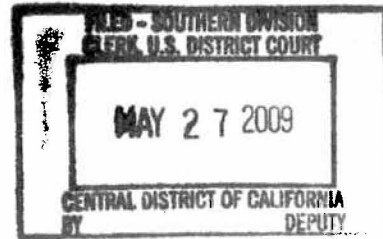


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15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA

17  
18 **Federal Trade Commission,**

19  
20 Plaintiff,

21 v.

22 **Data Medical Capital, Inc., et al.,**

23 Defendants.

SA-CV-99-1266 AHS (EEx)

**Federal Trade Commission's  
Memorandum in Support of its *Ex  
Parte* Application For An Order to  
Show Cause Why Defendants Should  
Not Be Held in Contempt**

Date and Time of Motion:  
June 8, 2009, 10:00 a.m.  
Judge Alicemarie H. Stotler

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CENTRAL DISTRICT OF CALIF.

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1 I. INTRODUCTION

2 Defendant Bryan D'Antonio ("D'Antonio"), along with The Rodis Law  
3 Group, Inc. ("RLG"), America's Law Group ("ALG"), and The Financial Group  
4 Inc. ("Financial Group") (collectively "Contempt Defendants"), are engaged in a  
5 foreclosure prevention and mortgage loan modification telemarketing scheme  
6 that is defrauding economically distressed consumers of millions of dollars.  
7 Accordingly, the Federal Trade Commission ("FTC" or "Commission") is  
8 seeking an order against the Contempt Defendants to show cause why Contempt  
9 Defendants should not be held in civil contempt for violating the Stipulated Final  
10 Judgment and Order for Permanent Injunction ("Permanent Injunction") this  
11 Court entered on July 13, 2001.<sup>1</sup> (Ex. 1.)

12 In the initial FTC proceeding, D'Antonio and the corporate entities he  
13 controlled engaged in a work-at-home medical billing scheme that, *inter alia*,

14  
15 <sup>1</sup> In addition to the Federal Trade Commission's *Ex Parte* Application For  
16 An Order to Show Cause Why Defendants Should Not Be Held in Contempt  
17 ("Contempt Application"), the FTC is concurrently filing the following *ex parte*  
18 filings with accompanying memoranda and proposed orders: (1) *Ex Parte*  
19 Application for a Temporary Restraining Order and a Preliminary Injunction,  
20 Pending Decision on its *Ex Parte* Application For An Order to Show Cause Why  
21 Contempt Defendants Should Not Be Held in Contempt ("TRO Application"); (2)  
22 *Ex Parte* Application to Modify Stipulated Final Judgment; (3) *Ex Parte*  
23 Application for Order Temporarily Sealing File and Docket; (4) *Ex Parte*  
24 Application for Order Waiving Requirements That Manual Filing be Filed and  
25 Advance Notice Be Filed; and (5) *Ex Parte* Application for Leave to File  
26 Memoranda of Law in Excess of Page Limits.

27 In support of its *Ex Parte* Applications the FTC is filing combined exhibits  
28 entitled Exhibits to Memoranda in Support of Federal Trade Commission's *Ex*  
*Parte* Applications for a Temporary Restraining Order and a Preliminary  
Injunction and For An Order to Show Cause Why Defendants Should Not Be Held  
in Contempt ("Exhibits to Memoranda"). The evidentiary documents are  
sequentially numbered and identified by Exhibit number, as well as by paragraph  
number, attachment letter, and exhibit page and line number where appropriate.  
(E.g., Ex. # ¶ #, Att. - at #:#-#.)

1 defrauded consumers of more than \$2,000,000 and resulted in the Court entering  
2 the Permanent Injunction. Moreover, in a subsequent criminal proceeding, the  
3 Court sentenced D'Antonio to four years in prison for leading that enterprise.  
4 (*U.S. v. D'Antonio*, CR-00158-AHS (C.D. Cal.) J & Prob./Commitment Order,  
5 March 6, 2001, Ex. 3.)

6 Undeterred, D'Antonio is now preying on economically distressed  
7 consumers struggling to avoid losing their homes to foreclosure. Specifically,  
8 D'Antonio directs a purported foreclosure prevention and mortgage loan  
9 modification operation sold through RLG and ALG, that is fueled by a  
10 nationwide radio advertising campaign generating thousands of in-bound  
11 telemarketing calls from desperate consumers. D'Antonio's telemarketers are  
12 trained to "capitalize on fear, create urgency, and sell hope" with promises that  
13 teams of highly qualified attorneys conducting "forensic audits" will substantially  
14 modify consumers' loans and save their homes.

15 In reality, from October 2008 though April 10, 2009, consumers who paid  
16 thousands of dollars to RLG received no legal services from overwhelmed,  
17 untrained staff tasked with servicing hundreds of loan files, or from the lone  
18 attorney fronting the operation, Ronald Rodis. Few, if any, consumers obtained  
19 loan modifications and many lost their homes. Contempt Defendants' failure to  
20 prevent foreclosures, to obtain loan modifications, and to provide meaningful  
21 legal services as promised by RLG was consistent with D'Antonio's view that  
22 RLG was "not a law firm," but rather a sales operation, and that consumers with  
23 mortgage problems were "bottom feeders."<sup>2</sup>

24 On April 13, 2009, D'Antonio abruptly changed the name of RLG to ALG,  
25 replacing Rodis with Nicholas Chavarela ("Chavarela") as the legal front man for  
26

---

27 <sup>2</sup> Declaration of Angelica Akins ¶ 5, Ex. 7; Declaration of Trinity Mai ¶ 4,  
28 Ex. 8; Declaration of Sarah Rudder ¶ 4, Ex. 9; Declaration of Juliette Smith ¶ 4,  
Ex. 10.

1 the operation. However, ALG maintains the same customers, the same location,  
2 and largely the same personnel, while continuing many of the same business  
3 practices, including promising distressed consumers lower interest rates, lower  
4 monthly payments, and reduced principal balances on their mortgage loans.

5 Contempt Defendants have violated the Permanent Injunction. First,  
6 Contempt Defendants' aggressive telemarketing campaign violates Section I.B.  
7 of the Permanent Injunction, which bans D'Antonio, and those in active concert  
8 with him, from engaging in or assisting others in engaging in telemarketing.  
9 Second, Contempt Defendants' false representations of mortgage assistance  
10 violate Section II of the Permanent Injunction, which prohibits D'Antonio and  
11 those in active concert with him from misrepresenting facts material to a  
12 "consumer's decision to buy or accept [a] good or service."

13 Accordingly, the FTC seeks civil contempt sanctions against Contempt  
14 Defendants, including compensatory relief for consumers victimized by  
15 D'Antonio's foreclosure prevention/mortgage loan modification scheme. In  
16 addition, the Commission is concurrently filing a separate motion against  
17 D'Antonio, pursuant to Federal Rule of Civil Procedure 60(b), seeking to modify  
18 the Permanent Injunction to ban him from marketing or selling any mortgage-  
19 related product or services.

