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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

DENNY LAKE (also d/b/a JD United,
U.S. Crush, Advocacy Department,
Advocacy Division, Advocacy
Program, and Advocacy Agency);
CHAD CALDARONELLO (a/k/a
Chad Carlson and Chad Johnson),
individually and as an officer of C.C.
Enterprises, Inc.; C.C.
ENTERPRISES, INC. (also d/b/a
HOPE Services, Trust Payment
Center, and Retention Divisions);
DEREK NELSON (a/k/a Dereck
Wilson), individually and as an officer
of D.N. Marketing, Inc.; D.N.
MARKETING, INC. (also d/b/a
HAMP Services and Trial Payment
Processing); BRIAN PACIOS (a/k/a
Brian Barry and Brian Kelly); JUSTIN
MOREIRA (a/k/a Justin Mason, Justin
King, and Justin Smith),

Defendants, and
CORTNEY GONSALVES,
Relief Defendant.

Case No. 4 " \$ 7 \$ + \$ + 1 3 Y

PLAINTIFF'S MEMORANDUM IN
SUPPORT OF EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER WITH ASSET FREEZE,
APPOINTMENT OF
TEMPORARY RECEIVER,
LIMITED EXPEDITED
DISCOVERY, AND OTHER
EQUITABLE RELIEF, AND
ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE

[LODGED UNDER SEAL]

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1 Second, victims and their lenders confirm the fraud. Specifically, seven
2 consumers identify mortgage payments sent to HOPE Services. In sworn
3 declarations, their lenders deny receiving these payments, or the MHA applications
4 the defendants supposedly submitted. Third, a comprehensive forensic accounting
5 shows that HOPE Services received approximately \$1.9 million in victims'
6 mortgage payments, but none went to consumers' lenders. George ¶¶12, 17-19.
7 Rather, hundreds of thousands went to the defendants directly or paid for country
8 club dues, casino junkets, helicopter rides, and sports memorabilia. *Id.* ¶41-47.
9 Finally, declarations from the Departments of Housing and Urban Development
10 (“HUD”) and Treasury refute defendants' claims of government affiliation.

11 Many victims make multiple monthly payments despite increasingly dire
12 foreclosure warnings, hearing notices, and even sale dates. As explained below,
13 this happens because of Defendant Denny Lake, who runs “Advocacy
14 Department.” Under the guise of finalizing their modifications, the Advocacy
15 Department assures victims that foreclosure warnings need not alarm them and that
16 their modification is progressing. The Advocacy Department also promises to
17 communicate with their lender on their behalf (when direct communication
18 between the homeowner and lender would reveal the fraud). Accordingly, Lake
19 helps keep victims' monthly mortgage payments coming—payments he knows
20 HOPE Services illegally induced.

21 Significantly, there are approximately 432 victims who lost mortgage
22 payments or reinstatement fees to the defendants from approximately March 1,
23 2014 through mid-February, 2015.² *Id.* ¶12. Because victims usually lose one or
24 more entire mortgage payments, the average loss per victim is more than \$4,300.
25 *Id.* ¶13. Furthermore, these losses cause substantial indirect injuries. For instance,

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28 ² It is unlikely Defendants voluntarily halted their fraud in February, so there
are likely at least 485 victims now.

1 threatened foreclosure affects others who reside in the home, not merely the
2 mortgagor. Many victims are already in severe financial distress, and few easily
3 recover. Some have lost their homes, and some have declared bankruptcy.
4 Clemens ¶21; Monrreal ¶12; Wofford ¶36. Even victims who retain their homes
5 suffer both out-of-pocket losses as well as penalties, interest

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1 Enterprises, Inc. (“CCE”) (d/b/a “HOPE Services”).⁴ Ostrum ¶14; *id.* ¶137:139 at
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1 Most important, both HOPE and HAMP have essentially identical business
2 operations, including the same sales pitch, the same business process, and the same
3 means of stealing homeowners' mortgage payments. Accordingly, except where
4 the context requires greater specificity, we refer to the HOPE Defendants CCE
5 (d/b/a HOPE Services), Chad Caldaronello, DNM (d/b/a HAMP Services), Derek
6 Nelson, Brian Pacios, and Justin Moreira) collectively as "HOPE Services."

7 **B. The HOPE Defendants' Aliases**

8 Importantly, the individual HOPE Defendants use aliases to hide their
9 identities.¹¹ *See infra* at 27 n.84, 29 n.89, 30 n.97, 100 n.31 (discussing evidence
10 establishing that the HOPE Defendants use aliases). Below, except where the
11 context requires otherwise, we refer to the HOPE Defendants by their real names.
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15 locations through at least February. Ostrum ¶274. Furthermore, they attempted to
16 use a CCE credit card to pay for phone service at the new (DNM) location, Ostrum
17 ¶275:141 at 2697 (the transaction failed, and the HOPE Defendants ultimately used
18 another card, *see id.*), and they gave CCE's address to the phone company, *id.*
19 1608. Additionally, the HOPE Defendants used a CCE card to pay for insurance
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1 **C. HOPE Defendant Brian Pacios’ Contempt**

2 Pacios is in contempt of an earlier order this Court issued. Specifically, the
3 Commission sued Sameer Lakhany and other parties, alleging that they perpetrated
4 foreclosure relief scams (“the *Lakhany Action*”).¹² The Court issued a TRO
5 against the defendants and appointed a Temporary Receiver.¹³ When the
6 Temporary Receiver arrived at an office associated with Lakhany, he found a
7 telemarketing “boiler room” that Pacios managed.¹⁴ The FTC subsequently
8 amended its complaint to include Pacios.¹⁵ In a 2013 Final Order resolving the
9 action against Pacios, the Court permanently enjoined him from selling any sort of
10 mortgage relief services.¹⁶ After this motion becomes public, the Commission will
11 move to hold Pacios in contempt. Cohen ¶15:10 (attaching draft contempt
12 motion).

13 **FACTS**

14 Defendants operate a loan modification scam in three phases. First, HOPE
15 Services preliminarily approves the homeowner for a loan modification. Second, it
16 represents that, if the homeowner makes three trial mortgage payments into his
17 lender’s trust account, he will receive a loan modification. Third, Advocacy
18 Department helps ensure that victims continue making these payments. However,
19 overwhelming evidence establishes that victims do not receive the promised

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21 ¹² See Complaint, *FTC v. Lakhany*, No. 8:12-cv-337-CJC (C.D. Cal. Mar. 5,
22 2012).

23 ¹³ See TRO, *FTC v. Lakhany*, No. 8:12-cv-337-CJC (C.D. Cal. Mar. 7,
24 2012).

25 ¹⁴ See Preliminary Report of Temporary Receiver, *FTC v. Lakhany*, No.
26 8:12-cv-337-CJC (C.D. Cal. Mar. 19, 2012) at 7.

27 ¹⁵ See First Amended Complaint, *FTC v. Lakhany*, No. 8:12-cv-337-CJC
28 (C.D. Cal. Mar. 22, 2012).

¹⁶ See Final Order, *FTC v. Lakhany*, No. 8:12-cv-337-CJC (C.D. Cal. Mar.
22, 2012) at 8-9. The Court also entered a \$1.75 million judgment against Pacios,
for his victims’ benefit, *see id.* at 13, of which Pacios still owes approximately \$1.2
million. *See Rivers* ¶5.

1 offering programs for homeowners whose “lender[s] [aren’t] giving them any
2 help.”²² Specifically, if the caller qualifies, HOPE Services claims it will submit
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1 claimed to have obtained an MHA proposal with a substantially reduced interest
2 rate (3.125% from 5.75%), Ostrum ¶75:30 at 345; *id.* ¶45:7 at 145, and
3 significantly lowered monthly payments (\$1,147.61 from \$1,487.78), *id.* ¶75:30 at
4 346; *id.* ¶45:7 at 144-45. The terms also involved a “reinstatement fee”
5 (\$1,759.06). *Id.* ¶75:30 at 346-347; *id.* ¶79:30 at 347. HOPE Services then
6 explained that this “reinstatement fee” was due on February 6, with her monthly
7 trial mortgage payments of \$1,487.78 due on March 6, April 6, and May 6.³¹
8 Ostrum ¶79:30 at 374. The counselor next stated that HOPE Services would send
9 MHA paperwork overnight, which the homeowner should sign and return as soon
10 as possible. Ostrum ¶76:30 at 348, 368.

