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

19 FEDERAL TRADE COMMISSION,

20 Petitioner,

21 v.

22 DINAMICA FINANCIERA LLC,

23 Respondent.

2:08-CV-04649 MMM (PJWx)

EMERGENCY APPLICATION FOR
ADDITIONAL SANCTIONS
AGAINST DINAMICA
FINANCIERA LLC FOR ITS CIVIL
CONTEMPT

24 The Federal Trade Commission (Commission) hereby applies to this Court for
25 additional sanctions against Dinamica Financiera LLC (Dinamica) for its civil contempt,
26 including coercive incarceration of one or both of its two members, Jose Mario Esquer
27 (Esquer) and Valentin Benitez (Benitez).

28 **Background**

1. The Fifth Declaration of Stacy Procter, which verifies certain facts
contained in this Petition, is attached hereto as FTC Exhibit ("FTC Exh.") 22.

2. On September 22, 2008, this Court entered an Order holding Dinamica

1 Financiera LLC (Dinamica) in civil contempt (Docket Entry (DE) 30) (September 22
2 Contempt Order) for its failure to comply with a prior Order, entered on July 31, 2008
3 (July 31 Order). (DE 13). The July 31 Order requires Dinamica to respond fully to the
4 interrogatories and document production requests contained in an April 21, 2008,
5 Commission Civil Investigative Demand (CID) to Dinamica. (DE 1 - FTC Exh. 2).

7 3. The September 22 Contempt Order imposed a sanction of \$750.00 per day,
8 beginning on October 7, 2008, if Dinamica failed to come into compliance with the July
9 31 Order. The September 22 Order also permitted the Commission to seek further
10 sanctions, including coercive incarceration of one or both of Dinamica's members, if the
11 daily monetary sanction of the September 22 Contempt Order proved ineffective. (DE
12 30 at pp. 9-10).

14 4. On October 6, 2008, Dinamica produced a supplemental responses to the
15 CID's interrogatories and production requests, including approximately 200 customer
16 files. (FTC Exh. 22 at ¶ 4).

18 5. Through an October 10, 2008 letter (DE 32 - FTC Exh. 19), counsel for the
19 Commission notified counsel for Dinamica that the October 6 supplementation did not
20 provide complete responses to the CID and, therefore, Dinamica had not purged its
21 contempt. The letter also requested a C.D. Cal. L.R. 37-1 conference with as a predicate
22 to this application.

24 6. In a hand-written facsimile on October 14, 2008 (DE 32 - FTC Exh. 20),
25 counsel for Dinamica appeared to acknowledge the deficiencies raised by the
26 Commission and indicated that Dinamica would attempt to cure these deficiencies.
27
28

1 7. In an October 20, 2008 letter (attached to Fifth Procter Decla. as FTC Exh.
2 23), counsel for Dinamica again acknowledged most of the deficiencies noted by the
3 Commission. While the letter proposed to provide supplemental responses and
4 documents to cure these deficiencies, it did not provide a time frame for doing so.
5

6 8. Through an October 22, 2008 letter (attached to Fifth Procter Decla. as
7 FTC Exh. 24), the Commission responded to Dinamica's counsel's facsimile and
8 indicated that absent a cure the Commission would file this application on or after
9 October 30, 2008.
10

11 9. On October 22, 2008, the Commission received approximately 20
12 additional customer files in response to the CID. (FTC Exh. 22 at ¶ 5).

13 10. On October 24, 2008, Dinamica produced a second supplemental response
14 to the CID interrogatories and production requests. (attached to Fifth Procter Decla. as
15 FTC Exh. 25).
16

17 11. In response, through an October 27, 2008, letter (attached to Fifth Procter
18 Decla. as FTC Exh. 26), the Commission enumerated why Dinamica still had not purged
19 its contempt.
20

21 12. Dinamica produced additional interrogatory responses on October 29, 2008,
22 that listed Dinamica's current and former employees and provided contact information
23 for them. (FTC Exh. 22 at ¶ 6).

24 13. On October 30, 2008, counsel for the Commission and Dinamica conducted
25 their C.D. Cal. L.R. 37-1 conference and discussed the remaining deficiencies in
26 Dinanimca's responses and productions to the CID. The Commission summarized these
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28

1 deficiencies in a letter dated October 31, 2008 (October 31 letter). (DE 34, FTC Exh.
2 21).

3
4 14. During the October 30 conference counsel for Dinamica represented that he
5 would be meeting with his client on November 4 and that would attempt to resolve the
6 deficiencies raised in the Commission's October 27 letter. He further stated that
7 anticipated that Dinamica would produce to the Commission supplemental materials that
8 would purge its contempt on or about November 7, 2008. (FTC Exh. 22 at ¶ 7).

9
10 15. By telephone on November 6, 2008, counsel for Dinamica informed
11 counsel for the Commission that he had met with representatives of Dinamica on
12 November 4. He represented that at this meeting he had gone over point-by-point the
13 deficiencies raised in the Commission's October 31 letter. He stated that he had been
14 authorized by Dinamica to prepare a final comprehensive response to the CID and that
15 he was to receive additional documents from Dinamica on November 6. Counsel for
16 Dinamica then stated that, assuming cooperation from his client, he would produce the
17 materials necessary to provide complete responses to the CID early in the week of
18 November 10, 2008. In response, the Commission agreed to give Dinamica a final
19 opportunity to purge its contempt before filing this application and seeking additional
20 judicial relief. (FTC Exh. 22 at ¶ 8).

21
22
23 16. Since November 6, the only communication that the Commission has
24 received from Dinamica or its counsel was a facsimile from Dinamica's counsel
25 transmitted to the Commission on November 17, 2008, promising further productions
26 and a telephone call on November 18, 2008. (attached to Fifth Procter Decla. as FTC
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1 Exh. 27). Despite these promises, the Commission has neither heard from counsel for
2 Dinamica nor received any additional materials. (FTC Exh. 22 at ¶ 9).

3 17. Dinamica has not paid to the Commission any portion of the \$750.00 daily
4 sanction for its continuing contempt that has been accruing since October 7, 2008. (FTC
5 Exh. 22 at ¶ 13).

6 18. This Application is filed on an emergency basis because of the immediacy
7 and magnitude of consumer harm that is at issue. Dinamica's continuing contumacious
8 behavior is delaying the Commission's investigation and thereby thwarting the
9 Commission's ability to obtain equitable relief under Sections 5(a) and 13(b) of the FTC
10 Act, 15 U.S.C. §§ 45(a) and 53(b), including, but not necessarily limited to, preliminary
11 and permanent injunctive relief to prevent further harm to consumers as well as
12 consumer redress.
13
14

15 **Continuing Deficiencies**

16 19. Notwithstanding its additional narrative responses and document
17 productions, Dinamica still is not in compliance with the requirements of the CID or the
18 Court's July 31 Order compelling compliance with the CID and, therefore, has not
19 purged itself of the contempt that this Court found in its September 22 Order.
20
21

22 ***Interrogatories***

23 20. *Interrogatory 2* requires a full description of the relationship between
24 Dinamica and any affiliates. (DE 1, FTC Exh. 2 at 30). Counsel for Dinamica and
25 Dinamica's September 17, 2008, response to the CID interrogatories both indicate that
26 Dinamica now operates as Soluciones Dinamica, Inc. (Soluciones). Soluciones is a new
27 entity, not simply a new name. (FTC Exh. 22 at ¶ 14; *see also* DE 29, FTC Exh. 1 at
28

¶ 1). Dinamica's narrative responses do not address the relationship between Dinamica and Soluciones at all. (DE 1, FTC Exh. 3 at 41).

21. *Interrogatory 3* requires Dinamica to provide a narrative answer fully describing the relationship among Dinamica, Esquer and Benitez. (DE 1, FTC Exh. 2 at 30). In light of transformation from Dinamica to Soluciones, Dinamica must fully explain the relationship among Dinamica, Soluciones, Esquer and Benitez. Dinamica's narrative responses do not address the Dinamica, Soluciones, Esquer and Benitez relationships at all. (DE 1, FTC Exh. 3 at 41).

22. *Interrogatory 5* requires Dinamica to discuss any entities with whom it shares or shared office space and their relationship. (DE 1, FTC Exh. 2 at 31). Dinamica's narrative responses do not indicate if Dinamica and Soluciones ever shared office space and, if so, their relationship. (DE 1, FTC Exh. 3 at 41).

23. *Interrogatory 6* requires Dinamica to identify all current employees of Dinamica and to provide the duties and earnings for each employee. (DE 1, FTC Exh. 2 at 31). Dinamica has only provided a partial response to this interrogatory. While Dinamica has provided information concerning its employees' 2007 earnings, it has not provided any information for 2006 or 2008. Further, to the extent that an employee earns both commission(s) and an hourly wage or salary, Dinamica has not separated these earnings' components. (DE 1, FTC Exh. 3 at 41; *see also see also* Dinamica's Oct. 6, 2008, first suppl. responses (excerpt attached to Fifth Procter Decla. as FTC Exh.

1 28).¹ Dinamica's response also needs to be revised to explain the relationship between
2 Soluciones and Esquer and Benitez.

3 24. *Interrogatory 9* requires Dinamica to describe any mortgage assistance
4 services, bankruptcy service or credit repair services it has offered or provided. (DE 1,
5 FTC Exh. 2 at 31-32). Dinamica represented that in January 2008 Dinamica "referred
6 and assisted clients for refinancing of their home loans" and "in the past prepared a
7 bankruptcy petition for clients who were unable to make payments and who faced a
8 foreclosure sale." (DE 29, FTC Exh. 18 at 61). Dinamica's current narrative responses
9 concerning these issues are both incomplete and ambiguous. (DE 1, FTC Exh. 3 at 43;
10 *see also* FTC Exh. 27 at 2). Dinamica, therefore, must more fully explain the
11 arrangements it made for these services, to whom it referred clients for these services,
12 the price that Dinamica's clients paid for such services, and any fees that Dinamica
13 received for its referrals for these services.
14

15 25. *Interrogatory 10* requires Dinamica to describe, if the fees it charged for
16 any mortgage assistance services, bankruptcy service or credit repair services varied,
17 how such fees were set or determined. (DE 1, FTC Exh. 2 at 32). Dinamica has not
18 responded to this question at least with regard to its bankruptcy services. (DE 1, FTC
19 Exh. 3 at 43). It needs to indicate if such fees varied or not and, if they varied, how they
20 were set or determined.
21

22 26. *Interrogatory 12* requires Dinamica to provide contact information for each
23 of its clients from January 1, 2006, through the present as well as an indication of the
24

25
26
27
28 ¹FTC Exh. 27 contains supplementation only for CID Interrogatories 6 and 7
and CID Production Requests 8, 13 and 14.