20 In addition, pursuant to Federal Rule of Civil Procedure 65(b), the FTC has  
21 concurrently filed an *ex parte* TRO to preserve the Court's ability to grant  
22 effective final relief, pending resolution of this Contempt Application, including  
23 an asset freeze, appointment of a receiver, and expedited discovery.<sup>3</sup>

---

24  
25  
26 <sup>3</sup> To avoid inconveniencing the Court with cross-references, this  
27 Memorandum contains a complete factual statement of the case that is substantially  
28 the same as the facts set forth in the accompanying the memorandum in support of  
the FTC's TRO Application.

1 II. STATEMENT OF FACTS

2 A. The Original Action

3 In the underlying action, D'Antonio used Data Medical Capital, Inc. ("Data  
4 Medical") to market a bogus work-at-home medical billing scheme with false  
5 earnings claims and false promises of assistance. The FTC initiated its action on  
6 October 14, 1999, filing a complaint against D'Antonio and Data Medical and  
7 seeking an *ex parte* TRO with an asset freeze that the Court granted on October  
8 18, 1999. This Court entered the Permanent Injunction on July 13, 2001 that,  
9 *inter alia*, permanently banned D'Antonio, and those acting in concert with him,  
10 from: (1) telemarketing or assisting others engaged in telemarketing; and (2)  
11 misrepresenting any material facts related to a consumer's decision to buy or  
12 accept a good or service.<sup>4</sup> (Ex. 1.)

13 B. Parties to Current Action: Contempt Defendants

14 1. *Bryan D'Antonio*

15 D'Antonio controls the Contempt Defendants' foreclosure prevention and  
16 loan modification scheme. RLG's Employee Handbook identifies D'Antonio as  
17 it's Chief Executive Officer ("CEO") (Declaration of David Dyssegard, Ex. 4,  
18 Att. C at 60-61), and he has used the titles CEO and Senior Managing Director.  
19 (Declaration of D'Nia Hawkins ¶ 6, Ex. 11.) Numerous former RLG employees  
20 and a former ALG employee identify D'Antonio as being in charge, giving  
21 employees orders, and threatening to fire anyone who did not perform to his  
22 expectations. (Ex. 7 ¶¶ 3, 4, 6; Ex. 8 ¶ 4; Ex. 9 ¶¶ 4, 5; Ex. 10 ¶ 4; Ex. 11 ¶¶ 3, 6,  
23 8-12, 38; Declaration of Richard McCullar ¶¶ 8- 9, Ex. 6.) When D'Antonio  
24 changed the name of the company from RLG to ALG he maintained control over  
25 the scheme. (Ex. 6 ¶ 15.)

26 \_\_\_\_\_  
27 <sup>4</sup> As noted above, D'Antonio's also was criminally prosecuted. He pled  
28 guilty to two mail fraud counts and this Court sentenced him to a four-year prison  
term.



1                   2.     *The Rodis Law Group, Inc.*

2             The Rodis Law Group, Inc. is a California corporation located at 1100  
3     Town and Country Road, Orange, California. (Declaration of Ronald D. Lewis,  
4     Ex. 15 ¶ 42.) Ronald P. Rodis (“Rodis”) incorporated RLG on October 15, 2008.  
5     (Ex. 15, Att. A at 375.) D’Antonio controlled RLG while Rodis was the front  
6     man lending his name and law degree to the fraudulent enterprise. Former  
7     employees with the most direct daily contact with Rodis characterize him as a  
8     figurehead who did not manage RLG, and who was, at best, minimally involved  
9     in providing any services to consumers. (Ex. 7 ¶¶ 3, 9, 10, 44; Ex. 8 ¶¶ 4, 28-30;  
10    Ex. 9 ¶¶ 10, 38-41; Ex. 11 ¶¶ 31-32.)

11                   3.     *America’s Law Group*

12             America’s Law Group is a continuation of RLG’s foreclosure prevention  
13     and loan modification operation, and also is located at 1100 Town and Country  
14     Road, Orange, California. (Ex. 15 ¶ 42.) On Friday, April 10, 2009, D’Antonio  
15     and another RLG senior manager, Wayne Farris, announced ALG’s formation to  
16     staff, and said that, effective the next day, April 11, 2009, the business would  
17     operate under the ALG name.<sup>5</sup> (Ex. 6 ¶ 12.) D’Antonio and the rest of the  
18     company management remained the same (*id.* ¶¶ 15-16, 19), with the only  
19     change being Nicholas Chavarela (“Chavarela”) replacing Rodis in lending his  
20     name and law degree to D’Antonio’s operation (*id.* ¶¶ 13-14). Moreover, the  
21     advertisements and false promises to consumers remained substantially the  
22     same.<sup>6</sup>

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23  
24             <sup>5</sup> According to the California State Bar web site, Chavarela was admitted to  
25     practice in California on December 3, 2007. (Ex. 15 ¶ 38, Att. NN.)

26             <sup>6</sup> As of April 29, 2009, ALG had not registered as a corporation with the  
27     California Secretary of State. (Ex. 15 ¶ 3.F., Att. F at 399.) However, Chavarela  
28     filed incorporation papers for The Law Offices of Nicholas Chavarela, Inc.  
   (“Chavarela Law Offices”), on April 1, 2009 (*id.* ¶ 3.E., Att. E at 395-97) and  
   ALG notes its affiliation with Chavarela Law Offices – also located at 1100 Town

1                                   4.     *The Financial Group, Inc.*

2             Financial Group also is located at 1100 Town and Country Road, Orange,  
3     California. (Ex. 15 ¶ 42.) Bryan D’Antonio identifies himself as the Chief  
4     Executive Officer (“CEO”) to employees, and to a bank used by Financial Group,  
5     U.S. Bank. (Ex. 4, Att. C at 60-61; Ex. 15 ¶ 30, Att. CC at 803.) However,  
6     California corporate records identify Christi D’Antonio, Bryan D’Antonio’s wife,  
7     as Financial Group’s CEO. (*Id.* ¶ 3.B., Att. B.) RLG employees were paid from  
8     a Financial Group bank account,<sup>7</sup> charges for RLG’s services appeared on a  
9     customer’s accounts as both Financial Group and Tax Relief ASAP (Declaration  
10    of Donald Brand ¶ 9, Ex. 12), and funds were transferred between RLG and  
11    Financial Group on multiple occasions (Ex. 15 ¶ 32, Att. GG.)<sup>8</sup> In addition, RLG  
12    and Financial Group share human resource, accounting, and information  
13    technology staff. (Ex. 6 ¶ 17; Ex. 11 ¶ 4.)

14             C.     Contempt Defendants’ Violative Business Practices.

15             Led by D’Antonio, Contempt Defendants aggressively market their  
16    foreclosure prevention and loan modification services to financially distressed  
17  
18  
19

20             \_\_\_\_\_

21    and Country Road, Orange, California – on the ALG web site. (*Id.*, Ex. 15, Att. Y  
22    at 762.)