11 Additionally, the counselor emphasizes several critical points. First, and
12 most important, the lender can still foreclose until the homeowner signs the
13 paperwork and makes the first payment. Ostrum ¶67:23 at 276. Thus, victims are
14 encouraged to make the first payment promptly to halt foreclosure, *see, e.g.*,
15 Wofford ¶16, and to make all trial payments because doing so secures the proposed
16 modification.³² Second, the counselor explains that the trial payments must go to
17

18 and submit three monthly trial payments of \$2,231.07. After making these three
19 payments, my loan modification would be final.”); Wofford ¶11 (“[Pacios] told me
20 that the lender approved my modification at a 2% fixed interest rate with a 40-year
21 term.”).

21 ³¹ Significantly, legitimate government programs use a trial payment
22 process, so homeowners researching loan modification will not necessarily notice
23 anything suspicious about what HOPE Services proposes. *See*

1 the lender’s trust account. *See, e.g.*, Robinson ¶4; Cannizzo ¶14. In the
2 undercover investigator’s case, for example, Chance instructed her to make
3 payments “to _____’s trust account.”³³ HOPE Services claims this is
4 “for [the homeowner’s] protection” against unscrupulous lenders that might accept
5 the trial payments, but renege on the promised modification.³⁴ As HOPE Services
6 also explains, “the trust account is called Trial Payment Processing.”³⁵ Finally, the
7 counselor provides a purported “banking allocation number.” Ostrum ¶79:30 at
8 366.

9 **c. The HOPE Defendants Send MHA Paperwork.**

10 Next, HOPE Services overnights a package of paperwork to the victim. This
11 package includes part of tor.3of

1 pre-filled-in with financial information the victims provided, so they simply need
2 to sign and return it.³⁷ The HOPE Services paperwork also includes
3 correspondence summarizing the new loan terms and a clear payment schedule.
4 *Id.* Critically, HOPE Services instructs the homeowner to send “certified funds
5 only”—either a cashier’s check or money order³⁸—by “FedEx or UPS Next Day
6 Air”³⁹ to a California address.⁴⁰

7 Most important, HOPE Services instructs homeowners to make their draft
8 payable to “[Fictitious Business Name]/[Consumer’s Lender].”⁴¹ For instance,
9 HOPE Services instructed a Wells Fargo mortgagor to make her checks payable to
10 “Trust Payment Center/Wells Fargo.” Clemens 1st ¶9:2 at 7. CCE registered the
11 “Trust Payment Center” FBN, and DNM registered the “Trust Payment
12 Processing” FBN. *See supra* at 4 n.4, 4 n.5. In this way, HOPE Services implies
13 that the payment goes to the lender, but HOPE Services can negotiate it.⁴²

14
15 ³⁷ Robinson ¶6:1 at 5-10; Huggins ¶5:2

1 Our undercover investigator recently received correspondence from HOPE
2 Services that is largely the same. It begins: “Enclosed is the proposed
3 modification agreement through the Making Homes Affordable program.” Ostrum
4 ¶¶80:31 at 382; Martin ¶6:2 at 6. Thus, this version also reinforces HOPE Services’
5 message—there is an “agreement,” and if the homeowner makes the payments, he
6 will receive a loan modification. The correspondence directs our investigator to
7 make checks payable to “Trial Payment Processing,” and identifies her apparent
8 lender, , as the loan’s servicer. Ostrum ¶80:31 at 382.

9 **3. Phase Three (Advocacy Department)**

10 After congratulating the victim on his purported MHA approval, HOPE
11 Services claims that Advocacy Department will begin working with him.
12 Defendant Lake controls Advocacy Department⁴³ (and does identical business as
13 “JD United,”⁴⁴ “U.S. Crush,” and “Advocacy Agency”).⁴⁵ Lake identifies himself

1 to consumers as a “Sr. Case Analyst,” and, in that capacity, he directs other
2 Advocacy Department employees. Harris ¶11:4 at 22; *id.* ¶21:12 at 53.

3 As described below, the Advocacy Department performs three critical
4 functions: (1) handling all communications with the lender on the consumer’s
5 behalf; (2) reassuring consumers that their modification is on track; and (3) filing
6 worthless complaints with government agencies or lenders. Most important, these
7 actions cause the consumer to continue

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... a standard ... 2015-04-28 10:26:42 ...

1 **b. Advocacy Department Reassures Victims that the**
2 **Modification Is Moving Forward.**

3 Next, Advocacy Department reassures victims that the modification process
4 is “moving forward,” which keeps consumers making payments rather than
5 questioning HOPE Services’ legitimacy. Through references to lender
6 negotiations, Young ¶9, requests for additional documents, Wofford ¶¶18-19, and
7 reports of alleged progress, Clemens 3d ¶6:4 at 22, Advocacy Department creates
8 an impression that the modification process is continuing. Furthermore, when
9 events occur that might cause a victim to question HOPE Services’ legitimacy—
10 such as continuing foreclosure proceedings—Advocacy Department reassures the
11 victim. *See* Harris ¶20:11 at 48. In fact, when the FTC undercover investigator
12 asked Advocacy Department whether she should stop making her HOPE Services
13 payments, the Advocacy Department representative made clear that she should
14 “keep doing what [she was] doing” with HOPE Services. Ostrum ¶92:41 at 475.

15 **c. Advocacy Department Files**
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1 these letters would accomplish anything at all⁵⁶—let alone somehow finalize a
2 modification that never existed.⁵⁷

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1 is corroborated by the fact that there were ninety-two calls between Lake’s
2 personal phone and Pacios’ personal phone from March through November 2014.⁶³

3 Most important, the FTC’s undercover call established that HOPE Services
4 receives information regarding a homeowner’s proposed trial payments from
5 Advocacy Department before HOPE Services relays that information to the
6 homeowner. Specifically, HOPE Services identified Malcolm Turner (an
7 Advocacy Department employee) as the person who “has been responsible . . . for
8 all documents with the bank, the agencies, and everything.”⁶⁴ According to
9 Turner, whatever agency had supposedly approved our investigator’s application
10 required that she make payments to _____’s trust account. Ostrum
11 ¶76:30 at 357. Thus, HOPE Services attributed the fraud’s key enabling feature
12 (payments to a supposed lender trust account) to an Advocacy Department
13 employee.
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15 **5. HOPE Services Refuses Refund Requests.**

16 As explained *supra* at 10-11, HOPE Services informs homeowners that it
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1 demand refunds. However, HOPE Services almost never refunds victims'
2 money,⁶⁶ and usually it simply stops taking their calls.⁶⁷

3 In our investigator's case, after she made her reinstatement payment, she
4 informed HOPE Services that her husband's parents unexpectedly paid their
5 arrearage and resolved the issues with their lender. Ostrum ¶¶93:42 at 510. HOPE
6 Services' "counselor" responded that this development "sucks." Ostrum ¶¶93:42 at
7 513. However, he did promise the lender would release her payment from the trust
8 following an elaborate process necessary to avoid "big trouble" with "the banking
9 commission." Ostrum ¶¶96:44 at 541. Later, Pacios assured her that "the funds
10 would be sent back out [to her] by certified mail and certified funds as they're
11 received." Ostrum ¶¶97:45 at 553. Suffice it to say, the refund never came.
12 Ostrum ¶¶98.