1 services provided, the dates during which services were provided, and the amount paid
2 to Dinamica. (DE 1, FTC Exh. 2 at 32). Dinamica only has provided what it purports
3 was a partial listing of its clients for the 90 days prior to May 8, 2008. (*see* DE 1, FTC
4 Exh. 3 at 43). During the October 30 conference, counsel for Dinamica confirmed that
5 Dinamica has not yet provided a complete list of its clients to the Commission in either
6 paper or electronic format. (FTC Exh. 22 at ¶ 7). Dinamica needs to provide a complete
7 response to this interrogatory.
8

9
10 27. *Interrogatory 13* requires Dinamica to identify each person who assists or
11 has assisted Dinamica in providing any bankruptcy services (DE 1, FTC Exh. 2 at 32).
12 Dinamica has provided no response to this interrogatory. (DE 1, FTC Exh. 3 at 43).
13

14 ***Production Requests***

15 28. *Document Destruction Generally* - Dinamica admits that it destroyed
16 documents through at least May 8, 2008. (FTC Exh. 26 at 8). This is after the April 22,
17 2008, service date for the CID when a duty to preserve potentially responsive documents
18 arose (*see* DE 29, FTC Exh. 18 at ¶ 4, pp. 8-9). Additionally, following the September
19 22, 2008, hearing, Dinamica's counsel confirmed that Dinamica had continued to
20 destroy documents after it was served with the CID and after he had been retained by
21 Dinamica (though against his advice). Further, on October 29, 2008, Dinamica's
22 counsel's told the Commission that Dinamica destroyed documents on May 1 and 2,
23 2008. (FTC Exh. 22 at ¶ 7). Dinamica has only partially identified what documents it
24 has destroyed, when they were destroyed, and why they were destroyed. At a minimum,
25 to purge itself of its contempt, Dinamica must provide this information for all documents
26 it has destroyed or fully explain why it is unable to do so.
27
28

1 29. *Production Request 2* requires the production of all contracts or other
2 agreements between Dinamica and any business affiliates. (DE 1, FTC Exh. 2 at 32).
3 Dinamica has not produced any such documents concerning the relationship between
4 Dinamica and Soluciones. (DE 1, FTC Exh. 3 at 45). Dinamica must produce all such
5 documents that exist.
6

7 30. *Production Request 4* requires the production of documents sufficient to
8 demonstrate all compensation of any kind paid by Dinamica to Benitez and Esquer. (DE
9 1, FTC Exh. 2 at 32). Dinamica has not fully responded to this specification. (DE 1,
10 FTC Exh. 3 at 45).
11

12 31. *Production Request 6* requires the production of a copy of every
13 advertisement used by Dinamica in every type of media (DE 1, FTC Exh. 2 at 33). At a
14 minimum, Dinamica has not produced all magazine advertisements it has used. (DE 1,
15 FTC Exh. 3 at 45).
16

17 32. *Production Request 9* requires the production of all documents relating to:
18 negotiations or communications by Dinamica on behalf of any of its clients and any
19 mortgage lender or servicer; any money paid or payments made by Dinamica on behalf
20 of any of its clients to any mortgage lender or servicer; any loan modifications,
21 repayment plan or workout plan requested, negotiated or obtained by Dinamica on
22 behalf of any of its clients with any mortgage lender or servicer; and any effort by
23 Dinamica on behalf of any of its clients to improve a client's credit record, history or
24 rating. (DE 1, FTC Exh. 2 at 33). From discussions with Dinamica's counsel the
25 Commission believes that Dinamica may have documents responsive to this request that
26 have not been produced. (FTC Exh. 22 at ¶ 10; *see also* DE 1, FTC Exh. 3 at 46).
27
28

1 33. *Production Requests 10(a) through 10(l)* require the production of all
 2 documents that relate to any express or implied claims made to consumers regarding a
 3 variety of types of services that Dinamica can provide for consumers concerning
 4 consumers' relationships and arrangements with their mortgage lenders and servicers.
 5 (DE 1, FTC Exh. 2 at 33-35). Dinamica's response to these requests has consisted of
 6 statements such as "nothing" or "none, no such claim made." (DE 1, FTC Exh. 3 at 46).
 7 At a minimum, Dinamica must state, separately for each request, whether Dinamica
 8 believes such a claim has been made and, if so, whether Dinamica has produced
 9 Documents to support that claim.²

12 34. *Production Request 12* requires the production of documents indicating all
 13 monies received from consumers for mortgage assistance, bankruptcy or credit repair
 14 services offered or provided by Dinamica as well as all monies paid by Dinamica to any
 15 mortgage lender or servicer. (DE 1, FTC Exh. 2 at 35). Dinamica produced what it
 16 purports to be statements summarizing payments made by clients but has not indicated if
 17 these statements include all payments or are only a partial listing. (DE 1, FTC Exh. 3 at
 18 46). Additionally, Dinamica has not produced (or at least specifically identified) all
 19 documents indicating payments, if any, made to any mortgage lender or servicer. (FTC
 20 Exh. 22 at ¶ 11).

23 35. *Production Request 14* requires the production of documents indicating
 24 gross sales, net sales and refunds to customers. (DE 1, FTC Exh. 2 at 35). While
 25

26
 27 ²The subparts for Production Requests 10(a) through 10(l) contain two
 28 subparts labeled "f" and two subparts labeled "g." In their October 29 conference
 counsel agreed to avoid any confusion concerning these subparts by using the
 convention "f1, g1, f2, and g2." FTC Exh. 26 at 3.

1 Dinamica indicated it would produce this information for 2008 (FTC Exh. 26 at 8), it
2 has not done so and has only provided information for 2006 and 2007. (FTC Exh. 22 at
3 ¶ 12; FTC Exh. 3 at 46).

4
5 WHEREFORE, the Commission invokes the aid of this Court and prays:

6 a. That the Court enter an Order directing Dinamica to show cause why this
7 Court should not impose further sanctions, including but not necessarily limited to the
8 coercive incarceration of Dinamica's two members Jose Mario Esquer and Valentin
9 Benitez, for Dinamica's failure to purge its contempt as determined by this Court in its
10 September 22, 2008, Order;

11
12 b. That the Court compel payment to the Commission by Dinamica of the
13 \$750.00 daily sanction from October 7, 2008, through the date of its Order granting this
14 Application; and

15 c. For such other relief as the Court deems just and proper.

16
17 Respectfully submitted,

18 WILLIAM BLUMENTHAL
19 General Counsel

20 JOHN F. DALY
21 Deputy General Counsel - Litigation

22 /S/ John Andrew Singer
23 JOHN ANDREW SINGER
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FTC Exhibit 22

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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11 FEDERAL TRADE COMMISSION,
12
Petitioner,
13
v.
14 DINAMICA FINANCIERA LLC,
15
Respondent.

2:08-CV-04649 MMM (PJWx)
FIFTH DECLARATION OF STACY
PROCTER

17 **FIFTH DECLARATION OF STACY PROCTER**

18 I, Stacy Procter, state the following:

19 1. I am an attorney employed in Los Angeles, California, by the Federal
20 Trade Commission (Commission or FTC) and am authorized to execute this
21 declaration. I am leading the Commission's investigation concerning possible
22 violations of the FTC Act by Dinamica Financiera LLC (Dinamica) and Soluciones
23 Dinamicas Inc. (Soluciones).
24

25 2. Attached hereto are true and correct copies of the following exhibits:

26 a. FTC Exh. 23 - Letter from counsel for Dinamica to counsel for
27
28

1 the Commission, dated October 20, 2008, and transmitted to the
2 Commission on October 21, 2008;

3 b. FTC Exh. 24 - Letter from counsel for the Commission to
4 counsel for Dinamica, dated and transmitted October 22, 2008;

5 c. FTC Exh. 25 - Dinamica's second supplemental response to the
6 Commission's CID (redacted pursuant to L.R. 79-5.4), dated
7 and transmitted on October 24, 2008;

8 d. FTC Exh. 26 - Letter from counsel for the Commission to
9 counsel for Dinamica, dated and transmitted on October 27,
10 2008;

11 e. FTC Exh. 27 - Facsimile from counsel for Dinamica to counsel
12 for the Commission, dated November 14, 2008, and transmitted
13 to the Commission on November 17, 2008;

14 f. FTC Exh. 28 - Excerpt from Dinamica's first supplemental
15 response to Commission CID (redacted pursuant to L.R. 79-
16 5.4), dated October 6, 2008.
17

18
19
20 3. Following the September 22, 2008, hearing, counsel for Dinamica
21 stated to counsel for the Commission that Dinamica had continued to destroy
22 documents after it was served with the CID and after he had been retained by
23 Dinamica (though against his advice). On October 30, 2008, Dinamica's counsel's
24 told the Commission that Dinamica destroyed documents on May 1 and 2, 2008.
25

26 4. On October 6, 2008, Dinamica produced supplemental responses to
27 the CID interrogatories and production requests, including approximately 200
28 customer files.

1 5. On October 22, 2008, the Commission received approximately 20
2 additional customer files.