23             <sup>7</sup> RLG employee paychecks were issued by “The Financial Group, Inc. dba  
24    Tax Relief ASAP.” (Ex. 6 ¶ 7; Ex. 15 ¶ 31, Att. II at 824-26.) Financial Group  
25    does not sell goods or services under its own name, but under a dba entity called  
26    Tax Relief ASAP. Financial Group has offered tax-related services through Tax  
27    Relief since at least October 2008. (Ex. 6 ¶ 3.) Tax Relief is not registered as a  
28    corporation and is identified in certain bank records and checks as “The Financial  
29    Group, Inc. dba Tax Relief ASAP.” (Ex. 15 ¶¶ 3.C., 31, Atts. C, II.)

<sup>8</sup> RLG has also transferred at least \$79,000 to Compass, Inc., an entity  
              identified with Christi D’Antonio. (Ex. 15 ¶¶ 3, 35, Atts. HH, RR.)

1 consumers for an advance payment of between \$2,500-5,500.<sup>9</sup> (See Ex. 4 ¶ 11;  
2 Ex. 12 ¶ 9; Ex. 15, Att. Q at 617:15-19.) Since October 2008, approximately  
3 2,000 distressed consumers have paid Contempt Defendants millions of dollars  
4 seeking mortgage assistance. (Ex. 15 ¶ 37, Att. LL at 919.)<sup>10</sup>

5 From October 2008 to mid-April 2009, D'Antonio marketed his purported  
6 mortgage rescue services through RLG, promising consumers: 1) RLG would  
7 stop foreclosures and have consumers' loans modified; and 2) RLG could achieve  
8 these incredible results because its team of highly qualified real estate attorneys  
9 would conduct a "forensic audit" of consumers' loan files. Since forming ALG  
10 in mid-April 2009, D'Antonio has operated from the same location, continuing  
11 many of the same practices, including promising the FTC's undercover  
12 investigator a loan modification with a lower interest rate, reduced principal  
13 balance, and an affordable monthly payment.<sup>11</sup> (Ex. 15 ¶¶ 7-8.)

14 1. *D'Antonio Used RLG to Falsely Promise Foreclosure*  
15 *Prevention and Loan Modification Services.*

16 To induce consumers to buy RLG's services, D'Antonio routinely  
17 represented that RLG: a) would stop foreclosures and keep consumers in their  
18 homes; and b) would negotiate modified mortgages with affordable monthly

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19  
20 <sup>9</sup> By posing as a law firm and collecting a "retainer," RLG avoided  
21 California's prohibition against mortgage foreclosure consultants receiving  
22 advance fees. See California Civil Code § 2945.4(a).

23 <sup>10</sup> Former employees estimate there were between 1,000-1,400 customers  
24 through mid-February. (Ex. 7 ¶ 28; Ex. 8 ¶ 19; Ex. 9 ¶ 24; Ex. 10 ¶ 23).  
25 Assuming a median payment of \$4,000, the estimated revenues from those  
26 customers is between \$4.0M to 5.6M. Bank records for RLG and Financial Group  
total almost \$6.0 million in deposits from mid-October through the end of  
February. (Ex. 15 ¶ 34, Atts. EE-FF.)

27 <sup>11</sup> Given the operation's name change from RLG to ALG, the time period  
28 discussed herein for RLG's business practices runs from October 2008 to mid-  
April 2009. Section II.C.3 discusses ALG's business practices.

1 payments, lower interest rates, and even reduced principal balances. In making  
2 these promises, D’Antonio’s RLG telemarketers repeatedly told consumers that  
3 RLG had a 100% success rate.

4 The fuel for D’Antonio’s scheme was the desperate plight of consumers  
5 facing a recessionary economy and a free falling real estate market. Seizing on  
6 this desperation, D’Antonio hatched RLG, where telemarketers were trained to:

- 7 • “capitalize on fear,”
- 8 • “create urgency,” and
- 9 • “sell hope.”

10 (Declaration of Jack Obrey ¶ 4, Ex. 5.) RLG instructed its telemarketers to tell  
11 consumers RLG had never lost a home to foreclosure and routinely negotiated  
12 affordable monthly payments and lower interest rates. (*Id* at ¶¶ 6-8; Declaration  
13 of David Dyssegard ¶ 7, 9, Ex. 4.) As discussed below, these promises were  
14 false, as many RLG customers lost their homes and few, if any, received the  
15 promised loan modifications.

16 a. RLG Falsely Promised It Would Stop Foreclosures.

17 RLG’s foreclosure prevention representations started with an aggressive  
18 nationwide radio advertising campaign directly appealing to consumers facing  
19 foreclosure. This campaign generated thousands of in-bound calls fielded by  
20 RLG telemarketers. The advertisement featured Rodis telling consumers, “Don’t  
21 let foreclosure put you out of your home,” followed by a radio announcer urging,  
22 “[I]f you want to keep your home, you need to put the power of Rodis Law  
23 Group on your side.” (Ex. 15, Att. I at 473:7-8, 14-16.) From November 10,  
24 2008, to March 13, 2009, the principal radio advertisement aired 7,162 times in  
25 markets nationwide – from Portland, Oregon, to Columbus, Ohio, to New York,  
26 New York. (*Id.* ¶ 14.) Similarly, RLG’s web site emphasizes, “**We Can Keep  
27 You In Your Home,**” claiming that RLG can “help stop foreclosure fast and  
28 effectively in this troubled market.” (*Id.* Att. V at 737-38.)

1           When consumers called RLG, as evidenced by numerous sales call  
2 recordings that were offered to RLG telemarketers as a training tool,<sup>12</sup> RLG  
3 telemarketers repeatedly tell consumers that they will not lose their homes. For  
4 example, an RLG telemarketer told one consumer that “[a]ll of our clients have  
5 kept their houses.” (Ex. 15, Att. L at 499:15-16.) Another telemarketer told a  
6 consumer, who had a certified check in hand payable to her lender for her  
7 mortgage payment, to instead sign the check over to RLG because, “You’re not  
8 going to lose your home once you hire us. You have my word on that.” (*Id.*, Att.  
9 O at 569:11-12.)<sup>13</sup>

---

11           <sup>12</sup> A former RLG telemarketer, David Dyssegard, provided the FTC with a  
12 thumb drive containing approximately 40 sales call recordings. (Ex. 4 ¶ 4; Ex. 15  
13 ¶ 15.) The FTC has had ten of the sales call recordings transcribed and included as  
14 Exhibits (Ex. 15, Atts L-U).

15           <sup>13</sup> RLG misled consumers asking about a “guarantee” by telling consumers  
16 that RLG had never lost a home to foreclosure, but the California Bar prohibited  
17 RLG from making guarantees. (*See, e.g.*, Ex. 15, Att. O at 556:23-25, 557:1-4,  
18 Att. R at 651:17-20; Ex. 5 ¶ 7.) RLG also told new hires they could not advise  
19 consumers not to pay their mortgages — but they could tell consumers that if they  
20 hired RLG, they would not lose their homes if they stopped making their mortgage  
21 payments. (Ex. 5 ¶ 8; *see e.g.*, Ex. 15, Att. L at 498:4-9, Att. M. at 520:5-7, Att. U  
22 at 729:22-25, 730:1-7.)

