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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DENNY LAKE, *et al.*,

Defendants.

Case No.: SACV 15-00585-CJC(JPRx)

**ORDER GRANTING THE FTC'S
MOTION FOR SUMMARY
JUDGMENT**

I. INTRODUCTION

Plaintiff Federal Trade Commission (“FTC”) brings this action against Defendant Denny Lake for violations of the Mortgage Assistance Relief Services (“MARS”) Rule,

1 12 C.F.R. § 1015.6, and the Telemarketing Services Rule (TSR”), 16 C.F.R. § 310.3.¹
2 Before the Court is the FTC’s motion for summary judgment on both counts. For the
3 following reasons, that motion is GRANTED.

4 5 **II. BACKGROUND**

6
7 Defendant Denny Lake claims to have been in the business of assisting distressed
8 homeowners since at least February 2010. (Dkt. 126, “Statement of Plaintiff’s
9 Objections to Defendant’s Response to Plaintiff’s Statement of Uncontroverted Facts”
10 (“UF”) 1; 2.)² He does business as “JD United” and “the Advocacy Program,” (UF 3),
11 and his business model has been to interview homeowners and then file complaints on
12 their behalf with banks, public officials, and other regulatory agencies, in an attempt to
13 get banks to negotiate mortgage modifications for them. (UF 12.) The way that Lake
14 would retain clients was in large part by contracting with other businesses whose clients
15 were distressed homeowners and who would refer those homeowners to Lake for Lake’s
16 “advocacy” services. (UF 16.) Lake did not market his services directly to
17 homeowners—the affiliates who sent him clients did that themselves. (UF 14; Lake Dep.
18 at 231:10–13.) Instead, Lake’s role was to work with banks on the “back end” to help
19 consumers obtain modifications. (UF 17.)

20
21 Federal regulations prohibit third parties like Lake who help homeowners secure
22 modifications from seeking “advance fees.” The third parties may only be paid by a
23 consumer after that consumer “has executed a written agreement between the consumer
24 and the consumer’s dwelling loan holder”—in other words, after the consumer has

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26 ¹ The remaining Defendants in this case stipulated to liability.

27 ² The FTC submitted a Statement of Uncontroverted Facts, Lake submitted responses, and the FTC
28 submitted objections to those responses. For simplicity’s sake, the Court refers to the facts in Dkt. 126,
which contains the original Statement, Lake’s responses, and the FTC’s objections, as “UF,” and notes
disputes only when necessary.

1 successfully obtained a modification from his or her bank. 12 C.F.R. § 1015.5. This
2 regulation and other related provisions are together known as the “MARS Rule.” In
3 Lake’s experience, the companies who referred clients to him would unlawfully collect
4 advance fees from those clients before paying Lake to process their files and
5 communicate with their lenders. (UF 21.) Lake assumed that if he had been hired to
6 process files, at some point, the company he had contracted with had been paid by the
7 consumer, and he did not work on a consumer file until he was paid to do so. (UF 22;
8 23.) Despite understanding that advance fees were illegal and that his affiliates were
9 taking them, Lake believed that so long as

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1 loan modifications. When a consumer expressed interest, HOPE Services would request
2 some initial documents and then congratulate the customer on being “preliminarily
3 approved” for a modification. (Compl. ¶¶ 18–28.) In the second phase, the HOPE
4 Defendants and their employees would inform consumers that they were required to pay
5 a “reinstatement fee”—typically a percentage of the past-due amount owed on the
6 consumer’s mortgage—and then make three monthly “trial mortgage payments” into
7 their lender’s “trust account,” which was actually just a HOPE account. (*Id.* ¶ 31.) The
8 HOPE Defendants would demand “certified funds only” and instruct consumers to make
9 the funds payable to HOPE entities, who sometimes had names styled to resemble the
10 consumer’s lender. (*Id.* ¶ 32.) After a consumer made the first trial payment, the HOPE
11 Defendants would then direct him or her to Lake’s “Advocacy Department.” The third
12 phase involved Lake: he or one of his employees would contact a consumer, reassure
13 them that the modification process was unfolding (even if the consumer was receiving
14 foreclosure warnings or a sale date was approaching), and generally ask additional
15 financial questions or request additional documentation before “advocating” on the
16 client’s behalf to banks or public officials. (*Id.* ¶¶ 43–49.) The FTC alleges that Lake’s
17 role in the scheme was crucial because it kept consumers making “trial payments” to the
18 HOPE Defendants for months longer than they would have otherwise, all the while
19 accruing interest and penalties with their actual lender. (*Id.*)