3 6. On October 29, 2008, Dinamica produced additional interrogatory
4 responses that listed Dinamica's current and former employees and provided
5 contact information for them.
6

7 7. During an October 30, 2008, C.D. Cal. L.R. 37-1 conference, counsel
8 for Dinamica represented that he would be meeting with representatives of
9 Dinamica on November 4 and that he would attempt to resolve the deficiencies
10 raised in the Commission's October 27 letter (FTC Exh. 26) during this client
11 meeting. Counsel for Dinamica also stated at the conference that he anticipated
12 that Dinamica would produce supplemental materials that would purge its
13 contempt on or about November 7, 2008. Dinamica's counsel also confirmed that
14 Dinamica had not provided a complete list to the Commission, in either paper or
15 electronic format, of clients for itself and Soluciones. Counsel for the Commission
16 summarized the deficiencies discussed during the conference in a letter to counsel
17 for Dinamica, dated October 31, 2008. (DE 34, FTC Exh. 21).
18
19

20 8. By telephone on November 6, 2008, counsel for Dinamica informed
21 counsel for the Commission that he had met with his client on November 4.
22 Counsel represented that at that meeting he had gone over with Dinamica's
23 representatives point-by-point the deficiencies raised in the Commission's October
24 31 letter, that he had been authorized by Dinamica to prepare a final
25 comprehensive response to the CID, and that he was to receive additional
26 documents from Dinamica on November 6. He also stated that, assuming
27
28

1 cooperation from his client, he would produce the materials necessary to provide
2 complete responses to the CID early in the week of November 10, 2008. In
3 response, the Commission agreed to give Dinamica a final opportunity to purge its
4 contempt before filing this application and seeking additional judicial relief.
5

6 9. Since November 6, 2008, the only communication that the
7 Commission has received from Dinamica or its counsel was a facsimile transmitted
8 on November 17, 2008 (FTC Exh. 27), from Dinamica's counsel promising further
9 productions and a telephone call on November 18, 2008. Despite these promises,
10 the Commission has neither heard from counsel for Dinamica nor received any
11 additional materials.
12

13 10. During the October 30 C.D. Cal. L.R. 37-1 conference, I raised the
14 issue of the production of documents relating to CID Document Production
15 Request 9 (DE 1, FTC Exh. 2 at 33). In response, Dinamica's counsel stated that
16 Dinamica may have documents responsive to this request that have not been
17 produced.
18

19 11. In my review of the documents produced by Dinamica to date, I have
20 only seen statements and receipts that purport to summarize payments made to
21 Dinamica by its clients. I have only seen one document which may show a
22 payment made by Dinamica to a mortgage lender or servicer. Dinamica has not
23 otherwise produced (or at least specifically identified) documents indicating
24 payments, if any, it has made to any mortgage lender or servicer on behalf of its
25 clients.
26

27 12. Dinamica has not produced any documentation concerning its gross
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1 sales, net sales and refunds to customers for 2008 as required by CID Production
2 Request 14. While Dinamica's counsel has promised that such documents would
3 be produced, no such responsive documents have been produced by Dinamica.

4
5 13. The Commission has not been paid by Dinamica any of the \$750.00
6 daily sanction, commencing on October 7, 2008, imposed by the Court's
7 September 22, 2008 Contempt Order. (DE 30).

8 14. In the course of various discussions, including on September 22,
9 2008, counsel for Dinamica has represented to counsel for the Commission that
10 while Soluciones is a separate entity from Dinamica, that Soluciones is the
11 continuation of the same business that originally operated under the name
12 Dinamica. As a result, counsel for Dinamica has stated that Dinamica's responses
13 to the CID apply to both Dinamica and the continuation of the business started as
14 Dinamica and that is continuing as Soluciones.

15
16 15. During a September 28, 2008, telephone conference where counsel for
17 the Commission and Dinamica discussed the continuing deficiencies in Dinamica's
18 responses, counsel for Dinamica indicated that Dinamica's two members, Jose
19 Mario Esquer and Valentin Benitez, were present in his office though neither
20 Esquer nor Benitez actually spoke.

21
22 I declare under penalty of perjury that the foregoing is true and correct.
23 Executed on November 25, 2008, at Los Angeles, California.

24
25
26 /S/ Stacy Procter

27 Stacy Procter
28

FTC Exhibit 23

MARCUS COMEZ
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October 20, 2008

Federal Trade Commission
10877 Wilshire Boulevard
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Los Angeles, California 90024-4341

Attn: Stacy Procter, Attorney

RE: Federal Trade Commission v. Dinamica Financiera LLC

Dear Ms. Procter,

The following is a further response to yours of October 20, 2008 regarding the discovery deficiencies.

Deficiencies

1. You mentioned the response to Interrogatory 12 together with the response to production request 8 and 9. Since the requested information is more completely covered by production requests 8 and 9 I will focus on those latter responses.

I have shown your letter and the list of persons attached to your letter to the Respondent. Respondent has undertaken efforts to compile the documents requested.

To date Respondent has sent 54 files with its first production request response and 162 additional files with its first supplemental production response.

I have explained to my clients that even though Dinamica Financiera has moved and that files were also moved or destroyed that it is important to account for every file.

2. The produced "statements" were recapitulations of payment information.

The reason for the use of the names Dinamica Financier and Solucion Dinamica is because of the name change of the company. My position is that the discovery responses should address both companies since they are essentially the same.

Respondent renamed all pending Dinamica Financiera clients or Solucion Financial clients and sought to so identify the clients and their file papers. Again, this should not make for a difference in what discovery is produced.

My clients explain that the billing statements should correspond with the individual contracts which are part of each produced client file. In other words, the contract amount should equal the billing statement amount.

During my discussion I learned that Respondent has in its possession a stack of unpaid checks from clients. These checks will be produced. As I explained to Respondent the unpaid checks would mean that the contracts in the client files would not accurately reflect the amount of fees paid to Respondent.

3. The "list of files destroyed" was prepared by Respondent staff during the regular course of business. As the files were destroyed the Respondent's employees manually recorded the information. I have asked Respondent to produce any other information beyond name, address and telephone numbers for clients whose files were destroyed if Respondent has such information.

4. First, I have asked Respondent to list any other possible responsive documents that were destroyed at any time since April 22, 2008.

Second, the first supplement production response at No 8 refers to files destroyed up to May 08, 2008. Where do you find, as your letter states, "the "May 22, 2008" referenced in the "statements" ? The "statements" have October 2008 dates and are responses to production requests No 8.

Also attached to response No 8 is a " list of files destroyed up to May 02, 2008." Are you trying to refers to this?

Please separate your objections into separate paragraphs. This might help avoid confusion and assist me in understanding the objection and responding to it.

Third, I am unclear as to your point regarding destruction of documents. Are you again referring to a May 22, 2008 date? If so, what is this based on ? Again, this objection is ambiguous.

5. Respondent will produce a P & L for 2008.

6. I have asked Respondent to separate the current and former employees per your request and supply any additional information.

7. Without waiving any right to claim the privilege Respondent will delete it from its interrogatory response at No. 13

8. Respondent stands by its prior response.

9. Respondent will modify its response.

10. I believe that this is the first time I have been apprised of this error. It will be corrected.

11. Production request No 10 is ambiguous where it lists subparts a, b,c,d,e,f,g,f,g, etc.

The typographical errors can be corrected.

Thank you for your courtesy and cooperation.

Sincerely,

MARCUS GOMEZ

Dictated But Not Read, For Fast Delivery.

MG/nc
cc: Solucion Financiera



NICOLE C., Assistant to M.G.

FTC Exhibit 24



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WESTERN REGION

Stacy Procter, Attorney
10877 Wilshire Blvd., Suite 700
Los Angeles, CA 90024-4341
(310) 824-4343

October 22, 2008

VIA FACSIMILE AND U.S. MAIL

Marcus Gomez, Esq.
12749 Norwalk Blvd., Suite 204A
Norwalk, CA 90650

Re: *Federal Trade Commission v. Dinamica Financiera LLC*, No. 08-4649 (C.D. Cal.)

Dear Mr. Gomez:

This letter is in response to your letter of October 21, 2008. Your letter purports to address the deficiencies raised in the Commission's October 10, 2008, letter to you. Notably, your letter appears to contest only a single deficiency. While your letter asserts that Dinamica¹ will address these deficiencies, "compile the documents requested," and "modify its response[s]," it fails to provide any date certain by which these deficiencies will be addressed, much less resolved. Given that the CID was served on Dinamica six months ago, the Court issued an Order compelling compliance on July 31, 2008, and Dinamica was found in contempt on September 22, 2008, mere promises to produce additional documents and narrative responses are insufficient, especially in light of Dinamica's failure to fulfill past, similar promises.

If Dinamica does not provide complete responses and production of documents by the close of business on October 29, 2008, the Commission intends to file an application with the Court seeking additional sanctions concerning Dinamica's continuing contempt (which may include the coercive incarceration of one or both of Dinamica's two members) and seek judicial assistance in obtaining payment of the outstanding sanctions (a total of \$12,000 to date) against Dinamica.

Addressing the specific points raised in your letter in the order they were raised:

¹The Commission appreciates your representation that Soluciones Dinamica is nothing more than the continuation of the business of Dinamica Financiera LLC under a new name and that, as a result, you construe the Commission's Civil Investigative Demand to Dinamica Financiera to be applicable to both entities.

1. While the Commission acknowledges that Dinamica has produced approximately 216 customer files to date, your letter misses the point: Dinamica has failed to provide the Commission with a complete listing of its customers for the applicable time period and to produce or fully explain the destruction of each file related to Dinamica's active customers since at least January 23, 2008 (90 days before the CID was served on Dinamica).
2. The Commission appreciates your clarifying the background of the statements. However, for Dinamica's responses to be complete, this explanation must be made in a narrative response under oath, not merely through representations in a letter from counsel. Instructions concerning the type of certification required are set forth in Section II.F. of the CID.
3. As with ¶ 2, the list of files destroyed needs to be provided to the Commission and supported by a proper certification. Further, to the extent that Dinamica has electronic documents, such documents must be produced for Dinamica to fully comply with the CID. Feel free to contact me to discuss the best way to produce any electronic documents.
4. It is Dinamica's duty under the CID either to produce all files for all of Dinamica's customers, *or*, where Dinamica has destroyed a customer's file, to identify each such customer, provide all requested information concerning each customer (to the extent available), and explain when and why each file was destroyed. This duty is continuing in nature and did *not* terminate in May 2008; rather, *this duty extends through full and complete compliance with the CID*. Dinamica's response to this issue is particularly critical since you indicated to counsel for the Commission after the hearing on September 22, 2008, that Dinamica has been continually destroying customer files since it received service of the Commission's CID in April 2008. In response to your question, the May 22, 2008 date is set forth on page 22 of Dinamica's response. The statement on page 22 seems to imply that Dinamica was operating up until May 22, 2008.
5. Dinamica must actually produce its 2008 financial statements, not just promise to do so after all this time.
6. While the Commission appreciates that you have discussed the production of a list of current and former employees of Dinamica with your client, as indicated above the time has come to provide this information, not merely to promise to do so.
7. Please modify Dinamica's sworn response accordingly.
8. While the Commission has reason to believe that Dinamica's response that it does not offer credit repair services is inaccurate, if Dinamica's position, under oath, is that it does not, then this clearly is its final response.