23           In late January 2009, RLG may have tweaked its sales representations by  
24 adding a disclaimer to the end of the sales pitch. (Ex. 5 ¶ 14.) The disclaimer  
25 asked consumers to confirm they had not been offered a guaranteed outcome. (Ex.  
26 15 ¶ 40, Att. KK at 917.) Notably, RLG provided the disclaimer only *after*  
27 consumers were subjected to RLG’s entire sales pitch, including the  
28 misrepresentations. *See* Ex. 4 ¶ 10; Ex. 5 ¶ 14. Moreover, after consumers  
committed to purchasing RLG’s services, RLG emailed a retainer agreement.  
Among four pages of legalese covering such topics as referral fees, arbitration, and  
severability, a provision entitled “No Guarantee – Scheduling” notes that RLG has  
not made any guarantees, but rather has expressed only “opinions.” While it also  
states that the retainer fee is not contingent on any particular result, that statement  
is followed by a statement that no representations as to the outcome of the case had  
been made – which, of course, is patently untrue. Consumers were told to return  
the agreement without delay so that RLG could begin work. (*See* Ex. 15, Att. S at

1 Notwithstanding RLG's promises to avoid foreclosures, former RLG  
2 employees estimate that the homes of between ten and thirty RLG customers  
3 were foreclosed on between November 2008 and February 2009. (Ex. 7 ¶ 30; Ex.  
4 8 ¶ 21; Ex. 9 ¶ 27.) Moreover, foreclosure sales were scheduled for as many as  
5 fifty homes that did not have foreclosure dates scheduled before the consumers  
6 became RLG customers. (Ex.8 ¶ 27; Ex. 10 ¶ 29.)

7 Sadly, consumer declarants corroborate RLG's failure to keep its word.  
8 RLG telemarketers told consumers Donald Brand and Penny Eddinger that their  
9 homes would not be foreclosed on and guaranteed that RLG would enable the  
10 consumers to stay in their homes. (Ex. 12 ¶ 4; Declaration of Penny Eddinger ¶  
11 4, Ex. 13.) Both lost their homes to foreclosure and now live elsewhere. (Ex. 12  
12 ¶ 14; Ex. 13 ¶¶ 7, 10.)

13 b. RLG Falsely Promised It Would Modify Mortgages.

14 RLG promised consumers that it would "rewrite" their mortgages to reduce  
15 consumer's monthly payments so they were affordable, lower their interest rates,  
16 and even reduce their principal balances. Specifically, RLG's sales script  
17 instructs telemarketers to tell consumers, "The things we routinely do for our  
18 clients and also expect to do for you" are "lower interest rates," "rewrit[e] the  
19 terms of your contract," and "even lower the principle [sic] balances on  
20 mortgages." (Ex. 4 ¶¶ 6, 9, Att. B at 57.)

21 RLG telemarketers consistently promised consumers that its attorneys had  
22 over ten years' experience in loan modifications with a 100% loan modification  
23 success rate. (Ex. 15, Att. L at 499:2-16, Att. P at 582:3-7, Att. S at 672:9-10,  
24 675:18-20.) For example, one RLG telemarketer told a consumer – who had  
25 unsuccessfully tried to get a modification on her own – that the lender:

26 won't do anything for you unless you have an attorney

27  
28  

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692:13-25, 693:1-2, Att. T at 715:24-25, 716:1-13.).

1 in your corner. So that's why we're so successful at  
2 what we do. We're actually 100 percent successful.  
3 We've never had one instance where a lender is not  
4 willing to work with us.

5 (*Id.*, Att. N at 537:20-25.) RLG buttressed its modification success claims by  
6 emphasizing that it only took on consumers it could help. For example, a  
7 telemarketer told a consumer:

8 I will tell you this first and foremost, [consumer], and it  
9 breaks my heart. I wish we can [sic] bring on every  
10 single person that calls. We just can't. . . . We will not  
11 take you on as a client unless we're convinced that  
12 we'll be able to, first and foremost, save your home  
13 from foreclosure, and secondly, rewrite or modify, if  
14 you will, the terms and conditions of your mortgage so  
15 you can afford it for a long period of time.

16 (*Id.*, Att. O at 557:13-21.) In actuality, RLG took on nearly any consumer who  
17 was willing to pay. (Ex. 4 ¶ 7; Ex. 5 ¶ 6.)<sup>14</sup>

18 RLG also promised consumers that it would negotiate a monthly mortgage  
19 payment they could afford. Specifically, RLG telemarketers followed the sales  
20 script asking consumers what kind of monthly payment they could "comfortably"  
21 or "realistically" make. (Ex. 4, Att. B. at 57; Ex. 15, Att. N at 539:19-25, 540:1-  
22 2, Att. M at 510:7-11, Att. R at 645:17-25, 646:1-6.) Regardless of a consumer's  
23

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24 <sup>14</sup> The deception regarding selectivity started with RLG's sales script, which  
25 instructed telemarketers to place consumers on hold and say they needed "to make  
26 a decision" about whether RLG could accept a consumer as a customer. (Ex. 4 ¶ 7,  
27 Att. B.) The script then instructs the telemarketer to calculate the retainer fee while  
28 the consumer is on hold and return to the customer and say, "Alright, [consumer],  
we will take you on as a client." (*Id.*) In January 2009, RLG may have stopped  
accepting consumers with sales dates scheduled on their properties. (*Id.*)

1 response, the telemarketer told the consumer the desired payment amount was  
2 realistic and, ultimately, that RLG was willing to take on the consumer as a  
3 customer. (See Ex. 4 ¶ 7; Ex. 5 ¶ 6; Ex. 15, Att. N at 539:24-25, 540:1-2, Att. R  
4 at 646:3-6, Att. P at 584:10-19.) As one telemarketer told a consumer, RLG’s  
5 attorneys are “going to put you in a spot where you can afford the payments and  
6 you hold on to your house.” (*Id.* Att. Q at 619:5-6.)

7 RLG also falsely promised consumers substantial interest rate reductions.  
8 (Ex. 12 ¶ 7; Ex. 4 ¶ 6-7; Ex. 15, Att. L at 497:6-10, Att. M at 515:2-7, Att. T at  
9 704: 22-25.) Telemarketers assured consumers that there had never been a case  
10 where the interest rate was not adjusted (Ex. 15, Att. Q at 620:17-20) and “what  
11 we automatically always do 100 percent of the time, is get your interest rate  
12 down.” (*Id.*, Att. S at 672:9-10.) RLG telemarketers claimed they could obtain  
13 very low interest rates, telling consumers “Well, we start our negotiations at two  
14 percent. . . . [and] the rates that are available to [RLG] are not available to  
15 [consumers] on the public market” (*id.*, Att. L at 497:6-9) and that “the average  
16 [interest rate] is 2 to 5 percent” (*id.*, Att. Q at 612:6-7).<sup>15</sup>

17 The FTC’s undercover call to RLG resulted in similar misrepresentations  
18 with the RLG telemarketer telling the investigator that the loan would be  
19 successfully modified and the monthly payment substantially reduced.  
20 Specifically, the telemarketer told the investigator that “your payment’s going to  
21 be reduced substantially.” (*Id.*, Att. G at 421:22-23.) The telemarketer also told  
22 the investigator that although the retainer agreement said there was no guarantee,  
23 “I can tell you, this loan will be modified,” (*id.*, at 431:7-8) further assuring the  
24 investigator that “we don’t take on every case, just the ones that really have a  
25 very high probability of being resolved successfully” (*id.* at 416:2-4).

