

JONATHAN E. NUECHTERLEN (General Counsel)  
JONATHAN COHEN

- 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

1 HAMP Services and Trial Payment  
2 Processing); BRIAN PACIOS (a/k/a  
3 Brian Barry and Brian Kelly); JUSTIN  
4 MOREIRA (a/k/a Justin Mason, Justin  
5 King, and Justin Smith),

6 Defendants, and

7 CORTNEY GONSALVES,

8 Relief Defendant.

9 Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

10 1.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345; 15 U.S.C. §§ 53(a), 53(b), 57b, 6102(c), and 6105(b); and Section 626 of the Omnibus Act, as amended by Section 511 of the Credit Card Act, and amended by Section 1097 of the Dodd-Frank Act, 12 U.S.C. § 5538.

3.

1 operates the "Advocacy Department." At times material to this Complaint, acting  
2 alone or in concert with others, Lakeside assisted and facilitated in the TSR and the  
3 MARS Rule violations this Complaint sets forth, in this district and throughout the  
4 United States.

5 7. Defendant Chad Caldaronello (a/k/a Chad Carlson and Chad Johnson)  
6 is the owner and President of Defendant C.C. Enterprises, Inc. At times material to  
7 this Complaint, acting alone or in concert with others, Caldaronello has  
8 formulated, directed, controlled, had the authority to control, or participated in the  
9 acts and practices of Defendants C.C. Enterprises, Inc. and D.N. Marketing, Inc.,  
10 including the acts and practices set forth in this Complaint, in this district and  
11 throughout the United States.

12 8. Defendant C.C. Enterprises, Inc. (also d/b/a HOPE Services, Trust  
13 Payment Center, and Retention Division ("C.C. Enterprises")) is a California  
14 corporation with a principal place of business in Lake Forest, California. At times  
15 material to this Complaint, acting alone or in concert with others, C.C. Enterprises  
16 advertised, marketed, provided, offered to provide, or arranged for others to  
17 provide MARS, as defined in 12 C.F.R. § 15.2, in this district and throughout  
18 the United States.

19 9. Defendant Derek Nelson (a/k/a Dek Wilson) is the owner and  
20 President of D.N. Marketing, Inc. At times material to this Complaint, acting  
21 alone or in concert with others, Nelson has formulated, directed, controlled, had  
22 the authority to control, or participated in the acts and practices of Defendant D.N.  
23 Marketing, Inc., including the acts and practices set forth in this Complaint, in this  
24 district and throughout the United States.

25 10. Defendant D.N. Marketing, Inc. (also d/b/a HAMP Services and Trial  
26 Payment Processing) ("D.N. Marketing") is a California corporation. At times  
27 material to this Complaint, acting alone or in concert with others, D.N. Marketing  
28 advertised, marketed, provided, offered to provide, or arranged for others to

1 provide MARS, as defined in 12 C.F.R. § 15.2, in this district and throughout  
2 the United States.

3 11. Defendant Brian Pacios (a/k/a Brian Barry and Brian Kelly) is a  
4 compliance manager at C.C. Enterprises and Marketing. At times material to  
5 this Complaint, acting alone or in concert with others, Pacios has formulated,  
6 directed, controlled, had the authority to control, or participated in the acts and  
7 practices of Defendants C.C. Enterprises and D.N. Marketing, including the acts  
8 and practices set forth in this Complaint, in this district and throughout the United  
9 States.

10 12. Defendant Justin Moreira (a/k/a Justin Mason, Justin King, and Justin  
11 Smith) is the operations manager for C.C.



1 otherwise associated with, or endorsed, sponsored or approved by, the United  
2 States Government in any way.