13 **B. Evidence of Falsity**

14 Four lines of evidence each establish that HOPE Services is a fraud: (1)
15 undercover work; (2) declarations from victims and their lenders; (3) a forensic
16 accounting; and (4) declarations from the Treasury Department, HUD, and NACA.

17 **1. Undercover Work**

18 Posing as Ann Garcia, the wife of a financially distressed [REDACTED]
19 mortgagor Carlos Garcia, an FTC investigator sought a loan modification from
20 HOPE Services.⁶⁸ Over the course of approximately two weeks, Ann Garcia had
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23 ⁶⁶ Out of 432 victims, the FTC identified two who apparently obtained
24 refunds. Ostrum ¶¶25.

25 ⁶⁷ Clemens ¶¶20; Young ¶¶9; Harris ¶¶31.

26 ⁶⁸ Ostrum ¶¶43. DNM's owner Nelson gave the investigator HOPE Services'
27 number. Specifically, before posing as Ann Garcia, she posed as a representative
28 working for the company that currently leases a maildrop to DNM. She called the
number DNM owner Nelson provided, but reached Pacios' voicemail. Ostrum
¶¶37-38:1 at 87, 92. She then called another number for Nelson and left a message
that he returned. Ostrum ¶¶39:138 at 2685. The investigator told Nelson that the
mailbox lessor had received angry consumer complaints, and she asked him what

1 multiple calls with HOPE Services representatives who collected financial

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1 mortgagor “to remit payments to an address in Lake Forest, California” not
2 associated with Wells Fargo; (2) the fact that HOPE Services material directs
3 mortgagors to make payments payable to “Trust Payment Center/Wells Fargo,”
4 and “[r]equests that payments be sent to locations or parties not associated with
5 Wells Fargo are strong indicators of fraud”; (3) “[t]he specific terms of the loan
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1 Services, but no payments went from HOPE

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1 equities receive far greater weight.”). In a statutory enforcement action, “[h]arm to
2 the public interest” and “irreparable injury” are presumed. *World Wide Factors*,
3 882 F.2d at 347. Likewise, irreparable injury “must be presumed.”⁸⁰ *Id.* Finally,
4 the Court’s “weigh[ing] of the equities” must occur with respect “to each element
5 of preliminary relief sought[.]” *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6,
6 17 (7th Cir. 1992).

7 **B. Corporate Defendants CCE and DNM Are Liable.**

8 The evidence above establishes the FTC’s likelihood of success on the
9 merits. CCE and DNM are violating Section 5 of the FTC Act, which prohibits
10 “unfair or deceptive acts or practices[.]” 15 U.S.C. § 45(a)(1). A
11 misrepresentation violates Section 5 if it is material and likely to mislead
12 consumers acting reasonably under the circumstances. *FTC v. Gill*, 265 F.3d 944,
13 950 (9th Cir. 2001). HOPE Services’ basic claim—that consumers will obtain loan
14 modifications if they make trial mortgage payments—is a lie. The evidence
15 establishes, among other things: victims’ trial payments never reach their lenders,
16 their loan modification applications are not submitted to “agencies” as advertised,
17 and MHA (which does not exist) has not approved anyone for anything. *See supra*
18 at 23. Simply put, HOPE Services steals the payments. *See supra* at 19-23. The
19 promise of a loan modification is obviously material to a homeowner shopping for
20 a loan modification. Furthermore, HOPE Services’ claims are likely to mislead,
21 particularly because HOPE Services poses as a nonprofit, implies government
22 approval, and uses a process that mimics real programs. *See supra* at 10 n. 31.
23 Accordingly, HOPE Services is violating the FTC Act.

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26 ⁸⁰ *See also United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172,
27 175 (9th Cir. 1987) (“No specific or immediate showing of the precise way in
28 which the violation of the law will result in public harm is required.”); *Am. Fruit*
Growers v. United States, 105 F.2d 722, 725 (9th Cir. 1939) (finding the absence
of facts “show[ing] irreparable injury” irrelevant because, under the statutory
scheme, Congress concluded that a violation “would cause irreparable injury”).

1 These same misrepresentations violate both the TSR and the MARS Rule.
2 *See* 16 C.F.R. Part 310; 12 C.F.R. § 1015. The TSR prohibits deceptive
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1 individual defendant) is proper if he participated directly in HOPE Services’
 2 unlawful acts or had authority to control them.⁸⁵ Caldaronello satisfies both
 3 standards. First, Caldaronello personally made misrepresentations.⁸⁶ Second,
 4 Caldaronello exerts control over HOPE Services. Among other things, he: (1) is
 5 CCE’s CEO and owner, Ostrum ¶100:46 at 562; Ostrum ¶229:124 at 2430; (2)
 6 signed CCE’s lease, *id.* ¶200:115 at 1435; (3) registered two FBNs to CCE,
 7 Ostrum ¶104:50 at 573; Ostrum ¶105:51 at 576; (4) helped DNM obtain a lease, *id.*
 8 ¶191:109 at 1189;⁸⁷ (5) opened at least one CCE bank account, Ostrum ¶229:124 at
 9 2429-30, (6) signs CCE’s checks, *id.* ¶254:134 at 2665; (7) opened two HOPE
 10 Services maildrops, *id.* ¶198:113 at 1324; *id.* ¶199:114 at 1334; (8) responds to
 11 consumer complaints, *see, e.g.*, Clemens ¶¶17-19; Hicks ¶¶9-12; (9) responded to a
 12 regulatory inquiry regarding CCE and “HOPE Services,” Ostrum ¶137:139 at
 13 2687; (10) accepted service of a lawsuit on CCE’s behalf outside its offices, *id.*
 14 ¶124:60 at 709; and (11) serves as one of two HAMP Services “compliance
 15 department” managers (Pacios was the other), *id.* ¶96:44 at 543.

16 Additionally, Cardaronello is liable for restitution if he had awareness of
 17 HOPE Services’ misrepresentations (which he plainly did because he made so
 18 many himself).⁸⁸ Furthermore, given the breadth of his participation in the
 19 fraudulent claims and the scam overall, it is impossible that he was unaware of
 20 HOPE Services’ misconduct. Accordingly, Caldaronello is liable for both
 21 injunctive and monetary relief. *See Publishing Clearing*, 104 F.3d at 1170-71.

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 23 maintains an office there, Ostrum ¶167:94 at Social Media Video Folder.

24 ⁸⁵ *See, e.g., FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009); *FTC v.*
Publishing Clearing House, Inc., 104 F.3d 1168, 1170-71 (9th Cir. 1997).

25 ⁸⁶ Ostrum ¶262:132 at 2631, 2633, 2626; Clemens ¶¶4-11; Harris ¶8;
 26 Ferriero ¶5; Ostrum ¶262:132 at 2635 (Caldaronello claiming HOPE Services is a
 “nonprofit”).

27 ⁸⁷ *See* Ostrum ¶191:109 at 1189.

28 ⁸⁸ *See, e.g., Stefanchik*, 559 F.3d at 931; *FTC v. Cyberspace.com LLC*, 453
 F.3d 1196, 1202 (9th Cir. 2006); *Affordable Media*, 179 F.3d at 1231.

2. Brian Pacios

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1 telemarketing scam⁹⁸ also evidence his knowledge. In fact, with respect to Pacios’
 2 prior scam, Moreira collaborated with Pacios, was deposed in the action
 3 concerning the scam, and knew that the receiver entered Pacios’ prior location.⁹⁹
 4 Because Pacios is again telemarketing, any reasonable person in Moreira’s position
 5 would know fraud is very likely. In short, Moreira knows about the fraud, but
 6 even assuming, *arguendo*, that he does not, Moreira is still liable for redress
 7 because he knows fraud is likely and would have to be willfully blind not to notice
 8 it. *See Affordable Media*, 179 F.3d at 1234.