9. Please modify Dinamica's sworn response accordingly.
10. Please have Dinamica execute the appropriate certification.
11. If Dinamica's response to Production Request 10 is ambiguous or unclear in any way, please modify Dinamica's response and execute the appropriate certification.

The Commission would prefer to resolve these issues without the need to expend further judicial resources. To that end, do not hesitate to contact me at (310) 824-4343 or John Singer at (202) 236-3234 to discuss this matter if that, in any way, can bring this matter to conclusion no later than October 29. Ultimately, however, Dinamica has the duty under the Court's July 31 Order to provide full and complete responses to the CID and the Commission will not hesitate to seek additional assistance from the Court after October 29.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stacy R. Procter', with a long horizontal flourish extending to the right.

Stacy R. Procter

FTC Exhibit 25

OCT-24-2008 04:54 PM

P. 06

Phone No: (562) 929-2309
Facsimile No.: (562) 929-7409

Attorney for Respondent
DINAMICA FINANCIERA LLC,

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FEDERAL TRADE COMMISSION,)	Case No.: 2:08-CV-4649-MMM (PJW)
)	
Petitioner,)	RESPONDENT'S FIRST
)	SUPPLEMENTAL RESPONSES TO
and)	PRODUCTION REQUEST (Set No. 1)
)	
DINAMICA FINANCIERA LLC,)	
)	
Respondent.)	
)	
)	
)	
)	

PROPOUNDING PARTY: PETITIONER: FEDERAL TRADE COMMISSION
RESPONDING PARTY: RESPONDENT: DINAMICA FINANCIERA LLC,
SET NO.: ONE

PRELIMINARY STATEMENT

Answering party Dinamica Financiera LLC, objects and responds to the Request for Production of Documents propounded by as follows:

These responses are made solely for the purpose of this action and each answer is subject to all objections on grounds which would require the exclusion of any evidence if the interrogatories were asked of, or any statement contained herein were made by, a witness present

RESPONSE TO PRODUCTION REQUEST (SET NO. 1)

1 and testifying in Court, all of which objections and grounds are reserved and may be interposed
2 at the time of trial.

3 Except for explicit facts admitted herein, no incidental or implied admissions are
4 intended hereby. The fact that Respondent has answered any information request should not be
5 taken as an admission that it accepts or admits the existence of any fact set forth or assumed by
6 such information request, or that such response constitutes admissible evidence. The factual
7 background of this litigation is one of complexity, and Respondent intends to conduct extensive
8 discovery, investigation and informal discovery. These responses are based upon information
9 presently available to Respondent and are made without prejudice to its right to utilize
10 subsequently discovered facts. This preliminary statement is incorporated into each of the
11 responses set forth below:

12
13 Supplemental Responses to Production of Documents No. 1

14 8. See attached list of additional files produced, see files. These lists are current complete
15 lists of Respondents customers since January 23, 2008. Respondent moved its location and has
16 made a good faith effort to account for each and every client file. The produced statements were
17 recapitulations of payment information. The reason for the use of the names Dinamica
18 Financiera and Solucion Financiera on the statements is because of the name change of the
19 company.

20 The billing statements showed corresponded with the individual contracts which are post
21 of each provided file.

22 Also, see list of files destroyed up to May 02, 2000. Respondent was preparing to move
23 to different facilities and destroyed these files by use of a shredder machine. Respondent's
24
25

1 employees performed the destruction of files work up to May 02, 2008 as the files were
2 destroyed Respondent's employees who recorded revised the information.

3 9. (a) See produced files

4 (b) See produced files

5 (c) See produced files

6 (d) No such documents. Respondent was not engaged in credit repair services.

7 Respondent performed work which, if successful, could have the effect of improving a customers
8 credit (eg successfully complete a loan workout or modification) but Respondent did not offer
9 services specifically related to credit repair.
10

11 13. See attached list and documents
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RESPONSE TO PRODUCTION REQUEST (SET NO. 1)

31

Except for explicit facts admitted herein, no incidental or implied admissions are intended hereby. The fact that Respondent has answered any interrogatory should not be taken as an admission that it accepts or admits the existence of any fact set forth or assumed by such interrogatory, or that such response constitutes admissible evidence. The factual background of this litigation is one of complexity, and Respondent intends to conduct extensive discovery, investigation and informal discovery. These responses are based upon information presently available to Respondent and are made without prejudice to its right to utilize subsequently discovered facts. This preliminary statement is incorporated into each of the responses set forth below:

SUPPLIMENTAL RESPONSES TO INTERROGATORIES SET NO.1

6. See attached list of employees active and no longer with the company

7. See attached list of employees active and no longer with the company

12. See attached list of additional files produced October 22, 2008.

13. See attached list of additional files produced October 22, 2008. Also, Respondent objects to this interrogatory as burdensome and unnecessary. The Respondent has produced copies of 236 files almost all of which Petitioner has purportedly reviewed. It would overly burdensome for Respondent to review each file in order to respond this interrogatory.

**RESPONDENT'S SECOND SUPPLEMENTAL RESPONSES TO INTERROGATORIES
(Set No. 1)**

OCT-24-2008 04:57 PM

P.03

NO. 6 NO 7.

Dinamica Financiera, LLC

List of Employees active and no longer with the company.

NAME	ADDRESS	PHONE #	ACTIVE	VOLUNTARY QUIT
VALENTIN BENITEZ	[REDACTED] PICO RIVERA CA [REDACTED]	[REDACTED]	X	
JOSE MARIO ESQUER	[REDACTED] SOUTH GATE, CA [REDACTED]	[REDACTED]	X	
MANUEL POZO	[REDACTED]	[REDACTED]	X	
ISABEL MENDOZA	[REDACTED]	[REDACTED]	X	
NORMA BENSON	[REDACTED]	[REDACTED]	X	
IRMA ISABEL MACIAS	[REDACTED]	[REDACTED]	X	
BLANCA OROPEZA	[REDACTED]	[REDACTED]	X	
ELIZABETH GAYTAN	[REDACTED]	[REDACTED]	X	
GUADALUPE MORALES	[REDACTED]	[REDACTED]	X	
ERIKA BLANCO GURROLA	[REDACTED]	[REDACTED]		X
JOSE RAMON ARREOLA	[REDACTED]	[REDACTED]		X
OLIVIA CASTILLO	[REDACTED]	[REDACTED]	X	
PRISCILA BENITEZ	[REDACTED]	[REDACTED]	X	
VICTOR SANTIAGO	[REDACTED]	[REDACTED]		X
LEYCIA AVINA	[REDACTED]	[REDACTED]	X	
JOAQUIN MARTINEZ	[REDACTED]	[REDACTED]	X	
REINA LICONA	[REDACTED]	[REDACTED]	X	
HAROLD ENRIQUE RANGEL	[REDACTED]	[REDACTED]	X	
AIDA RODRIGUEZ	[REDACTED]	[REDACTED]		X
CLAUDIA FIESTAS	[REDACTED]	[REDACTED]	X	

Dinamica Financiera, LLC

List of Employees active and no longer with the company.

NAME	ADDRESS	PHONE #	ACTIVE	VOLUNTARY QUIT
VALENTIN BENITEZ	PICO RIVERA CA		X	
JOSE MARIO ESQUER	SOUTH GATE, CA		X	
MANUEL POZO			X	
ISABEL MENDOZA			X	
NORMA BENSON			X	
IRMA ISABEL MACIAS			X	
BLANCA OROPEZA			X	
ELIZABETH GAYTAN			X	
GUADALUPE MORALES			X	
ERIKAL BLANCO GURROLA				X
JOSE RAMON ARREOLA				X
OLIVIA CASTILLO			X	
PRISCILA BENITEZ			X	
VICTOR SANTIAGO				X
LEYCIA AVINA			X	
JOAQUIN MARTINEZ			X	
REINA LICONA			X	
HAROLD ENRIQUE RANGEL			X	
AIDA RODRIGUEZ				X
CLAUDIA FIESTAS			X	

11-24-2008 04:33 PM

NO. 12 NO 13.

1. **BARRAZA CARLOS**
2. **BONILLA EVARISTA & RUANO JOSE**
3. **BRITO JOSE**
4. **GONZALEZ RICARDO E**
5. **JUAREZ JOSE N**
6. **MAGAÑA RAMON & CELIA**
7. **MELGAR PERLA & CARLOS**
8. **ORTIZ PATRICIA**
9. **PINEDA LILIAN BEATRIZ & LILIAN
MEJIA**
10. **RAMOS BARRERA ZOILA**
11. **TRIGUEROS PEDRO & ROSALBA**
12. **ZELADA MARIA E**
13. **CARMONA ISMAEL #1**
14. **CAMONA ISMAEL #2**
15. **GUERRERO IRMA**
16. **MENDOZA MIGUEL ANGEL SR &
ZUNIGA GLORIA**
17. **AGUILERA VICTOR**
18. **SOLORIO LUIS**
19. **FAJARDO OSCAR**
20. **HERNANDEZ MINERVA**

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature

Title

[Handwritten Signature]
[Handwritten Title]
10-23-08

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

FTC Exhibit 26



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WESTERN REGION

Stacy Procter, Attorney
10877 Wilshire Blvd., Suite 700
Los Angeles, CA 90024-4341
(310) 824-4343

October 27, 2008

VIA FACSIMILE AND U.S. MAIL

Marcus Gomez, Esq.
12749 Norwalk Blvd., Suite 204A
Norwalk, CA 90650

Re: *Federal Trade Commission v. Dinamica Financiera LLC*, No. 08-4649 (C.D. Cal.)