3 DEFENDANTS' BUSINESS ACTIVITIES

4 18. Corporate Defendants, along with Defendants Caldaronello, Nelson,  
5 Pacios, and Moreira (collectively "HOPE Defendants"), through operation of the  
6 common enterprise and with substantial assistance from Defendant Lake, have  
7 engaged in a course of conduct to advertise, market, sell, provide, offer to provide,  
8 or arrange for others to provide MARS, including loan modifications. Defendants  
9 operate a three-phase loan modification scam targeting homeowners facing  
10 foreclosure. In the first phase, HOPE Defendants preliminarily approve the  
11 consumer for a loan modification. In the second phase, HOPE Defendants  
12 represent that, if the consumer makes three trial mortgage payments into his or her  
13 lender's trust account, he or she will receive a loan modification or a refund. In the  
14 third phase, Defendant Lake's Advocacy Department helps ensure that the  
15 consumer continues making payments by preventing lender communications that  
16 would disclose the fraud to consumers, by explaining away facts that would  
17 otherwise suggest fraud, and by reassuring consumers that their modification is  
18 moving forward. As set forth below, Defendants' claims are false: consumers do  
19 not receive modifications, their lenders never receive their trial payments, and  
20 consumers' payments are not refunded.

21 *Phase One - HOPE Defendants' Initial Pitch*

22 19. HOPE Defendants induce consumers to call them through mailed  
23 marketing materials advertising loan modifications, and through unsolicited  
24 outbound telemarketing calls. HOPE Defendants target distressed and desperate  
25 homeowners facing foreclosure, and especi

1 States government. Initially, they use mail designed to look and feel official  
2 (known as “snap pack” or “snap sealed mailers”). These mailers are sealed on  
3 three sides, with perforated edges recipients must tear off to access the contents.

4 21. Inside the mailers, the top le  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1           25. The intake representatives reinforce HOPE Defendants' purported  
2 association with the government when they speak to consumers over the phone, by  
3 using numerous terms that are affiliated with legitimate government loan  
4 modification programs. For example, HOPE Defendants initially called their  
5 program "HOPE Services" and more recently started using the name "HAMP  
6 Services." Significantly, the website for the government's MHA program  
7 repeatedly references the word "HOPE," encouraging distressed homeowners to  
8 call the "Homeowner's HOPE™ Hotline," which is "888-995-HOPE." In  
9 addition, "HAMP" is the abbreviation for the government's "Home Affordable  
10 Modification Program" discussed at length on the MHA website.

11           26. HOPE Defendants often tell consumers that they are a "non-profit"  
12 and when consumers ask who pays HOPE Defendants, HOPE Defendants state or  
13 imply that the government pays them to help distressed homeowners. Indeed,  
14 when consumers complain to HOPE Defendants about not receiving return calls  
15 promptly, HOPE Defendants attribute the delay to "government cutbacks."

16           27. HOPE Defendants emphasize their high success rate and alleged  
17 ability to obtain modifications even when the consumer's lender has already  
18 rejected his or her modification request. HOPE Defendants claim they have  
19 special contacts with "higher ups" at lenders or other experience that facilitates  
20 modifications.

21           28. Over the course of several calls, HOPE Defendants ask the consumer  
22 questions about his or her financial situation and for documents such as mortgage  
23 statements, paystubs, and a utility bill to establish residence. After receiving the  
24 requested information and documentation, the intake representative congratulates  
25 the consumer on being "preliminarily approved" and claims that one of HOPE  
26 Defendants' "mortgage counselors" will receive his or her file.

1 *Phase Two – HOPE Defendants Induce the First Payment*

2 29. The consumer speaks with a HOPE defendant mortgage counselor  
 3 several times over the course of a week to ten days. The counselor obtains  
 4 additional financial information and asks the consumer to send additional  
 5 documents. The counselor claims that HOPE Defendants will submit the  
 6 consumer's modification application to "government agencies" including Housing  
 7 and Urban Development ("HUD"), Making Home Affordable ("MHA") and the  
 8 Neighborhood Assistance Corporation of America ("NACA"). After a few days,  
 9 HOPE Defendants call to provide "good news"—that MHA has purportedly  
 10 approved the consumer's application.

11 30. HOPE Defendants tell the consumer that the modification's terms include  
 12 a very low interest rate (often ranging from 2-3%) and monthly payments that are  
 13 typically 20-30% lower than the consumer's current payment.