9 4. Derek Nelson

10 Nelson is liable for injunctive relief because he is DNM’s owner and
 11 President.¹⁰⁰ Ostrum ¶101:47 at 564. Additionally, Nelson signed DNM’s lease,
 12 Ostrum ¶186:109 at 1090, registered its FBN, Ostrum ¶107:53 at 582, opened its
 13 bank account, Ostrum ¶233:125 at 2449, and rented its maildrop.¹⁰¹ Accordingly,
 14 his signatory power and officer role establish his liability for injunctive relief. *See*,
 15 *e.g.*, *Publishing Clearing*, 104 F.3d at 1170 (“Martin’s assumption of the role of
 16 president of PCH and her authority to sign documents on behalf of the corporation
 17 demonstrate that she had the requisite control over the corporation.”).

18 Nelson is also liable for restitution because he has “an awareness of a high
 19 probability of fraud along with an intentional avoidance of the truth.” *Affordable*
 20 *Media*, 179 F.3d at 1234. Because he both leased an office for DNM and rented a

21 ¶115:58 at 619.

22 ⁹⁸ Ostrum ¶145:74 at 830-31.

23 ⁹⁹ *Id.* ¶145:74 at 83-31.

24 ¹⁰⁰ Derek Nelson uses “Dereck Wilson.” “Dereck Wilson” has a phone
 25 number assigned at DNM, but does not receive compensation. Ostrum ¶203:116 at
 26 1606; George ¶15. However, Derek Nelson does. George ¶22.

27 ¹⁰¹ Ostrum ¶196:112 at 1271. Additionally, Nelson is physically present at
 28 DNM’s offices and, in fact, HAMP Services transferred our investigator to
 someone identifying himself as “Derek” during an undercover call she made there.
 Ostrum ¶96:44 at 534-35.

1 maildrop, he knew DNM did not receive mail at its office. Furthermore, Nelson
 2 registered the “Trial Payment Processing” FBN, meaning he knew DNM did
 3 business under another name. Nelson also opened DNM’s bank account and
 4 included the “Trial Payment Processing” d/b/a on bank account applications,
 5 Ostrum ¶222:122 at 2324, meaning he knew that DNM could cash checks made
 6 payable to “Trial Payment Processing.” Nelson either understands what the
 7 company he owns does, or he intentionally avoids learning what it does. Either
 8 way, Nelson is liable for restitution. *Affordable Media*, 179 F.3d at 1234.

9 **E. Lake**

10 The facts establish that Lake substantially assists HOPE Services in
 11 violation of the MARS Rule.¹⁰² *See* 12 C.F.R. § 1015.6. As described below, the
 12 evidence establishes that Lake (1) knows or consciously avoids knowing that
 13 HOPE Services violates the MARS Rule’s advance fee ban, but (2) substantially
 14 assists HOPE Services’ collection of improper advance fees anyway.¹⁰³ *See id.*

15 **1. Knowledge**

16 Lake knows (or consciously avoids knowing) that HOPE Services violates
 17 the MARS Rule. A MARS provider (such as HOPE Services) may not “[r]equest
 18 or receive payment of any fee or other consideration until the consumer has
 19 executed a written agreement between the consumer and the consumer’s dwelling
 20 loan holder or servicer[.]” 12 C.F.R. § 1015.5(a). Lake and his Advocacy
 21 Department know (or consciously avoid knowing) that HOPE Services violates
 22 this provision because (1) Lake knows HOPE Services’ victims have paid “fee[s]
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24 ¹⁰² Notably, Advocacy Department also violates the MARS Rule itself for
 25 multiple reasons, including that none of its communications with victims (such as
 26 the third party authorization, or Lake’s introductory email) contain the MARS
 27 Rule’s mandatory disclosures. *See* 12 C.F.R. § 1015.4(b).

28 ¹⁰³ HOPE Services is a “MARS Provider” because it markets or provides
 loan modification or foreclosure rescue services to consumers. *See* 12 C.F.R. §
 1015.2.

1 or other consideration, although (2) they do not have “written [modification]
2 agreement[s]” with their lenders.

3 **a. Lake Knows About the Payments**

4 Several facts establish that Lake knows (or consciously avoids knowing) that
5 HOPE Services’ victims make payments. To begin, Lake told at least one
6 consumer that her modification would become permanent after she made her trial
7 payments. Wofford ¶19 (“Denny . . . told me that after I made my three trial
8 payments, they would make my modification permanent.”). Similarly, a Lake
9 employee called a victim “asking that [she] make the third and final trial payment
10 so that I could get a permanent loan modification.”¹⁰⁴ Wofford ¶33.

11 Even when Lake dodged questions about the trial payments, his
12 communications still establish that he knew about them. For instance, consumer
13 Katrina Harris asked Lake several questions after she had made her third and final
14 trial payment, including whether she should continue making payments “to the
15 Trust as we have for the past three months,” and whether she should pay the new
16 amount (that HOPE Services told her to pay into the trust), or a different amount.
17 Harris ¶19:10 at 47. Lake responded: “The Advocacy Department does not have
18 anything to do with the payments so I am not sure what the arrangement was for
19 that. Typically three trial payments are made into the trust, but you would need to
20 speak with HOPE about that.” *Id.* Even assuming Lake’s denial of knowledge
21 was accurate,¹⁰⁵ it still reveals that he knows consumers are making payments. In

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23 ¹⁰⁴ Subject to exceptions not relevant here, knowledge of a fact that an agent
24 (such as one of Lake’s employees) knows or has reason to know is imputed to the
25 principal if knowledge of the fact is material to the agent’s duties to the
26 principal[.]” RESTATEMENT (THIRD) OF AGENCY § 5.03 (2006); *see also Hoover v.*
27 *Wise*, 91 U.S. 308, 310 (1875) (“The general doctrine, that the knowledge of an
28 agent is the knowledge of the principal, cannot be doubted.”). Because Lake is a
MARS provider affiliated with another MARS provider (HOPE Services),
knowledge concerning HOPE Services’ gross MARS Rule violations is necessarily
material to Lake.

¹⁰⁵ It wasn’t. As discussed *supra*, at 17-18, Advocacy Department is more

1 fact, when Harris later learned she had been cheated, she contacted Lake and asked
2 for a refund. Harris ¶26. Lake told her “to discuss it with [Pacios],” *id.*, further
3 demonstrating that Lake knew about the payments.¹⁰⁶

4 Lake employee Steve Navidad’s struggle to explain the payments to the
5 FTC’s undercover investigator also illustrates Advocacy Department’s knowledge.
6 Specifically, when the investigator raised an issue about the payments, Navidad
7 stammered and deflected the issue back to HOPE Services: “No, I—I—I
8 understand. But, no I mean, look, you can call Alan [Chance at HOPE Services]
9 and have him explain that process. Unfortunately, I—look, I don’t have
10 information relating to, you know, the payments you have and what you made and
11 whatnot.” Yet, when the investigator suggested that perhaps she “shouldn’t send
12 any [trial] payments” until Advocacy Department finished its work, Navidad knew
13 how to respond: “[Y]ou need to **keep doing what you’re doing** with [HOPE
14 Services], okay?” Ostrum ¶92:41 at 475 (emphasis added). Simply put, Navidad
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23 involved with the payments than Lake admits.

24 ¹⁰⁶ As did his employees. For instance, an Advocacy Department employee
25 left a victim a voicemail stating: “[Y]ou did receive a pre-qualification or
26 eligibility notice and . . . you made . . . all three trial payments already. But . . . we
27 need documents to get this through final review.” Wofford ¶18:6 at 36; *see also*
28 Ostrum ¶258:129 at 2607 (“CONSUMER: . . . [I’m] wondering what happened
to the \$2,844 that I sent off. ADVOCACY : Don’t know. I’ll have to have Brian
Barry or Chad . . . contact you on that.”). Another Lake employee, Jenny Fryman,
also told our investigator to “contact [HOPE] Services about [your payment].
They are the ones handling the payment.” Ostrum ¶86:37 at 429.