Dear Mr. Gomez:

This will confirm my receipt of your letter dated October 24, 2008. In response to your request concerning guidelines for the production of electronic documents, I direct you to pages 4 - 6 of the Civil Investigative Demand (CID). These pages set forth various options for the production of electronic documents. While guidelines are set forth in the CID, I encourage you to contact me so we can discuss the best way for your client to produce any electronic documents it has in response to the CID.

In response to your comments regarding the destruction of documents, both John Singer and I have similar recollections of what you stated following the hearing on September 22, 2008, concerning the destruction of documents by Dinamica Financiera LLC (Dinamica). We both recall you stating that Dinamica continued to destroy documents after it received service of the CID, including both before and after it retained you as counsel, while preparing to move its office, and possibly during and/or after its move. More important than our differing recollections, however, is that Dinamica's response simply states that it destroyed files up to May 2, 2008¹ and provides a list of destroyed files. The response fails to state clearly when each of the files were destroyed. What Dinamica needs to do to resolve this document destruction issue is simple: Dinamica must provide to the Federal Trade Commission (Commission), as directed by the CID and required by the Court's July 31, 2008, Order, a full and complete response regarding the destruction of documents. Such a response must include a statement describing the circumstances surrounding the transfer, destruction, or mislaying of each document and the date each document was destroyed, transferred or mislaid. Dinamica must

¹ Note, however, that page 79 of Dinamica's October 6, 2008 response implies that Dinamica destroyed files up to May 22, 2008.

state as explicitly as possible when each file was destroyed. If Dinamica does not know the exact date each file was destroyed, it should, at a minimum, identify which files were destroyed before April 23, 2008 (the date Dinamica was served with a copy of the CID), which files were destroyed between April 23, 2008 and May 2, 2008, and which files were destroyed after May 2, 2008. If Dinamica has stopped destroying documents responsive to the CID, Dinamica should simply state that its document destruction procedures were suspended and provide the date Dinamica began retaining documents as required by the CID. Note that while this letter only discusses client files, Dinamica must provide a similar statement for all documents responsive to the CID, electronic and otherwise, that Dinamica destroyed, transferred, or mislaid.

On a similar note, I think it is essential that we discuss CID Interrogatory 12. CID Interrogatory 12 required Dinamica to identify each of its clients from January 1, 2006 until full and complete compliance with the CID. To date, Dinamica has produced over 200 files, has produced statements identifying certain customers, and has produced a short list of destroyed client files. Aside from how Dinamica should have produced information responsive to CID Specification 12 and the fact that Dinamica has still failed to provide all information requested in that Specification, the Commission is concerned that Dinamica has only identified its active customers since January 23, 2008. Dinamica's most recent response to Production Request 8 notes that the lists that Dinamica has provided are "current and complete lists of Respondents customers since January 23, 2008." Dinamica's response to Interrogatory 12 simply refers to the "attached list of additional files produced." Reading these responses together, it appears as if Dinamica has only produced information for its clients since January 23, 2008. While Dinamica may have destroyed files related to clients that were no longer active as of January 23, 2008 (in accordance with its purported document destruction policy), that does not mean that Dinamica does not have to identify customers that were active with Dinamica before that date. Apparently Dinamica maintains some sort of accountings program that contains contact information for its clients, as evidenced by the statements Dinamica produced. Dinamica also had a policy of tracking files it destroys and, according to your correspondence, has a stack of unpaid checks. Each of these sources of information may identify additional Dinamica customers. If Dinamica is aware of any other customer who hired, engaged, contracted with, or paid Dinamica to provide any Mortgage Assistance Service, Bankruptcy Service or Credit Repair Service, Dinamica must identify that person and provide the information requested in Specification 12 regardless of whether Dinamica still retains that person's file.

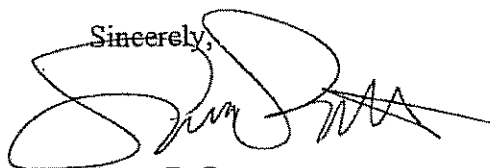
Rather than conducting dueling correspondence, I believe that the most effective manner to attempt to resolve the open issues is for us to meet and confer to attempt to resolve this matter. Indeed, I previously requested that you agree to such a conference in my October 10, 2008, letter to you. Please contact me to set up a time to discuss these issues. I can be reached at (310) 824-4343. I invite you to come to the Commission's Los Angeles office for a meeting either early tomorrow morning or tomorrow afternoon. Although I believe an in person meeting would be more effective, especially in light of the few brief conversations we have had to date, I am also available for a teleconference later today, early tomorrow morning, or tomorrow afternoon. If you wish to talk by phone, I request that we set aside a sufficient amount of time to fully discuss this matter.

Please be advised that the Commission has not yet fully reviewed Dinamica's most

Page 3

recent supplemental responses to the CID. It is possible that the Commission may have additional questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to be "Stacy R. Procter", written over the word "Sincerely,".

Stacy R. Procter

FTC Exhibit 27

MARCUS GOMEZ
ATTORNEY AT LAW
12749 NORWALK BOULEVARD
SUITE 204-A
NORWALK, CALIFORNIA 90650K
Phone No.: (562) 929-2309
Facsimile No.: (562) 929-7409

November 14, 2008

Federal Trade Commission
10877 Wilshire Boulevard
Suite 700
Los Angeles, California 90024-4341

Attn: Stacy Procter, Attorney.

Re: Federal Trade Commission v. Dinamica Financiera LLC.

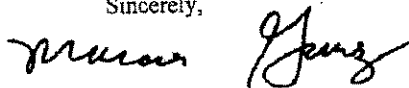
Dear Ms. Procter,

Please be advised my clients came into my office and left additional documentation.

I will call you on Tuesday after I review what I have.

Thank you for your courtesy and cooperation.

Sincerely,



MARCUS GOMEZ
Attorney at Law

MG/nc

FTC Exhibit 28

MARCUS GOMEZ, Esq. SBN: 89698
LAW OFFICES OF MARCUS GOMEZ
12749 NORWALK BLVD., STE 204-A
NORWALK, CA 90650
Phone No: (562) 929-2309
Facsimile No.: (562) 929-7409

Attorney for Respondent
DINAMICA FINANCIERA LLC,

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FEDERAL TRADE COMMISSION,)	Case No.: 2:08-CV-4649-MMM (PJW)
)	
Petitioner,)	RESPONSE FIRST SUPPLEMENTAL
)	RESPONSES TO INTERROGATORIES
and)	(Set No. 1)
)	
DINAMICA FINANCIERA LLC,)	
)	
Respondent.)	
)	
)	
)	

PRELIMINARY STATMENT

Answering party Dinamica Financiera LLC, objects and responds to the written interrogatories propounded by as follows:

These responses are made solely for the purpose of this action and each answer is subject to all objections on grounds which would require the exclusion of any evidence if the interrogatories were asked of, or any statement contained herein were made by, a witness present and testifying in Court, all of which objections and grounds are reserved and may be interposed at the time of trial.

RESPONSE FIRST SUPPLEMENTAL RESPONSES TO INTERROGATORIES
(Set No. 1)

1 Answering party Dinamica Financiera LLC has not completed his investigation of the
 2 facts nor preparation for trial. These responses are based on information presently available to
 3 Plaintiff and are made without prejudice to his right to utilize subsequently discovered facts.

4 Except for explicit facts admitted herein, no incidental or implied admissions are
 5 intended hereby. The fact that Plaintiff has answered any interrogatory should not be taken as an
 6 admission that he accepts or admits the existence of any fact set forth or assumed by such
 7 interrogatory, or that such response constitutes admissible evidence. The factual background of
 8 this litigation is one of complexity, and Plaintiff intends to conduct extensive discovery,
 9 investigation and informal discovery. These responses are based upon information presently
 10 available to plaintiff and are made without prejudice to its right to utilize subsequently
 11 discovered facts. Therefore without suggesting or implying any interest to respond less than fully
 12 to the interrogatories propounded, Plaintiff must point out that his answers are of necessity
 13 somewhat preliminary, and that full and factual basis concerning this matter is yet to be
 14 developed. This preliminary statement is incorporated into each of the responses set forth below:
 15

16 SUPPLIMENTED RESPONSES TO INTERROGATORIES NO.1

17 6. See attached list

18 7. See attached list

19 //

20 //

21 //

22 //

23
 24
 25
RESPONSE FIRST SUPPLEMENTAL RESPONSES TO INTERROGATORIES
(Set No. 1)

LIST

NAME	ADDRESS	PHONE NUMBER
VALENTIN BENITEZ	[REDACTED] PICO RIVERA, CA	[REDACTED]
JOSE MARIO ESQUER	[REDACTED] SOUTH GATE, CA [REDACTED]	[REDACTED]
MANUEL POZO	[REDACTED]	[REDACTED]
ISABEL MENDOZA		
NORMA BENSON		
IRMA ISABEL MACIAS		
BLANCA OROPEZA		
ELIZABETH GAYTAN		
GUADALUPE MORALES		
ERIKA BLANCO GURROLA	[REDACTED]	[REDACTED]
JOSE RAMON ARREOLA		

OLIVIA CASTILLO

PRISCILA BENITEZ

VICTOR SANTIAGO

LETYCIA AVINA

JOAQUIN MARTINEZ

REINA LICONA

HAROLD ENRIQUE RANGEL

AIDA RODRIGUEZ

CLAUDIA FIESTAS



VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing Response First Supplemental Responses to Interrogatories
(Set No. 1) and know its contents.