14 31. HOPE Defendants also tell consumers that they will need to make  
 15 three monthly trial mortgage payments to their lender's trust account. In some  
 16 instances, HOPE Defendants also instruct consumers to pay an additional  
 17 "reinstatement fee," which is typically a percentage of the past-due amount owed  
 18 on his or her mortgage, allegedly necessary to reinstate the defaulted loan's other  
 19 terms.

20 32. HOPE Defendants instruct consumers to send all payments in  
 21 "certified funds only"—either cashier's checks or money orders—made payable to  
 22 "Trust Payment Center/[the consumer's lender]," "Trial Payment Processing/[the  
 23 consumer's lender]," "Retention Division/[the consumer's lender]," or one of  
 24 these pairings, but in reverse. For instance, HOPE Defendants told one consumer  
 25 (a Wells Fargo mortgagor) to make his check payable to "Trust Payment  
 26 Center/Wells Fargo." In some cases, HOPE Defendants instruct consumers to  
 27 make their checks payable to "Trial Payment Processing."  
 28

1 33. HOPE Defendants claim that the lender's trust account is "like an  
2 escrow account" and thus ensures the lender cannot take the consumer's money  
3 without accepting the modification. HOPE Defendants state that lenders ultimately  
4 will receive the payments, or the payments will be refunded.

5 34. HOPE Defendants then send consumers a "Consumer Information  
6 Packet" which reaffirms HOPE Defendants' claims that MHA has accepted  
7 the consumer's modification application. They typically state: "Enclosed is the  
8 proposed modification agreement through the Making Home Affordable program."  
9 HOPE Defendants then partially complete the actual "Request For Mortgage  
10 Assistance (RMA)" with the consumer's data. This form is found on MHA's  
11 website and has the MHA logo on the front. Notably, the version HOPE  
12 Defendants send to consumers omits the seventh and final page. That page  
13 warns consumers to "BEWARE OF FORECLOSURE RESCUE SCAMS," and  
14 "never make your mortgage payments to the lender's trust account."  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 unaware of the modification due to the ~~code~~'s size and disorganization. HOPE

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



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

47. Lake's Advocacy Department also

1 Department jointly administer; it is not an agency at all, and it does not receive  
2 applications. NACA is a nonprofit organization, not a government agency.

3 51. HOPE Defendants do not place consumer reinstatement fees or trial  
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

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

- b. That a consumer's trial payments and/or reinstatement fee payment will be held in his or her lender's trust account and either be paid to his or her lender at the end of the trial period to finalize his or her modification, or be refunded;
- c. That HOPE Defendants are affiliated with, endorsed or approved by, or otherwise associated with the United States government, the MHA program, HUD, or NACA;
- d. That HOPE Defendants communicate with specialized departments, divisions, or "high ups" at the maker, holder, or servicer of the consumer's dwelling loan;
- e. That the consumer's lender can no longer foreclose on the consumer's house after HOPE.



- d. HOPE Defendants do not communicate with specialized departments, divisions, or “high ups” at the maker, holder, or servicer of the consumer’s dwelling loan;
- e. The consumer’s lender can foreclose on the consumer’s house after HOPE Defendants receive signed documents and the first payment from the consumer;
- f. HOPE Defendants typically do not deliver a loan modification within several months.

58. Therefore, HOPE Defendants’ representations as set forth in Paragraph 56 of this Complaint, are fals

1 association, limited or general partnership, corporation, or other business entity.

2 12 C.F.R. § 1015.2.

3 62. The MARS Rule prohibits any MARS provider from misrepresenting,  
4 expressly or by implication, any material aspect of any mortgage assistance relief  
5 service, including but not limited to:

6 a. The likelihood of negotiating, obtaining, or arranging any  
7 represented service or result 12 C.F.R. § 1015.3(b)(1);

8 b. The amount of time it will take the mortgage assistance relief  
9 service provider to accomplish any are

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 f. The total cost to purchase the mortgage assistance relief service.  
2 12 C.F.R. § 1015.3(b)(11).

3 g. The terms, conditions, or limitations of any offer of mortgage  
4 assistance relief the provider obtains from the consumer's dwelling  
5 loan holder or servicer, including the time period in which the  
6 consumer must decide to accept the offer. 12 C.F.R.  
7 § 1015.3(b)(12).

