477
Email: jsinger@ftc.gov

LOCAL COUNSEL:

STACY PROCTER
CA Bar No. 221078
Federal Trade Commission
10877 Wilshire Boulevard - Suite 700
Los Angeles, CA 90024
(310) 824-4366
Fax: (310) 824-4380
Email: sprocter@ftc.gov

CERTIFICATE OF SERVICE

1
2
3 I hereby certify that on July 16, 2008, via pre-paid Federal Express, I served a
4 copy of the Memorandum in Support of the Federal Trade Commission's Petition for an
5 Order Enforcing a Civil Investigative Demand on Marcus Gomez, Esq., 12749 Norwalk
6 Blvd., Suite 204-A, Norwalk, CA 90650, Counsel for Respondent, Dinamica Financiera
7 LLC ("Dinamica").
8
9

10
11
12
13 

14 STACY PROCTER
15 CA Bar No. 221078
16 Federal Trade Commission
17 10877 Wilshire Blvd., Suite 700
18 Los Angeles, CA 90024
19 (310) 824-4366
20 Fax: (310) 824-4380
21 Email: sprocter@ftc.gov
22 Attorney for Petitioner
23 Federal Trade Commission
24
25
26
27
28