☒ CHECK APPLICABLE PARAGRAPHS

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am ☒ an Officer ☐ a partner _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on October 06, 2008, at Norwalk, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Jose Mario Esquer

Type or Print Name

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/86

[Signature]
Signature

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 12749 Norwalk Boulevard, Suite 204-A, Norwalk, California 90650

On, October 06, 2008 I served the foregoing document described as Response first Supplemental Responses to Interrogatories

_____ on Interested Parties in this action

☒ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☐ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

STACY PROCTOR, Attorney
10877 Wilshire Blvd, Suite 700
Los Angeles, CA 90024-4341

JOHN ANDREW SINGER
Federal Trade Commission
600 Pennsylvania Avenue N.W.
Washington, D.C., 20580

☒ BY MAIL

☒ I deposited such envelope in the mail at Norwalk, California.

The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

☐ ****(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Nicole E. Chavez

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal
Solutions
& Plus

Rev. 7/99

1 **PROOF OF SERVICE-1013a, 2015.5 C.C.P.**

2 STATE OF CALIFORNIA }
 3 } §§
 3 COUNTY OF LOS ANGELES }

4
 5 I am employed in the County of Los Angeles, State of California. I am over the age of
 6 18 and not a party to the within action. My business address is 12749 Norwalk Boulevard, Suite
 204-A, Norwalk, California 90650.

7 On October 6, 2008, I served upon all interested parties in this action the foregoing
 8 document(s) described as **RESPONSE FIRST SUPPLEMENTAL RESPONSES TO**
INTERROGATORIES (Set No. 1) as follows:

9 (X) U.S. MAIL: The correspondence or documents were placed in sealed, labeled envelopes
 10 with postage thereon fully prepaid on the above date and placed for collection and mailing at my
 11 place of business to be deposited with the U.S. Postal Service at Norwalk, California on this
 same date in the ordinary course of business.

12 () FACSIMILE TRANSMISSIONS: The correspondence or documents were placed for
 13 transmissions in a facsimile transmission machine located in my employer's office, and were
 14 transmitted to a facsimile machine maintained by the party or attorney to be served, on this same
 date in the ordinary course of business. The transmission was reported as completed and
 without error, and a record of the transmission was properly issued by the transmitting facsimile
 machine.

15 **PARTIES SERVED:**

16
 17 JOHN ANDREW SINGER
 Federal Trade Commission
 18 600 Pennsylvania Avenue, N.W.
 Washington, D.C. 20580

19 STACY RENE PROCTER
 20 Federal Trade Commission
 10877 Wilshire Blvd., Suite 700
 21 Los Angeles, CA 90024

22 I declare under penalty of perjury, under the laws of the State of California, that the
 23 foregoing is true and correct and that this declaration is executed on October 6, 2008 at Norwalk,
 24 California.

25

 Nicole E. Chavez

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2 Federal Trade Commission
3 600 Pennsylvania Ave., N.W.
4 Washington, D.C. 20580
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6 Fax (202) 326-2477
7 Email: jsinger@ftc.gov

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

19 FEDERAL TRADE COMMISSION,

20 Petitioner,

21 v.

22 DINAMICA FINANCIERA LLC,

23 Respondent.

2:08-CV-04649 MMM (PJWx)

MEMORANDUM IN SUPPORT OF
EMERGENCY APPLICATION FOR
ADDITIONAL SANCTIONS
AGAINST DINAMICA
FINANCIERA LLC FOR ITS CIVIL
CONTEMPT

24 **PRELIMINARY STATEMENT**

25 On September 22, 2008, this Court found Dinamica Financiera LLC
26 (Dinamica) to be in civil contempt of its July 31, 2008, Order requiring Dinamica
27 to fully comply with a Civil Investigative Demand (CID) issued by the Federal
28 Trade Commission (Commission) and served on Dinamica on April 23, 2008.
(September 22 Contempt Order) (Docket Entry (DE) 30). The September 22
Contempt Order provided a daily sanction of \$750.00, starting on October 7,
2008. *Id.* As the Commission demonstrates below, Dinamica has not purged its

1 contempt nor has it paid any of the sanction which has now accrued to over
2 \$36,000. Since the sanction imposed by the September 22 Contempt Order has
3 not coerced compliance with the July 31 Order, the Commission respectfully
4 suggests that the time is ripe for the Court to impose a more serious sanction –
5 coercive incarceration of one or both of Dinamica’s members, Jose Mario Esquer
6 and Valentin Benitez.
7

8 This Application is filed on an emergency basis because of the immediacy
9 and magnitude of consumer harm that is at issue. Dinamica’s continuing
10 contumacious behavior is thwarting the completion of the Commission’s
11 investigation and, thereby, delaying the Commission’s ability, if appropriate, to
12 commence a law enforcement action against Dinamica and its members.
13

14 **JURISDICTION**

15 This Court has the inherent authority to enforce its orders through civil
16 contempt. (DE 30 at p. 5).
17

18 **STATEMENT OF RELEVANT FACTS**¹

19 On October 6, 2008, Dinamica produced supplemental responses to the CID
20 interrogatories and production requests, including approximately 200 customer
21 files. (Fifth Procter Declaration, attached to Application as FTC Exh. 22 at ¶ 4).²
22

23
24
25 ¹The Court set out the relevant facts that occurred through September 22 in
26 the September 22 Contempt Order. (DE 30 at pp. 2-5). This memorandum,
27 therefore, only provides the relevant facts that have occurred since that date.

28 ²Unless otherwise indicated, all FTC Exhibits cited herein are attached to the
Commission’s Application for Additional Sanctions.

1 Through an October 10, 2008, letter (DE 32, FTC Exh. 19), counsel for the
2 Commission notified counsel for Dinamica that, notwithstanding the October 6
3 supplementation, Dinamica still had not provided complete responses to the CID
4 and, therefore, had not purged its contempt. The letter also requested a C.D. Cal.
5 L.R. 37-1 conference with counsel for Dinamica as a predicate to this Application.
6

7 In a hand-written facsimile on October 14, 2008 (DE 32, FTC Exh. 20),
8 counsel for Dinamica appeared to acknowledge the deficiencies raised in the
9 Commission's October 10 letter and indicated that Dinamica would attempt to
10 cure these deficiencies. In an October 20, 2008, letter (attached to Fifth Procter
11 Decla. as FTC Exh. 23), counsel for Dinamica again acknowledged most of the
12 deficiencies noted by the Commission. While the letter proposed to provide
13 supplemental responses and documents to cure these deficiencies, it provided not
14 time frame for during so. The Commission responded to this facsimile through an
15 October 22, 2008, letter (attached to Fifth Procter Decla. as FTC Exh. 24), in
16 which the Commission stated that absent a cure the Commission would file this
17 application on or after October 30, 2008.
18
19

20 On October 22, 2008, the Commission received approximately 20
21 additional customer files. (FTC Exh. 22 at ¶ 5). On October 24, 2008, Dinamica
22 produced a second supplemental response to the CID's interrogatories and
23 production requests (attached to the Fifth Procter Decla. as FTC Exh. 25). In
24 response, through an October 27, 2008, letter (attached to Fifth Procter Decla. as
25 FTC Exh. 26), the Commission enumerated why Dinamica still had not purged its
26 contempt.
27
28

1 Dinamica produced additional interrogatory responses on October 29, 2008,
2 that listed Dinamica's current and former employees and provided contact
3 information for them. (FTC Exh. 22 at ¶ 6).
4

5 On October 30, 2008, counsel for the Commission and Dinamica conducted
6 their C.D. Cal. L.R. 37-1 conference and discussed the remaining deficiencies in
7 Dinamica's responses and productions. The Commission summarized these in a
8 letter dated October 31, 2008 (October 31 letter) (DE 34, FTC Exh. 21). During
9 the conference, counsel for Dinamica represented that he would be meeting with
10 his client on November 4 and would attempt to resolve the deficiencies raised in
11 the Commission's October 27 letter during this client meeting. He also stated that
12 he anticipated that Dinamica would produce supplemental materials that would
13 purge its contempt on or about November 7, 2008. (FTC Exh. 22 at ¶ 7).
14
15

16 By telephone on November 6, 2008, counsel for Dinamica informed counsel
17 for the Commission that he had met with his client on November 4. Counsel for
18 Dinamica represented that at his November 4 meeting with representatives of
19 Dinamica that he had gone over point-by-point the deficiencies raised in the
20 Commission's October 31 letter, that he had been authorized by Dinamica to
21 prepare a final comprehensive response to the CID, and that he was to receive
22 additional documents from Dinamica on November 6. He also stated that,
23 assuming cooperation from his client, he would produce the materials necessary to
24 purge Dinamica's contempt early in the week of November 10, 2008. In response,
25 the Commission agreed to give Dinamica a final opportunity to purge its contempt
26
27
28

1 before filing this application and seeking additional judicial relief. (FTC Exh. 22
2 at ¶ 8).

3 Since November 6, the only communication that the Commission has
4 received from Dinamica or its counsel was a facsimile transmitted to the
5 Commission on November 17, 2008, from Dinamica's counsel promising further
6 productions and a telephone call on November 18, 2008. (attached to Fifth Procter
7 Decla. as FTC Exh. 27). Despite these promises, the Commission has neither
8 heard from counsel for Dinamica nor received any additional materials. (FTC Exh.
9 22 at ¶ 9).

12 ARGUMENT

13 **Civil Contempt and Sanctions Standards**

14 This Court set out the standard for civil contempt in its September 22 Civil
15 Contempt Order: the petitioner must demonstrate by clear and convincing
16 evidence that: (a) the respondent has violated a specific and definite order of the
17 Court; (b) that the respondent had sufficient notice of the terms of this Order, and
18 (c) that the respondent has notice that it can be sanctioned if it does not comply
19 with the Order. (DE 30 at pp. 5-7). Sanctions for civil contempt have two
20 purposes, to coerce the respondent into compliance with the court's order and to
21 compensate the petitioner for any losses sustained. In determining the sanction, a
22 court should consider the character and magnitude of the harm threatened by the
23 continuing contumacy and the probable effectiveness of any suggested sanctions.
24 (DE at p. 8).