8 63. The MARS Rule prohibits any MARS provider from representing,  
9 expressly or by implication, in connection with the advertising, marketing,  
10 promotion, offering for sale, sale, or performance of any mortgage assistance relief  
11 service, that a consumer cannot or should not contact or communicate with his or  
12 her lender or servicer. 12 C.F.R. § 1015.3(a).

13 64. The MARS Rule prohibits any MARS provider from failing to place a  
14 statement in every general commercial communication disclosing that (i) the  
15 provider is not associated with the government and its service is not approved by  
16 the government or any lender, and (ii) in certain cases, a statement disclosing that  
17 the lender may not agree to modify a loan even if the consumer uses the provider's  
18 service. 12 C.F.R. §§ 1015.4(a)(1)-(2).

19 65. The MARS Rule prohibits any MARS provider from failing to place a  
20 statement in every consumer-specific commercial communication (i) confirming  
21 that the consumer may stop doing business with the provider or reject an offer of  
22 mortgage assistance without having to pay for the services, (ii) disclosing that the  
23 provider is not associated with the government and its service is not approved by  
24 the government or any lender, and (iii) in certain cases, a statement disclosing that  
25 the lender may not agree to modify a loan even if the consumer uses the provider's  
26 service, and (iv) in certain cases, a statement disclosing that if they stop paying  
27 their mortgage, consumers may lose their home or damage their credit. 12 C.F.R.  
28 §§ 1015.4(b)(1)-(3) and (c).

1           66. Since January 31, 2011, the MARS Rule prohibits any MARS  
2 provider from requesting or receiving payment of any fee or other consideration  
3 until the consumer has executed a written agreement between the consumer and the  
4 consumer's loan holder or servicer that incorporates the offer that the provider  
5 obtained from the loan holder or servicer. 12 C.F.R. § 1015.5(a).

6           67. The MARS Rule prohibits any person from providing substantial  
7 assistance or support to any mortgage assistance relief service provider when that  
8 person knows or consciously avoids knowing that the provider is engaged in any  
9 act or practice that violates the MARS Rule. 12 C.F.R. § 1015.6

10           68.

- c. That HOPE Defendants are affiliated with, endorsed or approved by, or otherwise associated with:
  - i. The United States government;
  - ii. Any governmental homeowner assistance plan;
  - iii. Any Federal, State, or local government agency, unit, or department; or
  - iv. Any nonprofit housing counselor agency or program;
- d. The consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan;
- e. The terms or conditions of refund or the circumstances in which a full or partial refund will be granted;
- f. The total cost to purchase the mortgage assistance relief service; and
- g. The terms and conditions of a mortgage assistance relief obtained.

COUNT III

(HOPE Defendants)

70. In numerous instances, in the course of providing, offering to provide, or arranging for others to provide mortgage assistance relief services, HOPE Defendants, in violation of the MAS Rule, 12 C.F.R. § 1015.3(a), have represented, expressly or by implication, that a consumer cannot or should not contact or communicate with or her lender or servicer.

COUNT IV

(HOPE Defendants)

71. In numerous instances, in the course of providing, offering to provide, or arranging for others to provide mortgage assistance relief services, HOPE Defendants failed to make the following disclosures:



1 COUNT V

2 (HOPE Defendants)

3 72. In numerous instances, in the course of providing, offering to provide,  
4 or arranging for others to provide mortgage assistance relief services, HOPE  
5 Defendants ask for or receive payment from consumers who have executed a written  
6 agreement between the consumer and the lender or servicer that incorporates  
7 the offer obtained by HOPE Defendants in violation of the MARS Rule, 12 C.F.R.  
8 § 1015.5(a).

9 COUNT VI

10 (Defendant Lake)

11 73. In numerous instances, Lake provided substantial assistance or  
12 support to HOPE Defendants who were in the course of providing, offering to  
13 provide, or arranging for others to provide mortgage assistance relief services.

14 74. Lake knew or consciously avoided knowing that HOPE Defendants  
15 were engaged in acts or practices that violated the MARS Rule as set forth in  
16 Counts II-V above.