1 knows about the payments —and, in fact, he told our investigator to keep making
2 them.¹⁰⁷

3 **b. Lake Knows There Are No Modifications**
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1 to send complaints “like buckshot” to the lender, government agencies, and public
2 officials, which will then cause the consumer’s “file [to be] escalated into the
3 [lender’s] executive office where we will end up in a fair and transparent
4 negotiation.” Harris ¶12:5 at 31; Wofford ¶20:7 at 46. This makes no sense if
5 Lake believed that HOPE Services had already obtained a written loan
6 modification.

7 Moreover, Lake and his employees claim to communicate with victims’
8 lenders and, in fact, execute “third party authorizations” to make this
9 communication possible. *See supra* at 16-17; *see also* Young ¶9 (Advocacy
10 Department told me “they were speaking to my lender”). Significantly, one victim
11 sued both HOPE Services and Advocacy Department (“the *Elias* Action”). In
12 Lake’s sworn *Elias* Action Answer, he represented that he communicated with the
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1 more than “casual or incidental” assistance qualifies. *Id.* Thus, ““cleaning a
2 telemarketer’s office, delivering lunches to the telemarketer’s premises, or
3 engaging in some other activity with little or no relation to the conduct that violates
4 the Rule would not be enough to support liability as an assistor or facilitator.”” *Id.*
5 (quoting FTC guidance).

6 By helping ensure that victims keep making payments to HOPE Services,
7 Lake provided vastly more than “casual and incidental” support. Most important,
8 Lake serves as an intermediary between the homeowner and the lender. *See supra*
9 at 15-16. Any significant communication from the lender to the homeowner would
10 disclose that the homeowner does not have a loan modification (and that the lender
11 has not received the trial payments or even the homeowner’s application). Despite
12 reviewing dozens of complaints and speaking directly with more than thirty
13 victims, the FTC was unable to uncover any instance in which Advocacy
14 Department disclosed to a homeowner that his lender had not received his trial
15 payments or his MHA application.¹¹¹ By filtering lender communications before
16 they reach homeowners, Lake prevents them from protecting themselves. In this
17 critical respect, Lake substantially assists HOPE Services.

18 Additionally, Lake provides substantial assistance by helping “explain
19 away” facts that might have caused victims to question HOPE Services sooner, and
20 he reinforces the false impression that their modifications are moving forward.
21 For instance, in mid-April 2014, HOPE Defendant Caldaronello informed
22 homeowner Keely Clemens that she “was approved for a HAMP loan
23 modification.” Clemens ¶7. Clemens paid a reinstatement fee (\$1,244.15) and her
24 first trial payment (\$1,428.50) in late April. *Id.* ¶¶8-10. Per HOPE Services’
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27 ¹¹¹ Ostrum ¶36. Fraud by omission is still fraud. *See, e.g., Mui Ho v. Toyota*
28 *Motor Corp.*, 931 F. Supp. 2d 987, 999 (N.D. Cal. 2013) (identifying elements of
fraud by omission claim under California law).

1 instructions, Clemens sent a cashiers' check covering both payments payable to
2 "Trust Payment Center/Wells Fargo." Wells Fargo ¶15:6 at 20-21. Clemens later
3 made her second trial payment as well (another \$1,428.50). *Id.* However—despite
4 the purported approval and more than \$4,000 in payments—Clemens' home
5 remained scheduled for sale.

6 Critically, in late May, Advocacy Department informed Clemens that "[t]he
7 sale date of your house was postponed in order to keep moving forward with your
8 request for mortgage assistance." Clemens 3d ¶6:4 at 22. While the process was
9 supposedly "moving forward," Clemens made her final payment of \$1,428.50
10 (again, payable to "Trust Payment Center/Wells Fargo"). Clemens ¶8; Wells
11 Fargo ¶15:6 at 22. After the payment, Caldaronello congratulated Clemens and
12 confirmed that her modification was "set in stone." Clemens ¶14.

13 Clemens lost her home. Clemens ¶21. Wells Fargo never received the
14 MHA application HOPE Services supposedly submitted or any of her payments.
15 Wells Fargo ¶15:6. Had Advocacy Department not falsely reassured Clemens that
16 the process was "moving forward" (rather than disclosing the HOPE Services
17 scam), it is unlikely Clemens would have made another payment instead of
18 exploring other measures to save her home.

19 Homeowner Katrina Harris presents another example. Harris' home was
20 was in foreclosure. On August 5, 2014, Lake informed Harris that her lender was
21 "willing to review [her] for all assistance programs." Harris ¶14:6 at 34. A few
22 days later, she made her final trial payment (payable to "Trust Payment
23 Center/BSI"). Harris ¶16:2 at 10. It is illogical (if not unbelievable) that any
24 consumer would continue making HOPE Services' payments after learning HOPE
25 Services was a fraud. Again, however, despite an extensive review, the FTC has
26 been unable to uncover any instance in which Lake (or anyone at Advocacy
27 Department) disclosed to a homeowner what had actually happened. Ostrum ¶36.
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1 Finally, even if one assumed that Lake merely provides “advocacy services”
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1 for a hearing.” *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th
2 Cir. 2006).

3 In this instance, the evidence that HOPE Services would disregard a court
4 order to preserve evidence is overwhelming. First, and most important, Pacios is
5 one of HOPE Services’ controlpersons, *see supra* at 29-30, and he is grossly
6 violating a Court order already. In 2013, the Court ordered Pacios to cease his
7 widespread loan modification fraud.¹¹⁵ Pacios paid the Court’s order no heed.
8 There is no reason to believe he will afford more respect to an order that HOPE
9 Services preserve evidence.¹¹⁶ Pacios’ egregious contempt, standing alone, is a
10 more than sufficient basis to support *ex parte* relief. *See, e.g., Vuitton v. White*,
11 945 F.2d 569, 575–76 (3d Cir. 1991) (finding court abused its discretion by failing
12 to issue *ex parte* TRO; plaintiff’s showing included evidence that defendants
13 violated a previous court order regarding the same issue).

14 Second, HOPE Services has already proven its unwillingness to comply with
15 mandatory discovery obligations. Specifically, when the Washington Department
16 of Financial Institutions (“DFI”), subpoenaed HOPE Services regarding the precise
17 conduct at issue here, HOPE Services responded with outright lies.¹¹⁷ In particular,
18 through a sworn response from “Brian Barry”: (1) Pacios denied providing “loan
19 modification services” to Washington residents;¹¹⁸ (2) Pacios asserted that Trust
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22 ¹¹⁵ Final Order, *FTC v. Lakhany*, No. 8:12-cv-337 (Feb. 28, 2013), DE152 at
23 8-9; *see also* Cohen ¶15:9 (forthcoming contempt motion).

24 ¹¹⁶ Notably, one of Pacios’ earlier entities (National Relief Group) was
25 subject to three cease and desist orders, all of which concerned loan modification
26 fraud, and all of which Pacios’ ignored. Savitt ¶¶ 12:M at 9-14, 13:N at 23-24,
27 14:O at 25-28; *see also* Memo., *FTC v. Lakhany*, No. 8:12-cv-337 (Mar. 22, 2012),
28 DE71 at 14.

¹¹⁷ Penttila ¶2:1 at 5-6. DFI sent the subpoena to HOPE Services’ FBN,
“Trust Payment Center.” *See id.*

¹¹⁸ Six Washington residents sent checks to “Trust Payment Center” before
Pacios’ response to DFI. Young ¶7:2 at 5; Clemens ¶10; Williams ¶¶5-8 at 4-7.

1 Payment Center had only one “current or former employee[.]” (whose alias he
2 provided, rather than his real name),¹¹⁹ *id.*; and (3) Pacios denied that “Trust
3 Payment Center” “[did] business under any other name,”¹²⁰ *id.* Simply put, if
4 HOPE Services will lie under oath with respect to a lawful discovery request
5 concerning its business practices, there is every reason to conclude it will not
6 respect a court order to preserve evidence regarding those same practices.