20
21 Based on these allegations, the FTC brought counts for violations of the MARS
22 Rule and the TSR against the HOPE Defendants, and counts for assisting violations of
23 the MARS Rule and the TSR against Lake. The individual Hope Defendants stipulated
24 to liability and the entry of permanent injunctions against them. (*See* Dkt. 89
25 (Caldaronello); 90 (Moreira); 91 (Pacios); and 96 (Nelson).) Lake refused to stipulate,
26 and on May 13, 2015, the Court granted a preliminary injunction freezing Lake’s assets
27 and enjoining him from violating the MARS Rule’s prohibition against receiving advance
28 fees for modification-related work. (Dkt. 68.) Lake was initially represented by counsel,

1 nonmoving party’s case, *Celotex Corp.*, 477 U.S. at 325. Once this burden is met, the
2 party resisting the motion must set forth, by affidavit, or as otherwise provided under
3 Rule 56, “specific facts showing that there is a genuine issue for trial.” *Anderson*, 477
4 U.S. at 256. A party opposing summary judgment must support its assertion that a
5 material fact is genuinely disputed by (i) citing to materials in the record, (ii) showing the
6 moving party’s materials are inadequate to establish an absence of genuine dispute, or
7 (iii) showing that the moving party lacks admissible evidence to support its factual
8 position. Fed. R. Civ. P. 56(c)(1)(A)–(B). The opposing party may also object to the
9 material cited by the movant on the basis that it “cannot be presented in a form that
10 would be admissible in evidence.” Fed. R. Civ. P. 56(c)(2). But the opposing party must
11 show more than the “mere existence of a scintilla of evidence”; rather, “there must be
12 evidence on which the jury could reasonably find for the [opposing party].” *Anderson*,
13 477 U.S. at 252.

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1 **IV. ANALYSIS**

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3 **A. MARS Substantial Assistance Rule**

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5 In addition to prohibiting certain acts or practices in mortgage servicing, the
6 MARS Rule, 12 CFR § 1015, prohibits any person from “provid[ing] substantial
7 assistance or support to any [MARS] provider when that person knows or consciously
8 avoids knowing that the provider is engaged in any act or practice that violates this rule.”
9 12 CFR § 1015.6. There are therefore three elements to a violation of the MARS
10 “substantial assistance” rule: (1) an underlying violation of the MARS rule by a MARS
11 provider; (2) substantial assistance or support by a person to that provider; and (3)
12 knowledge or conscious avoidance, on the part of the person, of the underlying violation.
13

14 **1. Underlying Violation**

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16 The FTC alleges that the HOPE Defendants violated the MARS Rule in at least
17 three ways. First, they illegally accepted advance fees from clients in violation of 12
18 C.F.R. § 1015.5 (“It is a violation of this rule for any mortgage assistance relief service
19 provider to . . . [r]equest or receive payment of any fee or other consideration until the
20 consumer has executed a written agreement between the consumer and the consumer’s
21 dwelling loan holder or servicer.”) Second, they made material misrepresentations to
22 their clients in violation of 12 C.F.R. § 1015.3, particularly regarding government
23 affiliation, the terms of their modifications, and the nature of their trial payments. And
24 third, they failed to make mandatory disclosures under 12 C.F.R. § 1015.4.
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26 The FTC has presented substantial evidence proving that the HOPE Defendants
27 violated the MARS Rule in the above ways. The record demonstrates that the HOPE
28 Defendants failed to make mandatory disclosures, both over the phone and by mail, (UF

