

PRELIMINARY STATEMENT

1
2
3 The Federal Trade Commission (Commission) petitions this Court for a civil
4 contempt order against respondent Dinamica Financiera LLC (Dinamica). Dinamica is a
5 California LLC with two members, Jose Mario Esquer and Valentin Benetiz. The
6 Commission seeks sanctions against Dinamica and its members for this contumacious
7 behavior including, but not necessarily limited to, coercive incarceration of one or both
8 of these members.
9
10

11 Dinamica is in violation of a July 31, 2008, Order (the “July 31 Order”) that
12 required Dinamica to produce to the Commission, within five (5) days of service of the
13 July 31 Order, documentary evidence and written responses in compliance with a
14 Commission Civil Investigative Demand (CID), served on April 22, 2008, in the course
15 of a non-public investigation concerning an apparent mortgage foreclosure rescue and
16 credit repair scam. The July 31 Order was served personally on Dinamica and by
17 Federal Express on its counsel on July 31, 2008. Dinamica has not produced any
18 responses or documents pursuant to the Court’s July 31 Order. The Commission,
19 therefore, requests that this Court find Dinamica in contempt of the July 31 Order and
20 coercively incarcerate at least one of the members of Dinamica until such time as
21 Dinamica comes into compliance with the July 31 Order.
22
23
24
25
26

27 This petition is filed on an emergency basis because of the immediacy and
28

1 magnitude of consumer harm that is at issue. Through its contumacious behavior
2 Dinamica continues to delay the Commission's investigation thereby thwarting the
3 Commission's ability to obtain equitable relief under Sections 5(a) and 13(b) of the FTC
4 Act, 15 U.S.C. §§ 45(a) and 53(b), including, but not necessarily limited to, preliminary
5 and permanent injunctive relief to prevent further harm to consumers as well as
6 consumer redress.
7
8

9
10 **JURISDICTION**

11 This Court has the inherent authority to enforce its orders through civil contempt.
12 *FTC v. Gill*, 183 F. Supp. 2d 1171, 1180 (C.D. Cal. 2001).
13

14 **STATEMENT OF RELEVANT FACTS**¹

15 On July 16, 2008, the Commission filed an Emergency Petition for an Order
16 Enforcing Civil Investigation Demand (Docket Entry (DE) 1) to enforce compliance
17 with a CID issued by the Commission on April 21, 2008, and served on Dinamica on
18 April 22, 2008. (DE 1, FTC Exh. 2).² This Petition was personally served by a private
19 process server on Dinamica, through its employees, Olivia Castaneda and Julio Ortega,
20
21
22
23

24
25 ¹A complete statement of the facts underlying this CID enforcement proceeding
26 was set out in the Commission's Emergency Petition of the Federal Trade
Commission for an Order Enforcing a Civil Investigative Demand. (DE 1).

27 ²The first eleven exhibits submitted by the Commission are attached to the
28 Petition filed at DE 1.

1 and its counsel, Marcus Gomez. (DE 8, 9 and 10).³ On July 17, 2008, this Court issued
2 an Order to Show Cause Why Respondent Should Not Comply with Federal Trade
3 Commission Civil Investigative Demand. (DE 5). This Order required Dinamica to file
4 any opposition to the Commission's Petition by July 24, 2008, and to appear before this
5 Court on July 31, 2008 at 10:00 a.m. *Id.* This Order was served by Federal Express on
6 both Dinamica and its counsel, Marcus Gomez. (DE 6 and 7). Dinamica never filed a
7 response to the Court's July 17 Show Cause Order. FTC Exh. 12, ¶ 5.

8
9
10
11 On July 31, 2008, the Court conducted a hearing concerning its July 17 Show
12 Cause Order. Following the hearing, this Court entered an order (the "July 31 Order")
13 compelling Dinamica to produce to the Commission, within five (5) days of service of
14 the Order, all documentary evidence and written responses necessary to comply fully
15 with the Commission's CID served on Dinamica on April 22, 2008. (DE 13). The July
16 31 Order was personally served on Dinamica on July 31, 2008, by a private process
17 server making personal service on one of Dinamica's two members, Valentin Benetiz.
18 (DE 16). The July 31 Order also was served by Federal Express on Dinamica's counsel,
19 Marcus Gomez, on July 31, 2008. (DE 15).

20
21
22
23
24 The Commission has received no responses or documents from Dinamica as

25 _____
26 ³Dinamica appears to have moved its principal place of business or opened a
27 second office. FTC Exh. 12, ¶ 3. The Commission, therefore, out of an abundance
28 of caution, directed the private process server to make personal service on
Dinamica at both locations.

1 required by the Court’s July 31 Order. FTC Exh. 12, ¶ 6.

2 **ARGUMENT**

3
4 The legal standard for establishing civil contempt is well-established: the petitioner
5 must demonstrate by clear and convincing evidence that: (a) the respondent has violated a
6 specific and definite order of the Court; (b) that the respondent had sufficient notice of
7 the terms of this Order, and (c) that the respondent has notice that it can be sanctioned if
8 it does not comply with the Order. *E.g., FTC v. Enforma Natural Prods.*, 362 F.3d 1204,
9 1211 (9th Cir. 2004); *FTC v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999);
10 *Internet Specialties West, Inc. v. ISPWest*, 2007 WL 1655732 at *2 (C.D. Cal. 2007);
11 *Biovail Labs. Inc. v. Anchen Pharm. Inc.*, 463 F. Supp. 2d 1073, 1080 (C.D. Cal. 2006);
12 *Gill*, 183 F. Supp. 2d at 1180. Whether the violation is intentional or willful is
13 immaterial for a finding of civil contempt. *Internet Specialties West*, 2007 WL 1655732
14 at *2; *Biovail Labs*, 463 F. Supp. 2d at 1080; *CFTC v. Emerald Worldwide Holdings,*
15 *Inc.*, 2004 WL 3186580 at *2 (C.D. Cal. 2004).
16
17
18
19
20