7 Third, HOPE Services engages in substantial efforts to evade detection. As
8 discussed above, its employees use numerous aliases, it changed physical
9 locations, it shifted to a new legal entity, it changes FBNs periodically, and it uses
10 maildrops to hide its real location. *See supra* at 3-5. There is no legitimate
11 purpose for this subterfuge, and an enterprise that goes to great lengths to hide
12 itself is unlikely to comply with discovery obligations intended for law-abiding
13 civil litigants.

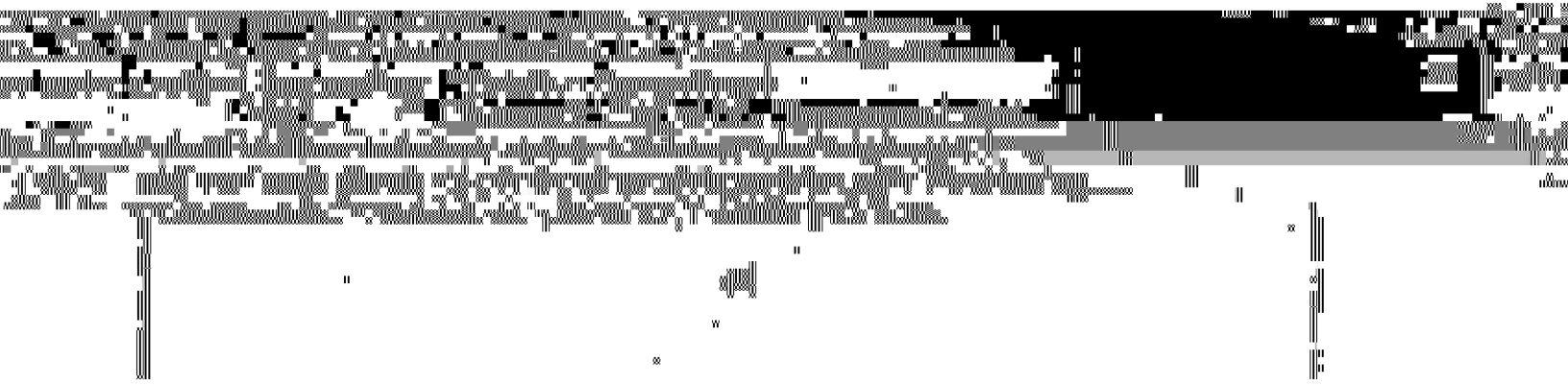
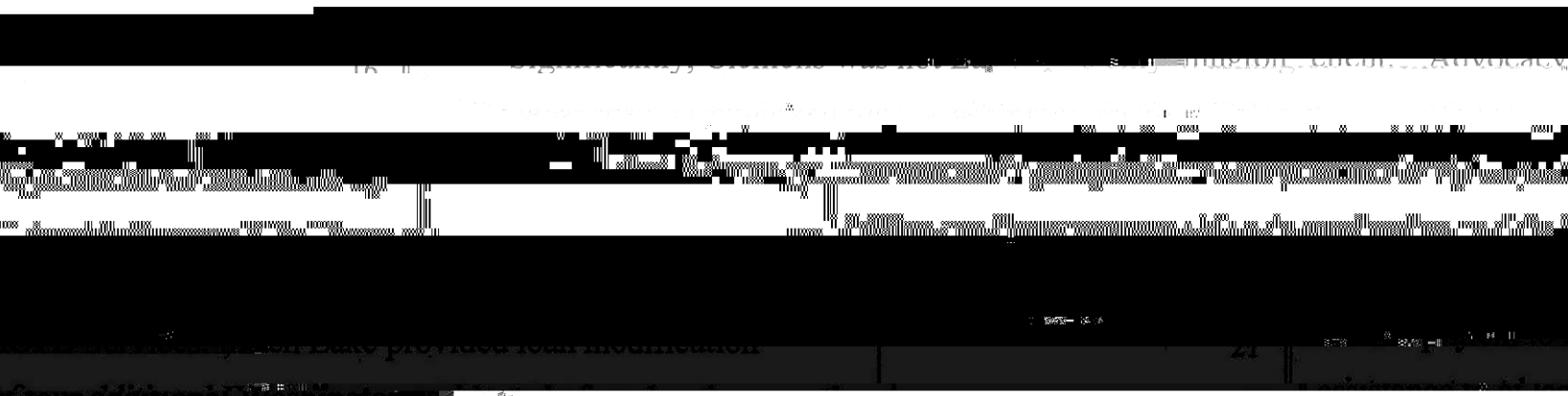
14 Finally, the HOPE Services scam is outright theft, as opposed to a technical
15 regulatory violation. It is unreasonable to expect that people willing to simply
16 steal homeowners’ mortgage payments will comply with a court order to preserve
17 evidence. Accordingly, *ex parte* relief is necessary.

19 **2. Lake Is Also Likely To Disregard a Court Order To** 20 **Preserve Evidence.**

21 As described below, Lake is also unlikely to comply with a Court order to
22 preserve evidence. Lake has already pe
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1 with DEI's purposes. Finally, Clark's active effort to conceal HOPE Services'
2 fraud demonstrates substantial risk that he will usregate a victim's trust.

HOPE Services' for proper... HOPE Services' for proper...



1 5; *id.* ¶9; Williams ¶¶5-8 at 4-7 (attaching victim checks prior to the subpoena
 2 return referencing properties (or drawn from banks) in Oak Harbor, Bremerton,
 3 Marysville, and Federal Way, Washington).

4 Furthermore, in his sworn discovery response, Lake also denied to DFI that
 5 JD United did “business under any other name such as a registered trade name or
 6 fictitious name.” Penttila ¶4:3 at 69. This response directly contradicts Lake’s
 7 (also sworn) assertion in the *Elias* Action Answer, in which he asserted that “JD
 8 United[] is a prior dba of Advocacy Department.”¹²²

9 Second, Lake perjured himself on his entity’s FBN registration. Initially,
 10 Lake accurately registered JD United as his FBN. Ostrum ¶103:49 at 572.
 11 Subsequently, however, he attempted to conceal his name by re-registering “JD
 12 United” to “U.S. Crush.” Ostrum ¶106:52 at 579. As noted above, U.S. Crush is
 13 actually Lake’s punk band. *See supra* at 14 n.44. However, in his Orange County
 14 filing, Lake falsely identified “U.S. Crush” as a California corporation.¹²³ Lake
 15 also represents that he is the “President” of that nonexistent corporation.¹²⁴ Ostrum
 16 ¶106:52 at 579.

17 **b. Advocacy Department Refused To Comply With DFI**
 18 **Subpoenas.**

19 DFI ultimately sent Lake two subpoenas, both of which Lake failed to
 20 comply with. Penttila ¶¶4-5. For instance, Lake refused to answer questions about
 21 JD United’s principals and employees. He also refused to identify his own title. In
 22 addition, Lake refused to answer DFI’s request that Lake explain what he meant

23 ¹²² Ostrum ¶125:60 at 687. Additionally, in an filing with Orange County,
 24 Lake registered “JD United” as an FBN of “U.S. Crush,” an alleged California
 25 corporation. *See supra* at 13 n.44.

26 ¹²³ The California Secretary of State confirms there is no such legal entity.
 Ostrum ¶110:56 at 589-93.

27 ¹²⁴ Lake also misstated material facts in his verified *Elias* Action Answer.
 28 Specifically, Lake’s sworn Answer denies the plaintiff’s allegation that “J.D.
 United” and “Advocacy Department” “do not appear to be incorporated entities.”
 Ostrum ¶125:60 at 688.