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1 material misrepresentations while telemarketing, and by particularly misrepresenting
2 material aspects of their refund policies while telemarketing. Each of these violations is
3 well-established in the record, and Defendant Lake makes no effort at disputing them.
4 The HOPE Defendants falsely represented to consumers that their payments would be
5 held in trust for their lenders, (*see* UF 83; Lake Dep. at 165:9–169:4), and then
6 subsequently took advance fees from those consumers, (UF 194), in violation of 16
7 C.F.R. 310.3(a)(4), which prohibits “[m]aking a false or misleading statement to induce
8 any person to pay for goods or services or to induce a charitable contribution.” Second,
9 the HOPE Defendants made material misrepresentations about the MARS services they
10 sold, (UF 184; 185; 186; 188), in violation of 16 C.F.R. 310(a)(2)(iii), which prohibits
11 misrepresenting “[a]ny material aspect of the performance, efficacy, nature, or central
12 characteristics of goods or services that are the subject of a sales offer.” Finally, the
13 HOPE Defendants misrepresented their refund policy, telling consumers that their
14 payments would all be refunded if a modification fell through. (UF 196; 204.) This
15 violated 16 C.F.R. § 310(a)(2)(iv), which prohibits misrepresenting “[a]ny material
16 aspect of the nature or terms of the seller’s refund, cancellation, exchange, or repurchase
17 policies.”

18 19 **2. Substantial Assistance or Support**

20
21 The substantial assistance standard for MARS violations is identical to the one for
22 TSR violations. For the reasons discussed above in Section IV(A)(2), no reasonable jury
23 could conclude that Lake did not substantially assist the HOPE Defendants in carrying
24 out their scheme. Lake therefore substantially assisted them in violating the TSR.

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1 “[R]estitution is a form of ancillary relief available to the court” in FTC cases. *F.T.C. v.*
2 *Gill*, 265 F.3d 944, 958 (9th Cir. 2001).

3
4 Here, the FTC seeks monetary relief in the full amount consumers paid to the
5 HOPE Defendants (\$2,349,885.00), a permanent injunction barring Lake from future
6 violations of the MARS Rule and the TSR, and “fencing-in” relief, or a provision that
7 “serve[s] to close all roads to the prohibited goal, so that [the FTC’s] order may not be
8 by-passed with impunity.” *Litton Indus., Inc. v. F.T.C.*, 676 F.3d 364, 370 (9th Cir.
9 1982). The fencing-in relief the FTC seeks is a permanent injunction banning Lake from
10 selling “secured or unsecured debt relief products and services,” selling “mortgage-
11 related financial products and services,” “telemarketing,” making any misrepresentation
12 with regard to any financial product, making misrepresentations with regard to *any*
13 products or services, and making unsubstantiated claims. (Dkt. 114 (“Proposed Order” at
14 9–13).)

15 16 **1. Joint and Several Liability**

17
18 The parties dispute whether Lake, as an assister, is jointly and severally liable for
19 the *full* harm caused by both Lake and the HOPE Defendants. They have located only
20 one case to confront the question directly—*FTC v. HES Merch. Servs. Co.*, Case No.
21 6:12-cv-1618-Orl-22KRS, 2015 U.S. Dist. LEXIS 28039, at *15 (M.D. Fla. Feb. 11,
22 2015). There, a district court held an assister jointly and severally liable for a total harm.
23 Lake contends that *HES* was wrong to automatically apply joint and several liability, and
24 that the Court should instead apply the federal common law of joint and several liability.
25 That would require the Court to consider whether the harm effected by Lake and the
26 other Defendants is “capable of apportionment,” *Burlington N. & Santa Fe Ry. v. U.S.*,
27 556 U.S. 599, 606 (2009). The Court need not resolve this dispute because even if it
28 accepted Lake’s argument that federal common law applied, it would still conclude that

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1 declaration that the Court cannot locate and which is cited nowhere else in the FTC's

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1 The Court finds that a permanent injunction against Mr. Lake is appropriate under
2 the circumstances to enjoin him from engaging in similar misleading and deceptive
3 conduct. Mr. Lake has a considerable history of working in the mortgage business and
4 for MARS fraudsters: prior to the events at issue in this case, he worked for Frank
5 Barilla, an attorney who was later disciplined by the state bar for fraudulent mortgage
6 practices, (UF 34–37), and he took work from National Advocacy Program, an entity
7 which was illegally accepting advance fees from MARS consumers, (UF 50). He has
8 also demonstrated an intent to continue working in the mortgage field; after JD United
9 was shut down, Lake obtained a “Mortgage Loan Originator License” and began working
10 for Ladera Lending, selling mortgage loans to consumers. (UF 218–219.) Mr. Lake’s
11 actions in this case indicate that he cannot honestly market mortgage services to
12 consumers, and the Court finds that he should be permanently enjoined from working in