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26  
27 <sup>15</sup> At some point, RLG instructed its telemarketers not to quote a specific  
28 interest rate or specific monthly payment, but the sales recordings provided as a  
training tool do just that and former employees confirm this practice. (Ex. 4 ¶ 8.)



1           However, RLG did not deliver on its promises to modify mortgage loans,  
2 because RLG’s Legal Support department – the department responsible for  
3 providing RLG’s foreclosure prevention and loan modification services – was  
4 quantitatively and qualitatively deficient.

5           RLG simply did not employ the promised “team” or “staff” of experienced  
6 real estate attorneys purportedly working aggressively on customers’ behalf.  
7 Rodis was the only lawyer whose involvement with RLG spanned the entire  
8 October 2008 to mid-April 2009 time period. (Ex. 7 ¶ 17; Ex. 8 ¶ 11; Ex. 9 ¶ 15.)  
9 He had no involvement with the vast majority of customer files, and for the  
10 limited number of customer files he did work on, his involvement was often  
11 reluctant, amounted primarily to assuaging irate customers, and only on occasion  
12 involved discussions with lenders. (Ex. 7 ¶ 44; Ex. 8 ¶¶ 28-30; Ex. 9 ¶¶ 38-40;  
13 Ex. 10 ¶¶ 31-32.) Indeed, Rodis told one staff member that the RLG customers  
14 had not paid him enough money to pursue legal action against lenders. (Ex. 9 ¶  
15 40.)

16           Moreover, for most of that time period, Rodis was the only attorney  
17 employed by RLG. Between October 2008 and February 2009, RLG hired one  
18 other attorney, Nhahanh Nguyen (“Nguyen”), but her experience did not match  
19 what RLG advertised or represented to its customers.<sup>16</sup> Specifically, Nguyen had  
20 been admitted to the California bar on December 4, 2008 (Ex. 15 ¶ 38, Att. PP ),  
21 one month prior to her January 2009 RLG hiring. (Ex. 11 ¶ 33.) Tellingly, her  
22 tenure was short-lived, lasting approximately a week as she resigned shortly after  
23 D’Antonio made his pronouncement that RLG was not a law firm, but a sales  
24 group. (Ex. 7 ¶ 18; Ex. 8 ¶ 12; Ex. 10 ¶ 13).<sup>17</sup> Sometime in January 2009, one

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25  
26           <sup>16</sup> Notably, Nhahanh Nguyen was hired as case manager, a position  
27 primarily held by non-attorneys at RLG. (See Ex. 9 ¶16.)

28           <sup>17</sup> Additionally, RLG also hired Julie Ho and Marianne Castillo, two other  
individuals with some legal background, as case managers, but neither lasted more

1 other attorney, Erik Brimmer (“Brimmer”), was borrowed from Tax Relief  
2 ASAP, the Financial Group dba entity located at the same address as RLG. (Ex.  
3 7 ¶ 20; Ex. 8 ¶ 13; Ex. 9 ¶ 17; Ex. 10 ¶ 14.) Brimmer, however, lacked  
4 foreclosure prevention or loan modification experience, and sought instruction  
5 from non-attorney staff. (Ex. 7 ¶ 20; Ex. 9 ¶ 17; Ex. 10 ¶ 14.) Primarily, he  
6 talked to angry clients who insisted on speaking to an attorney. (Ex. 8 ¶ 13).

7 Nor did the non-attorney staff have foreclosure prevention or loan  
8 modification experience – the most that can be said is that two of the non-  
9 attorney staff had previously done loan processing work. (See Ex. 9 ¶ 19; Ex. 10  
10 ¶ 22.) Significantly, RLG did not address these staff deficiencies in any way.  
11 Rodis provided little, if any, instruction or direction to the staff in preventing  
12 foreclosures or obtaining loan modifications. (Ex. 7 ¶ 34; Ex. 8 ¶ 28.) Moreover,  
13 the company did not train staff in preventing foreclosures or obtaining loan  
14 modifications. (Ex. 7 ¶ 34; Ex. 8 ¶ 23; Ex. 9 ¶ 29; Ex. 10 ¶ 22; Ex. 11 ¶ 31.)  
15 Instead, staff were, from day one, left to figure out what to do on their own as  
16 best they could. (See Ex. 7 ¶¶ 34, 37; Ex. 8 ¶ 24; Ex. 9 ¶ 30.)

17 RLG’s unwavering focus on hiring sales staff created an overwhelming  
18 workload for the few staff actually assigned to work on customers’ loan files. As  
19 of mid-February 2009, RLG’s customer files<sup>18</sup> numbered well over 1,000 (and  
20 most likely in the range of 1,400) with approximately 120 to 300 high priority  
21 “red” files – which were homes with scheduled sales dates. (See Ex. 7 ¶¶ 27-28;  
22 Ex. 8 ¶¶ 18-19; Ex. 9 ¶¶ 23-24; Ex. 10 ¶¶ 19-20.) Manilla files were created for  
23 \_\_\_\_\_  
24 than a few weeks. It is unclear whether one or both were attorneys or paralegals.  
25 (Ex. 11 ¶¶ 34-35.)

26 <sup>18</sup> The customer files were not well maintained as the staff could not keep  
27 up with the volume of materials. (Ex. 7 ¶ 42.) At some point, the telemarketers  
28 were instructed to include in the files customer loan related documents as well as  
the retainer agreement and authorization designating RLG as their representative,  
but it is not clear this instruction was followed. (Ex. 15 ¶ 44, Att. JJ.)

1 customers without scheduled sales dates.

2 Overwhelmed RLG staff assigned priority to red files, spending most of  
3 their time seeking sales date extensions attempting to stave off impending  
4 foreclosures. (Ex. 7 ¶ 38; Ex. 8 ¶ 25; Ex. 9 ¶ 33.) Unfortunately, even when they  
5 obtained a short postponement, RLG staff had to immediately turn to another red  
6 file with an impending sales date. (Ex. 7 ¶ 39; Ex. 9 ¶ 33.) Little, if any, time  
7 was left for seeking loan modifications even for the “high priority” red files. (Ex.  
8 7 ¶ 39; Ex. 8 ¶¶ 25, 27; Ex. 9 ¶¶ 28, 33; Ex. 10 ¶¶ 24-25.) Often no one worked  
9 on a manila file unless a customer called and complained. (Ex. 7 ¶ 41; Ex. 8 ¶  
10 27.)