1 **B. A Complete Asset Freeze Is Necessary.**

2 **1. The Egregious Facts in This Case Warrant a Complete**
3 **Asset Freeze.**

4 An asset freeze is appropriate where, as here, it is necessary to preserve the
5 possibility of restitution for victimized consumers.¹²⁸ *FTC v. Southwest Sunsites,*
6 *Inc.*, 665 F.2d 711, 717-19 (5th Cir. 1982); *see also SEC v. ETS Payphones, the*

1 substitution of a ‘likelihood’ of dissipation—as opposed to its ‘possibility’—[was
2 error] as the standard placed an unnecessarily heavy burden on FSLIC.”); Cohen
3 ¶16:10, Order, *FTC v. Wealth Educators, Inc.*, No. CV 15-02375 (C.D. Cal. Apr. 6,
4 2015) at 9 (“[W]hen a government agency is a movant, the mere ‘possibility’ (as
5 opposed to likelihood) of dissipation of assets is sufficient to justify a freeze.”)
6 (citing *Sahni*, 868 F.2d at 1097).¹²⁹

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9 ¹²⁹ There is a second line of authority pursuant to which a private party that
10 must establish irreparable harm correspondingly must show a “likelihood” of
11 dissipation, *see Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009)—
12 although the difference is academic because the evidence here establishes that
13 dissipation is likely. However, “possibility” of dissipation rather than “likelihood”
14 is the correct standard because *Johnson* limited *Sahni* in a private context where
15 the court could not presume “irreparable harm.” As *Johnson* explained, it altered
16 the standard specifically due to a subsequent Supreme Court case involving private
17 litigants. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)
18 (requiring “plaintiffs seeking preliminary relief to demonstrate that irreparable
19 injury is likely”) (Court’s emphasis); *Johnson*, 572 F.3d at 1085 n.11 (limiting
20 *Sahni* “because *Winter* requires a likelihood of irreparable harm”). Thus,
21 *Johnson*’s statement regarding *Sahni* is inapplicable where, as in FTC statutory
22 enforcement, irreparable harm is presumed. *See supra* at 25; *but see SEC v.*
23 *Schooler*, 902 F. Supp. 2d 1341, 1359-60 (S.D. Cal. 2012) (following *Johnson*
24 rather than *Sahni* in an SEC enforcement action based on district court decisions,
25 and without considering the “irreparable harm” presumption). Notably, when
26 *Sahni* identified the “possibility” standard as the correct one, it specifically relied
27 upon Ninth Circuit FTC authority that *Johnson* did not mention:

20 We have previously held, in an analogous situation involving the
21 FTC, that an asset freeze may issue without such a heightened
22 showing of likely irreparable harm; indeed, when “the public interest
23 is involved in a proceeding of this nature, [the district court’s]
24 equitable powers assume an even broader and more flexible character
25 than when only a private controversy is at stake.” *FTC v. H.N.*
26 *Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir.1982) (quoting *Porter v.*
27 *Warner Holding Co.*, 328 U.S. 395, 398 (1946)).

25 *Sahni*, 868 F.2d at 1097. The Ninth Circuit further noted that, in other statutory
26 enforcement cases, “courts have consistently concluded that an asset freeze in
27 similar contexts does not require that the court find that dissipation is likely.” *Id.*
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1 Several facts show that HOPE Services will dissipate assets. Most
 2 important, fraud permeates HOPE Services. Fraudulent activities “lead to the
 3 conclusion that, absent a freeze, [defendants] would either dispose of, or conceal,
 4 or send abroad, all of the moneys that they have obtained[.]”¹³⁰ *Singer*, 668 F.2d at
 5 1113. Furthermore, HOPE Services goes to great lengths to hide itself, *see supra*
 6 at 3-5, which makes tracing its assets more difficult. It also suggests the HOPE
 7 Defendants will try to conceal or dissipate assets. Additionally, HOPE Services is
 8 rapidly dissipating assets already, as victims’ money flows out of its accounts as
 9 quickly as it arrives. George ¶¶ 16:C-17:D. Moreover, CCE and DMN assets go
 10 quickly to personal expenses such as sports memorabilia and travel.¹³¹ *Id.* ¶¶ 41-
 11 47. Finally, the HOPE Defendants withdrew approximately \$500,000 from CCE
 12 and DNM accounts from March 2014-February 2015. *Id.* ¶49.

13 Like HOPE Services, fraud permeates Lake’s Advocacy Department, which
 14 actively hides evidence of HOPE Services’ wrongdoing from victims. *See Singer*,
 15 668 F.2d at 1113 (asset freeze appropriate when fraud permeates business); *see*
 16 *also Mui Ho*, 931 F. Supp. 2d at 999 (N.D. Cal. 2013) (elements of fraud by
 17 omission). Equally important, Lake structured Advocacy Department so no victim
 18 interacts with a legal entity holding any assets. “Advocacy Department” is not a
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21 ¹³⁰ *See also Manor Nursing*, 458 F.2d at 1106 (“Because of the fraudulent
 22 nature of appellants’ violations, the court could not be assured that appellants
 23 would not waste their assets prior to refunding public investors’ money.”); *FTC v.*
 24 *Int’l Computer Concepts, Inc.*, No. 5:94CV1678, 1994 WL 730144, *16 -17 (N.D.
 25 Ohio Oct. 24, 1994) (“Where, as in this case, business operations are permeated by
 26 fraud, there is a strong likelihood that assets may be dissipated during the
 pendency of the legal proceedings. Mindful of this, courts have ordered the
 freezing of assets solely on the basis of pervasive fraudulent activities[.]”)
 (citations omitted).

27 ¹³¹ Additionally, Pacios routinely gambles at high-end Las Vegas casinos.
 28 Ostrum ¶252. Pacios spends significant money on high-end gambling trips to
 Vegas despite owing victims from his last scam roughly \$1.2 million. *See id.*;
 Rivers ¶5.

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1 prohibit defendants from using ill-gotten gains to fund their defense.¹³⁴ *See, e.g.,*
2 *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 618 (1989) (“A
3 defendant has no Sixth Amendment right to spend **another person’s money** for
4 services rendered by an attorney[.]”) (emphasis added). Money the individual
5 Defendants hold belongs to the homeowners they victimized, and these victims
6 should not have to pay for Defendants’ legal bills, living expenses, gambling, and
7 sports memorabilia. This Court has frozen individual defendants’ assets before,¹³⁵
8 including in *FTC v. National Consumer Council*, a debt relief case involving facts
9 less egregious than the ones presented here (material nondisclosure and
10 misrepresentations as opposed to outright theft).¹³⁶ Accordingly, a full asset freeze
11 is appropriate.¹³⁷

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15 ¹³⁴ Similarly, courts often prevent defendants from using ill-gotten gains for
16 living expenses. *See, e.g., SEC v. Petters*, No. 09-1750, 2010 WL 1782235, *2 (D.
17 Minn. Apr. 30, 2010) (“The Court reiterates that living expense payments from
18 funds preserved for Sajus Is fT0 1 Tf 0.0008 Tc -0.0018 Tw[(be justifiedy a Tcn atto. ri)4(

1 **2. Alternatively, the Court Should Issue a Partial Asset**
2 **Freeze.**

3 Alternatively, the Court should, at a minimum, preserve a portion of the
4 individual defendants’ assets to compensate victims. To accomplish this, the
5 Commission has prepared an alternative Proposed TRO that would freeze only
6 50% of individual defendants’ personal accounts. The partial freeze would leave
7 them with resources to hire counsel at reasonable rates and pay reasonable living
8 expenses. Additionally, the alternative Proposed TRO forces the FTC (and
9 potential Temporary Receiver) to respond to any request for additional funds on an
10 extremely expedited basis.¹³⁸

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22 ¹³⁸ For several reasons, the Court should completely freeze corporate
23 accounts (and accounts Lake uses for business) regardless of how it treats personal
24 accounts. Initially, at least the DNM

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2. McNamara Benjamin LLP

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2 McNamara Benjamin LLP (“McNamara”) is a California-based law firm
3 specializing in equity receiverships. Cohen ¶4. McNamara has extensive
4 experience working in FTC matters. *See id.* at 43-48. The Court previously
5 appointed him to serve as Receiver in the litigation involving Pacios’ earlier
6 mortgage scam, *see id.* at 39, and a California court appointed McNamara to serve
7 as Receiver in an earlier scam involving Lake, *see* at 13 n.43. Accordingly,
8 McNamara has already interviewed, and interacted with, both Pacios and Lake.
9 McNamara’s rates range from \$60 to \$375/hour. *See id.* at 41.