28 **Dinamica has Violated Specific and Definite Terms of the July 31 Order**

1 The Court's July 31 Order unambiguously ordered Dinamica to provide
2 complete responses to interrogatories contained in and to produce all documents
3 responsive to the Commission's CID. As demonstrated below, despite the Court's
4 September 22 Contempt Order and the sanctions it imposed, Dinamica remains in
5 contempt to the July 31 Order.
6

7 ***Deficient Responses to Interrogatories***

8 *Interrogatory 2* requires a full description of the relationship between
9 Dinamica and any affiliates. (DE 1, FTC Exh. 2 at 30). Counsel for Dinamica and
10 Dinamica's September 17, 2008 response to the CID interrogatories both indicate
11 that Dinamica now operates as Soluciones Dinamica, Inc. (Soluciones).
12 Soluciones is a new entity, not simply a new name. ((FTC Exh. 22 at ¶ 14; *see*
13 *also* DE 29, FTC Exh. 1 at ¶ 1). Dinamica's narrative responses do not address the
14 relationship between Dinamica and Soluciones at all. (DE 1, FTC Exh. 3 at 41).
15

16 *Interrogatory 3* requires Dinamica to provide a narrative answer fully
17 describing the relationship among Dinamica, Esquer and Benitez. (DE 1, FTC
18 Exh. 2 at 30). In light of transformation from Dinamica to Soluciones, Dinamica
19 must fully explain the relationship among Dinamica, Soluciones, Esquer and
20 Benitez. Dinamica's narrative responses do not address the Dinamica, Soluciones,
21 Esquer and Benitez relationships at all. (DE 1, FTC Exh. 3 at 41).
22

23 *Interrogatory 5* requires Dinamica to discuss any entities with whom it
24 shares or shared office space and their relationship. (DE 1, FTC Exh. 2 at 31).
25 Dinamica's narrative responses do not indicate if Dinamica and Soluciones ever
26 shared office space and, if so, their relationship. (DE 1, FTC Exh. 3 at 41).
27
28

1 *Interrogatory 6* requires Dinamica to identify all current employees of
2 Dinamica and to provide the duties and earnings for each employee. (DE 1, FTC
3 Exh. 2 at 31). Dinamica has only provided a partial response to this interrogatory.
4 While Dinamica has provided information concerning its employees' 2007
5 earnings, it has not provided any information for 2006 or 2008. Further, to the
6 extent that an employee earns both commission(s) and an hourly wage or salary,
7 Dinamica has not separated these earnings' components. (DE 1, FTC Exh. 3 at 41;
8 *see also* Dinamica's Oct. 6, 2008, first suppl. responses (excerpt attached to Fifth
9 Procter Decla. as FTC Exh. 28). Dinamica's response also needs to be revised to
10 explain the relationship between Soluciones and Esquer and Benitez.
11

12 *Interrogatory 9* requires Dinamica to describe any mortgage assistance
13 services, bankruptcy service or credit repair services it has offered or provided (DE
14 1, FTC Exh. 2 at 31-32). Dinamica represented that in January 2008 "referred and
15 assisted clients for refinancing of their home loans" and "in the past prepared a
16 bankruptcy petition for clients who were unable to make payments and who faced
17 a foreclosure sale". (DE 29, FTC Exh. 18 at 61). Dinamica's current narrative
18 responses concerning these issues are both incomplete and ambiguous at least with
19 regard to bankruptcy services. (DE 1, FTC Exh. 3 at 43; *see also* FTC Exh. 27 at
20 2). Dinamica, therefore, must more fully explain the arrangements it made for
21 these services, to whom it referred clients for these services, the price that
22 Dinamica's clients paid for such services, and any fees that Dinamica received for
23 its referrals for these services.
24
25
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1 *Interrogatory 10* requires Dinamica to describe, if the fees it charged for any
 2 mortgage assistance services, bankruptcy service or credit repair services varied,
 3 how such fees were set or determined (DE 1, FTC Exh. 2 at 32). Dinamica has not
 4 fully responded to this question at least with regard to its bankruptcy services. (DE
 5 1, FTC Exh. 3 at 43). It needs to indicate if such fees varied or not and, if they
 6 varied, how they were set or determined.

8 *Interrogatory 12* requires Dinamica to provide contact information for each
 9 of its clients from January 1, 2006, through the present as well as an indication of
 10 the services provided, the dates during which services were provided, and the
 11 amount paid to Dinamica (DE 1, FTC Exh. 2 at 32). Dinamica only has provided
 12 what it purports was a partial listing of its clients for the 90 day period ending on
 13 May 8, 2008 (*see* DE 1, FTC Exh. 3 at 43). During the October 30 conference,
 14 counsel for Dinamica confirmed that Dinamica has not yet provided a complete list
 15 of its clients to the Commission in either paper or electronic format. (FTC Exh. 22
 16 at ¶ 7). Dinamica needs to provide a complete response to this interrogatory.

19 *Interrogatory 13* requires Dinamica to identify each person who assists or
 20 has assisted Dinamica in providing any bankruptcy services (DE 1, FTC Exh. 2 at
 21 32). Dinamica has provided no response to this interrogatory. (DE 1, FTC Exh. 3
 22 at 43).

24 ***Deficient Responses to Production Requests***

25 *Document Destruction Generally* - Dinamica admits that it destroyed
 26 documents through at least May 8, 2008. (FTC Exh. 26 at 8). This is after the
 27 April 22, 2008, service date for the CID when a duty to preserve potentially
 28

1 responsive documents arose (*see* DE 29, FTC Exh. 18 at ¶ 4, pp. 8-9).
2 Additionally, following the September 22, 2008, hearing, Dinamica's counsel
3 confirmed that Dinamica had continued to destroy documents after it was served
4 with the CID and after he had been retained by Dinamica (though against his
5 advice). Further, on October 30, 2008, Dinamica's counsel's told counsel for the
6 Commission that Dinamica destroyed documents on May 1 and 2, 2008. (FTC
7 Exh. 22 at ¶ 7). Dinamica has only partially identified what documents it has
8 destroyed, when they were destroyed, and why they were destroyed. At a
9 minimum, to purge itself of its contempt, Dinamica must provide this information
10 for all documents it has destroyed or fully explain why it is unable to do so.
11

12
13 *Production Request 2* requires the production of all contracts or other
14 agreements between Dinamica and any business affiliates (DE 1, FTC Exh. 2 at
15 32). Dinamica has not produced any such documents concerning the relationship
16 between Dinamica and Soluciones. (DE 1, FTC Exh. 3 at 45). Dinamica must
17 produce all such documents that exist.
18

19 *Production Request 4* requires the production of documents sufficient to
20 demonstrate all compensation of any kind paid by Dinamica to Benitez and Esquer
21 (DE 1, FTC Exh. 2 at 32). Dinamica has not fully responded to this specification.
22 (DE 1, FTC Exh. 3 at 45).
23

24 *Production Request 6* requires the production of a copy of every
25 advertisement used by Dinamica in every type of media (DE 1, FTC Exh. 2 at 33).
26 At a minimum, Dinamica has not produced all magazine advertisements it has
27 used. (DE 1, FTC Exh. 3 at 45).
28

1 *Production Request 9* requires the production of all documents relating to:
2 negotiations or communications by Dinamica on behalf of any of its clients and
3 any mortgage lender or servicer; any money paid or payments made by Dinamica
4 on behalf of any of its clients to any mortgage lender or servicer; any loan
5 modifications, repayment plan or workout plan requested, negotiated or obtained
6 by Dinamica on behalf of any of its clients with any mortgage lender or servicer;
7 and any effort by Dinamica on behalf of any of its clients to improve a client's
8 credit record, history or rating. (DE 1, FTC Exh. 2 at 33). From discussions with
9 Dinamica's counsel the Commission believes that Dinamica may have documents
10 responsive to this request that have not been produced. (FTC Exh. 22 at ¶ 10; *see*
11 *also* DE 1, FTC Exh. 3 at 46).

12 *Production Requests 10(a) through 10(l)* require the production of all
13 documents that relate to any express or implied claims made to consumers
14 regarding a variety of types of services that Dinamica can provide for consumers
15 concerning consumers' relationships and arrangements with their mortgage lenders
16 and servicers. (DE 1, FTC Exh. 2 at 33-35). Dinamica's response to these
17 requests has consisted of statements such as "nothing" or "none, no such claim
18 made." (DE 1, FTC Exh. 3 at 46). At a minimum, Dinamica must state,
19 separately for each request, whether Dinamica believes such a claim has been made
20 and, if so, whether Dinamica has produced Documents to support that claim.³
21
22
23
24
25

26
27 ³The subparts for Production Requests 10(a) through 10(l) contain two
28 subparts labeled "f" and two subparts labeled "g." In their October 29 conference
(continued...)

1 *Production Request 12* requires the production of documents indicating all
2 monies received from consumers for mortgage assistance, bankruptcy or credit
3 repair services offered or provided by Dinamica as well as all monies paid by
4 Dinamica to any mortgage lender or servicer. (DE 1, FTC Exh. 2 at 35). Dinamica
5 produced what it purports to be statements summarizing payments made by clients
6 but has not indicated if these statements include all payments or are only a partial
7 listing. (DE 1, FTC Exh. 3 at 46). Additionally, Dinamica has not produced (or at
8 least specifically identified) all documents indicating payments, if any, made to
9 any mortgage lender or servicer. (FTC Exh. 22 at ¶ 11).

12 *Production Request 14* requires the production of documents indicating
13 gross sales, net sales and refunds to customers. (DE 1, FTC Exh. 2 at 35). While
14 Dinamica indicated it would produce this information for 2008 (FTC Exh. 26 at 8),
15 it has not done so and has only provided information for 2006 and 2007. (FTC
16 Exh. 22 at ¶ 12; FTC Exh. 3 at 46).

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

19 The July 31 Order was served on both Dinamica and its counsel.
20 Notwithstanding the express terms of the July 31 Order as well as the sanctions
21 imposed by the September 22 Contempt Order, Dinamica has not provided
22 complete responses and productions as directed by the Commission's CID and
23 required by the July 31 Order.
24

26 ³(...continued)
27 counsel agreed to avoid any confusion concerning these subparts by using the
28 convention "f1, g1, f2, and g2." FTC Exh. 26 at 3.