11 Thus, given the crush of work fueled by the growing number of RLG  
12 telemarketers, the undermanned RLG “Legal Support” department, the absence  
13 of staff with loan modification experience, and the lack of training, very few  
14 RLG customers even had loan modification applications *submitted*, (*see, e.g.*,  
15 Ex. 7 ¶ 40; Ex. 8 ¶ 26; Ex. 9 ¶¶ 34-36; Ex. 10 ¶¶ 21-30) and few, if any, RLG  
16 customers ever obtained loan modifications. (Ex. 7 ¶¶ 29-43; Ex. 8 ¶¶ 20-27; Ex.  
17 9 ¶¶ 26-28, 32-37; Ex. 10 ¶ 27.) Rather, many manila file customers became red  
18 file customers – the customers receiving mortgage notices of default (“NODs”)  
19 and their homes scheduled for sale. (Ex. 7 ¶¶ 31, 42-43; Ex. 8 ¶ 27; Ex. 9 ¶¶ 28,  
20 37; Ex. 10 ¶¶ 23-24, 29.)

21 Consumer Donald Brand’s experience illustrates RLG’s failure to fulfill its  
22 loan modification promises. Before signing on as an RLG customer, Brand  
23 informed the RLG telemarketer that he had sought a loan modification through  
24 another entity and his lender had offered a modification option with higher  
25 monthly payments. (Ex. 12 ¶ 6.) The RLG telemarketer assured Brand that RLG  
26 would restructure his mortgage loan and obtain a lower interest rate and a  
27 principal balance reduction. (*Id.* ¶ 7.) However, in the end, the lender offered  
28 Brand an option that required a \$5,000 immediate payment, higher monthly

1 payments, and no principal reduction – an offer Brand had previously received  
2 and which he once again declined because he could not afford it. The result:  
3 Donald Brand paid RLG \$3,500 and still lost his home. (*Id.* ¶ 14.)

4 2. *D’Antonio Used RLG to Falsely Promise That Highly*  
5 *Qualified Attorneys Would Prevent Foreclosures and*  
6 *Negotiate Modified Mortgages.*

7 In addition to misrepresenting his ability to stop foreclosures and obtain  
8 mortgage loan modifications through RLG, D’Antonio blatantly misrepresented  
9 the experience and quality of RLG legal services. First, RLG told consumers that  
10 experienced attorneys would aggressively negotiate on their behalf. Second,  
11 RLG told consumers it would use its legal resources to conduct forensic analyses  
12 of their mortgages that would leverage negotiations with lenders.

13 a. *RLG Falsely Represented That It Had Numerous*  
14 *Experienced Attorneys Working on Customers’ Behalf*

15 RLG claimed that it had multiple attorneys with foreclosure prevention and  
16 mortgage loan modification expertise. Specifically, RLG’s radio advertisements  
17 appealed to homeowners facing foreclosure with Ron Rodis saying, “[d]on’t let  
18 foreclosure push you out of your home. My staff of real estate attorneys will  
19 fight for you. I have been protecting homeowners like you since 1996, and my  
20 team of experienced attorneys are highly skilled in negotiating lower interest  
21 rates and even lowering your principal balance.” (Ex. 15, Att. I at 473:7-12.)  
22 Similarly, RLG’s web site emphasizes that, at RLG, “**We are not mortgage**  
23 **brokers, nor realtors.** We are skilled Attorneys who act as tough negotiators  
24 between the homeowner and the lender . . . to provide you with the solution you  
25 deserve.” (*Id.* Att. V at 737.) Further, the web site states that RLG has  
26 “experienced California bankruptcy and litigation Attorneys on staff in addition  
27 to real estate experts” to explore all potential options. (*Id.* at 738.) RLG also  
28 prepared a form letter to send to consumers sounding the same theme, stating that

1 Rodis had been practicing real estate law since 1996, that “the other attorneys on  
2 staff [were] highly skilled in real estate law and negotiating mortgage contracts,”  
3 and claiming that RLG was “the leading Law Firm in the country, specializing is  
4 [sic] renegotiating mortgage contracts.” (Ex. 15, Att QQ at 935.)

5 After consumers called, RLG’s telemarketers further trumpeted this so-  
6 called team of experienced attorneys. RLG’s sales script proclaimed that it was  
7 different from other loan modification companies precisely because it was a law  
8 firm with experienced real estate attorneys who had been helping homeowners  
9 save their homes for over ten years. (Ex. 4, Att. B at 56.) Pursuant to the sales  
10 script, one telemarketer told a consumer that RLG employed attorneys who had  
11 more leverage with lenders and that, “It’s much different when you hire a real  
12 estate attorney with a law firm to go in and negotiate for you.” (Ex. 15, Att. M at  
13 512:17-19.) Another telemarketer told a husband and wife they needed an  
14 attorney “in your corner” and that RLG was a law firm with several real estate  
15 attorneys and had been doing this type of work before the “mortgage meltdown”  
16 even began. (*Id.*, Att R at 648:12-16, 653:7-10; *see also* Ex. 15, Att. O at 550:19-  
17 24, Att. P at 581:14-18, Att. N at 537:20-25, Att. U at 728:22-23, Att. S at  
18 675:18-23.)

19 As discussed above, the reality was that RLG did not have experienced  
20 attorneys with over a decade of experience in preventing foreclosures and  
21 obtaining loan modifications negotiating on customers’ behalf. Rodis was the  
22 only lawyer whose involvement with RLG spanned the entire October 2008 to  
23 mid-April 2009 time period and for most of that time he was the only attorney at  
24 RLG. (Ex. 7 ¶ 17; Ex. 8 ¶ 11; Ex. 9 ¶ 15.) Far from aggressively fighting with  
25 RLG customers’ lenders, Rodis did nothing on the vast majority of customer files  
26 and little more on the few customer files he did work on. (Ex. 7 ¶ 44; Ex. 8 ¶¶  
27 28-30; Ex. 9 ¶¶ 38-40; Ex. 10 ¶¶ 31-32.) Of the two other attorneys who worked  
28 on RLG customer files, Nguyen and Brimmer, one was a newly admitted

1 California practitioner who lasted perhaps a week (Ex. 15, Att. PP; Ex. 7 ¶ 18,  
2 Ex. 8 ¶ 12; Ex. 10 ¶ 13) and the other did not have foreclosure prevention or loan  
3 modification experience and relied on the overworked non-attorney staff for  
4 instruction even on obtaining sale date extensions. (See Ex. 7 ¶ 20; Ex. 8 ¶ 13:  
5 Ex. 9 ¶ 17; Ex. 10 ¶ 14.)

6 Thus, from October 2008, until at least mid-March 2009, to the extent any  
7 work was done for RLG customers, that work was done by staff with little, if any,  
8 legal, foreclosure, or loan modification experience. The team of experienced real  
9 estate attorneys that RLG marketed simply did not exist.

10 b. RLG Falsely Represented That It Provided “Forensic”  
11 Analyses of Consumers’ Mortgages

12 RLG’s web site and telemarketers claimed that experienced real estate  
13 attorneys would carefully review and analyze consumers’ mortgages for legal  
14 violations that RLG could leverage in negotiations with lenders. The web site  
15 highlighted RLG’s customized forensic review of each consumer’s case:

16 There simply is not one right solution for everyone, and no one can  
17 tell you what is right for you without thoroughly analyzing your  
18 legal rights, financial situation and a **forensic audit** of your loan  
19 documents. We understand the mortgage industry from years of  
20 experience and will use leverage to negotiate to benefit you.