17 75. Lake's acts and practices as alleged in Paragraphs 73-74 constitute a  
18 violation of the MARS Rule, 12 C.F.R. § 1015.6.

19 76. As a result of Lake's acts and practices, Lake is jointly and severally  
20 liable for the acts and practices that violated the MARS Rule.

21 VIOLATIONS OF THE TELEMARKETING SALES RULE

22 77. Congress directed the FTC to prescribe rules prohibiting abusive and  
23 deceptive telemarketing acts or practices

1 Under the TSR, a “telemarketer” means any person who, in connection with  
2 telemarketing, initiates or receives telephone calls to or from a customer or donor.  
3 16 C.F.R. § 310.2(cc). A “seller” means any person who, in connection with a  
4 telemarketing transaction, provides, offers to provide, or arranges for others to  
5 provide goods or services to a custom

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



1 obtaining or arranging a loan or other extension of credit for a person.  
2 § 310.4(a)(4).

3 83. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.  
4 § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation  
5 of the TSR constitutes an unfair or deceptive act or practice in or affecting  
6 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

7 COUNT VII

8 (HOPE Defendants)

9 84. In numerous instances, in connection with the telemarketing of its  
10 services, HOPE Defendants misrepresented directly or indirectly, expressly or by  
11 implication, material aspects of the performance, efficacy, nature, or central  
12 characteristics of such services, including, but not limited to:

- 13 a. That HOPE Defendants will obtain mortgage modifications for  
14 consumers that will make their payments substantially more  
15 affordable, will substantially lower their interest rates, and/or will  
16 help them avoid foreclosure;
- 17 b. That a consumer's trial payments and/or reinstatement fee payment  
18 will be held in his or her lender's trust account and be paid to his  
19 or her lender at the end of the term period to finalize his or her  
20 modification;
- 21 c. That HOPE Defendants are affiliated with, endorsed or approved  
22 by, or otherwise associated with the United States government, the  
23 MHA program, HUD, or NACA;
- 24 d. That HOPE Defendants communicate with specialized  
25 departments, divisions, or "high ups" at the maker, holder, or  
26 servicer of the consumer's dwelling loan;

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

e.



1 93. Lake knew or consciously avoided knowing that HOPE Defendants  
2 were engaged in acts or practices that violated the TSR as set forth in Counts VII-  
3 IX above.

4 94. Lake's acts and practices, as described in Paragraphs 92-93 of this  
5 Complaint, are deceptive telemarketing or practices that violate Section  
6 310.3(b) of the TSR. 16 C.F.R. § 310.3(b).

7 95. As a result of Lake's acts and practices, Lake is jointly and severally  
8 liable for the acts and practices that violated the TSR.

9 COUNT XI

10 (Relief Defendant Gonsalves)

11 96. Relief Defendant Gonsalves has received, directly or indirectly, funds  
12 or other assets from HOPE Defendants that are traceable to funds obtained from  
13 HOPE Defendants' customers as a result of the deceptive and unlawful acts or  
14 practices described herein.

15 97. Relief Defendant Gonsalves is not a bona fide purchaser with legal  
16 and equitable title to HOPE Defendants' customers' funds or other assets, and  
17 Relief Defendant Gonsalves will be unjustly enriched if she is not required to  
18 disgorge funds or the value of the benefit she received as a result of HOPE  
19 Defendants' deceptive and unlawful acts or practices.

20 98. By reason of the foregoing, Relief Defendant Gonsalves holds funds  
21 and assets in constructive trust for the benefit of HOPE Defendants' customers.

22 CONSUMER INJURY

23 99. Consumers have suffered and will continue to suffer substantial injury  
24 as a result of Defendants' violations of the FTC Act, the MARS Rule, and the  
25 TSR. In addition, Defendants have been unjustly enriched as a result of their  
26 unlawful acts or practices. Absent injunctive relief by this Court, Defendants are  
27 likely to continue to injure consumers, reap unjust enrichment, and harm the public  
28 interest.

THIS COURT'S POWER TO GRANT RELIEF

100. Section 13(b) of the FTC Act, 15.S.C. § 53(b), empowers this Court to grant injunctive and such

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