Dinamica and its Members are on Notice that They May Be Sanctioned If Dinamica Does Not Comply with July 31 Order

The Court's August 21, 2008, show cause order (DE 19) was served on Dinamica and one of its members, Jose Mario Esquer (Esquer). (DE 28 and 29).⁴ It provided express notice of the possibility of sanctions including the coercive incarceration of one or both of the members of Dinamica.

Both counsel for Dinamica and Esquer were present at the September 22, 2008, hearing. In open court, the Court warned Esquer that Dinamica failing to purge its contempt could lead to sanctions beyond monetary ones. This warning was expressly repeated in the Court's September 22 Contempt Order. (DE 30 at pp. 9-10).

The proposed Show Cause Order will again provide express notice to Dinamica and its two members that they may be subject to further sanctions, including coercive incarceration, for Dinamica's continuing civil contempt. The proposed Show Cause Order also will provide notice of the opportunity to file responsive papers to the Commission's Application and the date and time of the hearing regarding additional contempt sanctions.

Coercive Incarceration of One or More of Dinamica's Members is an Appropriate Sanction for Dinamica's Civil Contempt

The Court's September 22 Contempt Order found that Dinamica failed to obey the Court's July 31 Order requiring full compliance by Dinamica with the Commission's CID. The September 22 Contempt Order imposed a daily sanction

⁴Since the commencement of this proceeding the Commission has been unable to locate the other member of Dinamica, Valentin Benitez.

1 of \$750.00, commencing on October 7, 2008, if Dinamica failed to purge itself of
2 its contempt. As established above, Dinamica has failed to purge itself of its
3 contempt and have not paid to the Commission any of the daily sanctions which
4 have now accrued to over \$36,000.
5

6 Dinamica's disregard for the September 22 Contempt Order and its
7 monetary sanctions make the coercive incarceration of one or both of Dinamica's
8 members the most logical sanction to attempt to compel Dinamica's compliance
9 with the July 31 Order. To address the issue raised in note 25 of the Court's
10 September 22 Contempt Order (DE 30 at 10), there is no doubt that Esquer and
11 Benitez are the individuals with the authority to bring Dinamica into compliance
12 with the July 31 Order and to purge its contempt.
13

14 Esquer was personally served with the August 21 Show Cause Order and
15 attended the September 22 contempt hearing. The record establishes that Esquer is
16 one of Dinamica's two members and is its president and the supervisor of its
17 employees (DE 1, FTC Exh. 3 at 41, 52, 58 and 59), is Dinamica's agent for
18 process (DE 1, FTC Exh. 3 at 52 and 60), and has the authority to control
19 Dinamica's bank accounts (DE 1, FTC Exh. 3 at 53-54).
20
21

22 Benitez also clearly has control over Dinamica. He, too, is one of
23 Dinamica's two members and officers (DE 1, FTC Exh. 3 at 52 and 58), was a
24 manager (DE 1, FTC Exh. 3 at 41 and 59), and has the authority to control
25 Dinamica's bank accounts (DE 1, FTC Exh. 3 at 53-54). Benitez also owns the
26 majority membership interest in Dinamica. (DE 1, FTC Exh. 3 at 41).
27
28

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

19 FEDERAL TRADE COMMISSION,

20
21 Petitioner,

22 v.

23 DINAMICA FINANCIERA LLC,

24 Respondent.
25
26
27
28

2:08-CV-04649 MMM (PJWx)

[PROPOSED] ORDER TO SHOW
CAUSE WHY RESPONDENT
SHOULD NOT BE HELD IN CIVIL
CONTEMPT FOR ITS FAILURE
TO COMPLY WITH THIS
COURT'S JULY 31, 2008, ORDER
AND NOTICE THAT DINAMICA
FINANCIERA LLC AND ITS
MEMBERS, JOSE MARIO
ESQUER AND VALENTIN
BENITEZ, MAY BE
SANCTIONED, INCLUDING
THROUGH COERSIVE
INCARCERATION, FOR
DINAMICA'S FAILURE TO
COMPLY WITH THIS COURT'S
ORDER

1 On September 22, 2008, this Court entered an Order finding that
2 respondent, Dinamica Financiera LLC (Dinamica) was in civil contempt for its
3 failure to comply with this Court's July 31, 2008, Order (the "July 31 Order") (DE
4 13) compelling Dinamica to produce complete responses to written
5 interrogatories, all responsive documents, and a sworn certification of compliance
6 for a Civil Investigative Demand (CID) issued by the Federal Trade Commission
7 (Commission) on April 21, 2008, and then served on Dinamica. (September 22
8 Contempt Order) (DE 30). This contempt order imposed a daily sanction of
9 \$750.00, commencing on October 7, 2008, if Dinamica failed to purge itself of its
10 contempt.

11 The Commission filed an Application asserting that Dinamica has failed to
12 purge its contempt since the entry of the September 22 Contempt Order. The
13 Commission's Application further states Dinamica has not paid any of the daily
14 sanctions imposed by this Order. The Commission asserts that the monetary
15 sanction imposed by the September 22 Contempt Order has not been effective
16 and, therefore, requests that the Court impose additional sanctions for Dinamica's
17 continuing civil contempt, including the coercive incarceration of one or both of
18 Dinamica's members, Jose Mario Esquer and Valentin Benitez.

19 The Court has considered the Commission's Application and the papers filed
20 in support thereof. Based on these materials it appears to the Court that the
21 Commission has shown good cause for the entry of this Order.

22 It is, therefore, ORDERED that respondent Dinamica and its two members,
23 Jose Mario Esquer and Valentin Benitez, appear at _____ a.m./p.m. on the ____
24 day of _____, 2008, in Courtroom No. ____, United States Courthouse,
25 Los Angeles, California, and show cause, if any there be, why this Court should
26 not find that Dinamica continues to be in contempt of this Court's July 31 Order
27 and why the Court should not impose additional sanctions, including but not
28 limited to coercively incarcerating Jose Mario Esquer, Valentin Benitez or both of

1 them, as a result of Dinamica's continuing contempt and the apparent
 2 ineffectiveness of the monetary sanction imposed by this Court's September 22
 3 Civil Contempt Order. Unless the Court determines otherwise all issues raised by
 4 the Application and supporting papers, and any opposition to the Commission's
 5 Application will be considered at the hearing on the Application, and the
 6 allegations of said Application shall be deemed admitted unless controverted by a
 7 specific factual showing.

8 IT IS FURTHER ORDERED that, if respondent Dinamica or either or both
 9 of its members, Jose Mario Esquer and Valentin Benitez, intend to file pleadings,
 10 affidavits, exhibits, motions or other papers in opposition to said Application or to
 11 the entry of the Order requested herein, such papers must be filed and delivered to
 12 counsel for the Commission by _____ a.m./p.m. on _____,
 13 2008. Any reply by the Commission shall be filed with the Court and received by
 14 Dinamica and its members by _____ a.m./p.m. on _____,
 15 2008.

16 IT IS FURTHER ORDERED that a copy of this Order and copies of said
 17 Application and the Memorandum of Points and Authorities in support thereof
 18 shall be served forthwith by the Commission upon counsel for Dinamica, and
 19 upon the two members of Dinamica, Jose Mario Esquer and Valentin Benitez.
 20 Service upon Dinamica's counsel shall be made by first-class mail, personal
 21 service, certified or registered mail return receipt requested, or by overnight
 22 express delivery service. Service upon Jose Mario Esquer and Valentin Benitez
 23 shall be made by personal service, or by certified or registered mail return receipt
 24 requested.

25 **NOTICE of POTENTIAL FURTHER SANCTIONS for**
 26 **DINAMICA, JOSE MARIO ESQUER, and VALENTIN**
 27 **BENITEZ : Pursuant to this Order, Dinamica and its two**
 28

1 **members, Jose Mario Esquer and Valentin Benitez, are hereby**
2 **placed on notice that they may be subject to further sanctions,**
3 **beyond the monetary sanctions imposed by the Court's September**
4 **22 Civil Contempt Order, in the event the Court determines that**
5 **Dinamica remains in contempt of the Court's July 31, 2008, Order.**
6 **Since the monetary sanctions imposed by the September 22 Civil**
7 **Contempt Order apparently have not coerced Dinamica to comply**
8 **with the Court's July 31, 2008, Order, the further sanctions may**
9 **include, but are not limited to, the coercive incarceration of Jose**
10 **Mario Esquer and Valentin Benitez. Such incarceration may**
11 **continue until such time as Dinamica substantially complies with**
12 **the terms of the Court's July 31, 2008, Order.**
13
14

15
16 MARGARET M. MORROW
United States District Judge

17 Dated: _____, 2008, Los Angeles, California

18 PRESENTED BY:

19 WILLIAM BLUMENTHAL
20 General Counsel

21 JOHN F. DALY
22 Deputy General Counsel - Litigation

23 JOHN ANDREW SINGER
24 Attorneys for Petitioner
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27 LOCAL COUNSEL:

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

19 FEDERAL TRADE COMMISSION,

20 Petitioner,

21 v.

22 DINAMICA FINANCIERA LLC,

23 Respondent.

2:08-CV-04649 MMM (PJWx)

CERTIFICATE OF SERVICE FOR
STATUS REPORT OF THE
FEDERAL TRADE COMMISSION
CONCERNING DINAMICA
FINANCIERA LLC'S CONTEMPT

24
25 I hereby certify that on November 25, 2008, I served a copy of the Federal Trade
26 Commission's Emergency Application for Additional Sanctions Against Dinamica
27 Financiera LLC for its Civil Contempt, the Memorandum in Support thereof, and a
28

1 (Proposed) Order to Show Cause Why Respondent Should Not be Held in Civil
2 Contempt for its Failure to Comply with this Court's July 31, 2008, Order and Notice
3 that Dinamica Financiera LLC and its Members, Jose Mario Esquer and Valentin
4 Benitez, May be Sanctioned, Including through Coercive Incarceration, for Dinamica's
5 Failure to Comply with this Court's Order, via Federal Express on:
6

7 Marcus Gomez, Esq.
8 12749 Norwalk Blvd., Suite 204-A
9 Norwalk, CA 90650
10 Counsel for Respondent, Dinamica Financiera LLC

11 /S/ John Andrew Singer
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