10 McNamara proposes to use one of its attorneys, Daniel Benjamin, as counsel
11 to the Receiver. Cohen ¶9. Daniel Benjamin specializes in complex civil litigation
12 and has extensive experience representing federal equity receivers. *See id.* Mr.
13 Benjamin’s rate is \$378/hour. *See id.*

3. Robb Evans & Associates

14 Robb Evans & Associates LLC (“Robb Evans”) is a California-based
15 consulting firm specializing in equity receiverships. *See id.* ¶10:5 at 49. Robb
16 Evans has extensive experience working on FTC matters, *see id.* at ¶12:7, and
17 extensive experience before this Court, *see id.* Its experience includes serving as
18 the receiver in seven matters involving loan modification or mortgage relief fraud,
19 including five that also involved the FTC. *See id.* at ¶10:5 at 49. Robb Evans’
20 rates range from \$99 to \$342/hour. *See id.* at 50.

21 Robb Evans is likely to use either Gary Karis of McKenna, Long & Aldridge
22 LLP (“McKenna”) or Craig Wheelen of Frandzel, Robins, Bloom and Csato L.C.
23 (“Frandzel”) as counsel to the Temporary Receiver. Both have local offices and
24 extensive experience representing equity receivers. Mr. Caris’ anticipated rate is
25 \$598/hour, and Mr. Wheelen’s anticipated rate is \$405/hour. *See id.* at ¶13.
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1 **D. The Proposed TRO's Other Provisions Are Necessary and**
 2 **Appropriate.**

3 **1. Immediate Access to Business Premises**

4 The Proposed TRO authorizes the Temporary Receiver to immediately
 5 access the Defendants' business premises.¹⁴⁰ Although the Proposed TRO requires
 6 the Temporary Receiver to afford the FTC and Defendants reasonable access to
 7 Defendants' business premises as well, it also provides that only "[t]he Temporary
 8 Receiver shall have the discretion to determine the time, manner, and reasonable
 9 conditions of such access." Proposed TRO § XVII. Thus, if the Temporary
 10 Receiver allows FTC representatives to join the immediate access, the Temporary
 11 Receiver will control the FTC's conduct during that access. Additionally, if the
 12 Temporary Receiver permits the FTC to image Receivership data during the
 13 immediate access (or at any other time), the Proposed TRO mandates that the
 14 Temporary Receiver supervise the FTC including, among other things, taking steps
 15 "to ensure the integrity of the data." *Id.* The Temporary Receiver must also keep a
 16 copy of anything the FTC images, and provide it to Defendants upon request.¹⁴¹

17 **2. Fifth Amendment Considerations**

18 Requiring individual Defendants to produce documents (such as bank
 19 records) that third parties have created almost certainly does not implicate the Fifth
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 22 ¹⁴⁰ Proposed TRO § XVII; *see also generally U.S. Oil & Gas*, 748 F.2d at
 23 1434 ("The court's authority to issue an immediate access stems from its inherent
 24 equitable authority to issue preliminary relief in order to effectuate permanent
 25 relief.").

26 ¹⁴¹ Although the Proposed TRO contains no other provisions authorizing
 27 expedited discovery from Defendants, two existing orders permit certain discovery.
 28 *See Final Order, FTC v. Lakhany*, No. 8:12-cv-337 (C.D. Cal. Feb. 28, 2013),
 DE152 at 22-23 (concerning Pacios and related parties); *Final Order, FTC v.*
Lakhany, No. 8:12-cv-337 (C.D. Cal. Feb. 28, 2013), DE150 at 21-22 (concerning
 Assurity Law Group and related parties). The Court should not (and cannot)
 modify these Orders without further proceedings. *See generally Rufo v. Inmates of*
Suffolk Cnty. Jail, 502 U.S. 367, 384 (1992) (order modification standard).

1 Amendment.¹⁴² Out of an abundance of caution, however, the Proposed TRO does
2 not require individual Defendants to produce any information. However, it does
3 permit the FTC and the Temporary Receiver to take discovery from third parties
4 (such as financial institutions and credit reporting agencies) regarding assets.

5 3. Smartphones

6 The HOPE Defendants use their personal cellphones to conduct HOPE
7 Services' business.¹⁴³ Accordingly, the Proposed TRO provides that if they
8 possess a smartphone or tablet on business (Receivership) premises, the Temporary
9 Receiver may image the device, although he must return it to them within two
10 business days (along with a copy of the imaged data).¹⁴⁴

12 ¹⁴² See, e.g., *Fisher v. United States*, 425 U.S. 391, 411 (1976) (holding that
13 it does not violate the Fifth Amendment to compel a third party to produce
14 documents made by a third party, about the defendant, even if the papers on their
15 face might incriminate the defendant); *Singer*, 668 F.2d at 1114 (holding that
16 compelling a defendant to produce documents created by third parties may or may
17 not amount to authentication, and if it does, would not necessarily be a violation of
18 the Fifth Amendment; moreover, if defendant believes there is a Fifth Amendment
19 concern, the burden is on defendant to make a showing to that effect for the court
20 to evaluate) (citing *Fisher*, 425 U.S. 391).

21 ¹⁴³ For instance, Pacios his iPhone to send an email arranging for DNM's
22 office lease, Ostrum ¶190:109 at 1158, and used his personal phone to call the
23 office space lessor eighteen times, Ostrum ¶217. Pacios also gave DNM's
24 telephone service provider his personal cell number. Ostrum ¶202:116 at 1604.
25 Caldaronello listed his personal cellphone on a Postal Service form required to
26 lease a mailbox CCE used, Dalaie ¶2:1 at 4; Ostrum ¶198:113 at 1324, he provided
27 it to another business that leased a second mailbox to CCE, Ostrum ¶119:114 at
28 1334 (Caldaronello's personal number appears a business card bearing another
entity's name), he listed his personal cellphone as CCE's number on application
materials he completed to obtain office space for CCE, Ostrum 200:115 at 1426,
and he provided his personal cellphone as the business number for CCE or "Trust
Payment Center" on account application materials he submitted to two different
financial institutions, Ostrum ¶231:125 at 2450-2452, Ostrum ¶235:126 at 2462-
2463. Nelson provided his personal cellphone to DNM's office lessor as DNM's
business number. Ostrum ¶188:109 at 1141. HOPE Services also provided
Moreira's personal cellphone to a maildrop lessor, Ostrum ¶199:114 at 1334, and
to an office space lessor. Ostrum ¶200:115 at 1482.

¹⁴⁴ See Proposed TRO § XX(D). The Temporary Receiver may request that
the FTC image the device subject to his supervision. *See id.*

1 **4. Social Media**

2 There is very substantial evidence that individual Defendants and other
3 HOPE Services employees record information relevant to business activities and
4 assets on social media.¹⁴⁵ For instance, Moreira posted an image himself showing
5 off a Rolex, Ostrum ¶141:70 at 800, and an image of himself in front of a new
6 vehicle, *id.* ¶144:73 at 809. The Proposed TRO does not require Defendants or
7 HOPE Services employees to produce any social media, but it does prohibit them
8 from deleting or destroying any social media material during the Order’s
9 pendency.

10 **5. Safes**

11 Caldaronello purchased a large safe with corporate funds and installed it on
12 (or in) his garage floor. Ostrum ¶206:117 at 1612. Additionally, HOPE Services
13 apparently used corporate funds to purchas
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Respectfully submitted,