21 (Ex. 15, Att. V at 738.) (Emphasis added.) An RLG telemarketer called RLG’s  
22 line-by-line review a “trade secret.” (Ex. 12 ¶ 8.) Another telemarketer noted  
23 that this “forensic analysis” was the key to obtaining the “leverage” for a loan  
24 modification because after a review, lenders do not opt to “go and defend  
25 themselves in court.” (Ex. 15, Att. M at 516:20-25, 517:13:4-7.) A former RLG  
26 telemarketer confirms RLG claimed to conduct “forensic” reviews of customers’  
27 loan files. (Ex. 5 ¶ 9.)

28 Of course, RLG typically failed to conduct even a cursory review of

1 consumer's loan file, let alone a forensic audit. As noted above, RLG did not  
2 have staff capable of performing such an "audit" and rarely did more than seek  
3 sales extensions for consumers. In short, both qualitatively and quantitatively,  
4 RLG lacked the resources to perform the advertised forensic audits on customers'  
5 behalf. Indeed, Rodis told a RLG staff member that RLG customers had not paid  
6 enough for him to pursue court action. (Ex. 9 ¶ 40.)

7 3. *Contempt Defendants Continued RLG's Violative Business*  
8 *Practices as ALG*

9 On or about April 13, 2009, D'Antonio abruptly changed the business  
10 name from RLG to ALG. (Ex. 6 ¶ 12.) Though the name was changed, the  
11 business location, management, staff, website, radio advertisements, and  
12 promises of loan modification remained largely the same. Most notably,  
13 D'Antonio continued orchestrating the operation as before, with Chavarela  
14 stepping in for Rodis as the nominal legal front man. (*Id.* ¶¶ 13-15.)

15 Specifically, ALG operates from the same location as RLG, 1100 Town  
16 and Country Road, Orange, CA. (Ex. 15 ¶ 42.) ALG's and RLG's web sites are  
17 virtually identical, and share the same 800-number for consumers to call for free  
18 consultations. (*Id.* 15 ¶ 22; *compare* Ex 15, Att V with Ex. 15, Att. Y.) Even an  
19 RLG consumer testimonial from "Randy E." thanking RLG for saving his home  
20 and reducing his principal balance was transformed into a testimonial for ALG.  
21 (*Id.* 15 ¶¶ 23-25, Atts. Z, AA, and BB.) Further, ALG's radio advertisements are  
22 very similar to RLG's, encouraging consumers to hire ALG's experienced  
23 lawyers and "Put the power of America's Law Group on your side and keep your  
24 home." (Ex. 15 ¶ 13, Att. J at 477:14-15, Att. K at 481:13-15.) The  
25 advertisements tell consumers ALG's attorneys can "successfully negotiate lower  
26 interest rates, lower monthly payments, and even lower the principal balance on  
27 your mortgage." (*Id.*, Att. J at 477:9-13.)

28 Moreover, D'Antonio's ALG telemarketers make many of the same

1 representations as his RLG telemarketers. An ALG telemarketer “warranted” to  
2 the FTC’s undercover investigator that ALG would negotiate an affordable  
3 monthly payment and that ALG would reduce the interest rate, reduce the  
4 principal balance, and negotiate away overdue payments. (*Id.* ¶ 8, Att. H at  
5 457:8-10.) The ALG telemarketer also advised the undercover investigator his  
6 family did not have to pay the lender, but to pay ALG instead because if they  
7 employ ALG “[t]hey’re not moving.” (*Id.* ¶ 8, Att. H at 458:1-3.)

8 The change from Rodis to Chavarela hardly solves the deficiencies in  
9 D’Antonio’s operations. Rodis, who did nothing meaningful for customers  
10 during his tenure at least had been admitted to practice in California since 1996.  
11 Chavarela was admitted to practice in California on December 3, 2007 (*id.* ¶ 38,  
12 Att. NN at 927) hardly the highly experienced legal staff D’Antonio touts to  
13 consumers.

14 Significantly, RLG customers now appear to be ALG customers. Mere  
15 days after the formation of ALG, an April 16, 2009 ALG press release, posted to  
16 BusinessWire, identifies Chavarela as ALG’s managing attorney, and quotes him  
17 as saying that ALG is in the process of “helping almost 2,000 consumers modify  
18 their loan payments in order to stay in their homes.” (Ex. 15 ¶ 37, Att. LL.)<sup>19</sup> As  
19 ALG had been in existence less than one week at that point, the 2,000 consumers  
20 must be those who purchased services from RLG.<sup>20</sup> Thus, D’Antonio has merely  
21 continued RLG under a new name.

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22  
23  
24  
25 <sup>19</sup> The press release also parroted certain of RLG’s routine representations,  
26 identifying ALG as “a leading national law firm” and “one of the country’s top  
27 mortgage law firms.” (Ex. 15 ¶ 37, Att. LL.)

28 <sup>20</sup> Nor are they likely Chavarela Law Offices customers, which incorporated  
less than three weeks earlier on April 1, 2009. (Ex. 15 ¶ 3.E., Att. E.)



1 III. LEGAL DISCUSSION

2 A. This Court Has the Authority to Grant the Requested Relief.

3 The Court has the inherent power to enforce its orders through civil  
4 contempt. *Shillitani v. United States*, 384 U.S. 364, 370, 86 S. Ct. 1531, 1535, 16  
5 L. Ed. 2d 622, 627 (1966). The FTC, as a party to the original action, may invoke  
6 the court's powers by initiating a civil contempt proceeding as part of that action.  
7 *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 444-45, 31 S. Ct. 492, 499,  
8 55 L. Ed. 797, 807 (1911).

9 Civil contempt is warranted where there is clear and convincing evidence  
10 that parties knew of and violated a specific and definite order of the court. *See*  
11 *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999). Here there  
12 is overwhelming evidence that the Contempt Defendants are bound by and  
13 violated unambiguous provisions of the Permanent Injunction and should,  
14 therefore, be held in contempt.

15 1. D'Antonio, RLG, ALG, and Financial Group are Bound by  
16 the Permanent Injunction.

17 Under Federal Rule of Civil Procedure 65(d), a permanent injunction is  
18 binding on a party with actual notice, as well as on any person or entity who has  
19 actual notice and is in "active concert" with a party. Fed. R. Civ. P. 65(d).

20 D'Antonio is a named Defendant and signed and returned an affidavit  
21 acknowledging receipt of the Permanent Injunction in July 2001. (Ex. 3.) Thus,  
22 D'Antonio has actual notice of and is bound by the Permanent Injunction.