21 Sanctions for civil contempt have two purposes: to coerce the respondent into
22 compliance with the court’s order and to compensate the petitioner for any losses
23 sustained. *Internet Specialties West*, 2007 WL 1655732 at *2; *Gill*, 183 F. Supp. 2d at
24 1180. In determining the sanction, a court should consider the “character and magnitude
25 of the harm threatened by continued contumacy, and the probable effectiveness of any
26
27
28

1 suggested sanctions.” *Gill*, 183 F. Supp. 2d at 1180, quoting *United States v. United*
2 *Mine Workers*, 330 U.S. 258, 304 (1947).
3

4 **Dinamica Has Violated Specific and Definite terms of the July 31 Order**

5 The Court’s July 31 Order unambiguously ordered Dinamica to provide complete
6 responses to interrogatories contained in and to produce all documents responsive to the
7 Commission’s CID.
8

9 **Dinamica Had Sufficient Notice of the Terms of the July 31 Order**

10 The July 31 Order was served on both Dinamica and its counsel.
11
12 Notwithstanding the express terms of the July 31 Order, Dinamica has not provided any
13 responses or documents to the Commission in compliance with this Order.
14

15 **Dinamica and its Members Will Be on Notice That They May Be Sanctioned**
16 **If Dinamica Does Not Comply with July 31 Order**

17 The proposed Show Cause Order concerning Dinamica’s civil contempt contains
18 express notice that Dinamica and its two members, Jose Mario Esquer and Valentin
19 Benetiz, may be sanctioned for Dinamica’s failure to comply with the Court’s July 31
20 Order. The proposed Show Cause Order specifically indicates that such sanctions may
21 include, but will not necessarily be limited to, coercive incarceration of one or both of
22 Dinamica’s members. Following personal service of the proposed Show Cause Order,
23 Dinamica and its two members will be on notice that they may be sanctioned for failure
24 to comply with the Court’s July 31 Order.
25
26
27
28

1 **Coercive Incarceration of One or More of Dinamica’s Members is an**
2 **Appropriate Sanction for Dinamica’s Civil Contempt**

3 Dinamica ignored the Court’s July 17, 2008, Show Cause Order relating to the
4 Commission’s Emergency Petition for an Order Enforcing a Civil Investigative Demand
5 by failing to file a response as permitted by that Order. Dinamica now has ignored the
6 affirmative requirement of the Court’s July 31 Order by failing to provide any further
7 responses or documents in response to the CID to the Commission. As a result, the
8 Commission respectfully submits that the Court sanction Dinamica through coercive
9 incarceration of one or both of its members, Jose Mario Esquer and Valentin Benitez,
10 until such time as Dinamica comes into compliance with the Court’s July 31 Order. Such
11 a sanction is appropriate given Dinamica’s utter failure to comply with this Order, the
12 resulting likelihood of continuing contumacious behavior, and the considerable harm that
13 may be resulting to consumers due to the resulting delay in the Commission being able to
14 fully investigate and, if appropriate, to seek injunctive relief to stop Dinamica’s apparent
15 mortgage relief scam. This utter disregard for the Court’s Order suggests that coercive
16 incarceration may be the only effective sanction to assure compliance with the July 31
17 Order. Monetary sanctions are not an optimal sanction here since any monies held by
18 Dinamica would be best used as consumer redress should the Commission bring an
19 enforcement action, particularly since the Commission has not suffered any monetary
20 losses due to Dinamica’s contumacious behavior.
21
22
23
24
25
26
27
28

CONCLUSION

1
2 For the reasons set forth above, this Court should enter an order requiring
3
4 Dinamica to show cause why it is not in contempt of the Court’s July 31 Order. Upon a
5
6 finding of contempt, the Court should sanction Dinamica through sanctions directed at its
7
8 members. Such sanctions should include, but not necessarily be limited to, the coercive
9
10 incarceration of one or both of Dinamica’s members, Jose Mario Esquer and Valentin
11
12 Benitez.

11 Respectfully submitted,

12
13 WILLIAM BLUMENTHAL
14 General Counsel

15 JOHN F. DALY
16 Deputy General Counsel - Litigation

17
18 /S/ John Andrew Singer
19 JOHN ANDREW SINGER
20 Attorneys for Petitioner
21 Federal Trade Commission
22 600 Pennsylvania Ave., N.W.
23 Washington, D.C. 20580
24 (202) 326-3234
25 Fax (202) 326-2477
26 Email: jsinger@ftc.gov
27
28

1 LOCAL COUNSEL:

2 STACY RENE PROCTER
3 CA Bar No. 221078
4 Federal Trade Commission
5 10877 Wilshire Boulevard - Suite 700
6 Los Angeles, CA 90024
7 (310) 824-4366
8 Fax: (310) 824-4380
9 Email: sprocter@ftc.gov
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Marcus Gomez, Esq.
12749 Norwalk Blvd., Suite 204-A
Norwalk, CA 90650
Counsel for Respondent, Dinamica Financiera LLC

Dinamica Finaciera, LLC
7857 E. Florence Avenue, Suite 201
Downey, California, 90240

Dinamica Finaciera, LLC
9550 Firestone Boulevard, Suite 201
Downey, CA 90241.

/S/ John Andrew Singer
JOHN ANDREW SINGER
Attorney 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