23 As discussed in Section II.B, D'Antonio is an officer and manager of RLG  
24 and ALG. Accordingly, both entities also have actual notice of and are bound by  
25 the Permanent Injunction. *See* Cal. Civ. Code § 2332; *People v. Forest E. Olson,*  
26 *Inc.*, 137 Cal. App. 3d 137, 140, 186 Cal. Rptr. 804, 806-07 (Cal. Ct. App. 1982).  
27 Furthermore, as one of the business entities through which D'Antonio engages in  
28 telemarketing and makes his misrepresentations, RLG is in active concert with

1 D'Antonio and thus subject to the Permanent Injunction. Similarly, ALG is  
2 subject to the Permanent Injunction as a continuation of RLG's operations  
3 remaining under D'Antonio's control.

4 Likewise, because D'Antonio controls Financial Group, as its *de facto*  
5 CEO, his notice of the Permanent Injunction is imputed to Financial Group. *Id.*  
6 Moreover, Financial Group is in active concert with D'Antonio, RLG, and ALG.  
7 As discussed *supra*, Financial Group and RLG share human resources,  
8 accounting, and information technology staff and D'Antonio is a signatory on  
9 both RLG and Financial Group bank accounts. Financial Group has paid RLG  
10 employees and processed customer payments out of Financial Group bank  
11 accounts. Finally, RLG transferred significant funds from its accounts to  
12 Financial Group accounts. Thus, Financial Group is integrally involved in  
13 D'Antonio's mortgage rescue operations. *See FTC v. Productive Mktg, Inc.*, 136  
14 F. Supp. 2d 1096, 1104 (C.D. Cal. 2001) (citing *Gemco Latino Am., Inc. v. Seiko*  
15 *Time Corp.*, 61 F.3d 94, 98 (1st Cir. 1995) (knowingly aiding and abetting party  
16 in violating court order subjects nonparty to that order)).

17 2. Clear and Convincing Evidence Establishes that Contempt  
18 Defendants Violated Clear and Definite Provisions of the  
19 Court's Permanent Injunction.

20 The Contempt Defendants have violated two clear and definite provisions  
21 of the Preliminary Injunction. First, Contempt Defendants engage in  
22 telemarketing in violation of Section I.B's permanent telemarketing ban. Second,  
23 Contempt Defendants make material misrepresentations in violation of Section II.

24 a. Contempt Defendants Violate the Permanent  
25 Injunction's Telemarketing Ban.

26 Contempt Defendants violate Section I.B of the Permanent Injunction  
27 permanently banning D'Antonio, and those in active concert with him, from:

28 engaging in, or receiving any remuneration of any kind

1           whatsoever from, holding any ownership interest, share,  
2           or stock in, or serving as an officer, director, trustee,  
3           general manager of, or consultant or advisor to, any  
4           business entity engaged, or assisting others engaged in  
5           any of these activities, in whole or in part, in . . .  
6           [t]elemarketing or assisting others engaged in  
7           telemarketing.

8           (Ex. 1 at 5-6.)

9           The Permanent Injunction clearly defines the term “telemarketing” as “[a]  
10          plan, program or campaign which is conducted to induce the purchase of goods  
11          or services by the use of one or more telephones and which involves more than  
12          one interstate telephone call.” (*Id.* at 4.) The telemarketing ban provides “fair  
13          and well-defined notice of the prohibited conduct.” *Reno Air Racing Assoc., Inc.*  
14          *v. McCord*, 452 F.3d 1126, 1132 (9th Cir. 2006).

15          As discussed in Section II.C., Contempt Defendants’ entire operation is  
16          based on a concerted telemarketing “campaign.” Indeed, Contempt Defendants’  
17          devote significant resources to their nationwide radio advertising, which, along  
18          with their web sites, direct consumers to call a toll free telephone number: “If  
19          you want to keep your home.” Thereafter, Contempt Defendants’ telemarketers  
20          receive thousands of consumer calls and aggressively sell their services with false  
21          promises of lower interest rates and monthly payments they can “comfortably”  
22          afford. This coordinated “program,” designed “to induce the purchase of”  
23          D’Antonio’s loan modification operations’ services, violates the clear and  
24          definite telemarketing ban.

25                           b.       Contempt Defendants Violate the Permanent  
26                                        Injunction’s Prohibition Against Material  
27                                        Misrepresentations.

28           Contempt Defendants violate Section II of the Permanent Injunction,

1 which prohibits D'Antonio, and those in active concert with him, from  
2 misrepresenting, "in connection with the advertising, marketing, promoting,  
3 telemarketing, offering for sale, or sale of *any good or service, . . . any fact*  
4 material to a consumer's decision to buy or accept the good or service." (Ex. 1 at  
5 8-9.) (emphasis added.)

6 As discussed in Section II.C, Contempt Defendants make numerous  
7 material misrepresentations in marketing and selling D'Antonio's mortgage  
8 rescue services. Specifically, D'Antonio used RLG and ALG to falsely promise  
9 consumers that: 1) they would *not* lose their homes and *would* receive loan  
10 modifications with lower interest rates and affordable monthly payments; and 2)  
11 highly experienced attorneys would fight for them, including conducting  
12 "forensic audits" that would compel lenders to offer affordable mortgage terms.

13 Blatantly playing on consumers' fears, RLG consistently misrepresented  
14 that it had been in business for over ten years and had never lost a customer's  
15 home to foreclosure. Moreover, RLG telemarketers told consumers that once  
16 they became RLG customers, if they did not make their mortgage payment, they  
17 would not lose their homes. An RLG telemarketer went so far as telling a  
18 consumer to sign over their mortgage payment to RLG, because RLG would  
19 protect [her] from foreclosure. In a similar vein, an ALG telemarketer told the  
20 FTC undercover investigator that his family would not lose their home if they  
21 employed ALG and it was better to make payments to ALG rather than their  
22 mortgage holder.

23 In addition, to convince customers to buy their services, RLG  
24 telemarketers consistently misrepresented that it was 100% successful in  
25 obtaining loan modifications for its customers. The RLG sales script promised  
26 loan modifications and misrepresented that RLG routinely obtained, *inter alia*,  
27 lowered monthly payments, lowered interest rates, and even reduced principal  
28 balances. RLG telemarketers also promised consumers affordable monthly

1 payments that would keep them in their homes.

2 Similarly, when D'Antonio created ALG to continue his fraudulent  
3 scheme, the misrepresentations continued. An ALG telemarketer "warranted"  
4 that ALG would obtain an affordable monthly payment for the FTC undercover  
5 investigator's family. Further, the ALG telemarketer told the investigator "here's  
6 what we do," we reduce the principal, we reduce the monthly payment, and we  
7 eliminate past due payments.

8 However, Contempt Defendants have not achieved the promised results -  
9 customers *did* lose their homes and did *not* obtain loan modifications. Former  
10 RLG staff confirm that numerous customers lost their homes to foreclosure. In  
11 addition, due in large part to RLG's failure to do any work on most manilla files  
12 customers, as many as fifty RLG customers who did not have foreclosure sale  
13 dates scheduled prior to becoming RLG customers, had foreclosure sale dates  
14 scheduled after becoming RLG customers. Moreover, RLG submitted very few,  
15 and obtained even fewer, if any, loan modifications.<sup>21</sup>

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16  
17 <sup>21</sup> As noted above, a disclaimer that RLG did not guarantee an outcome may  
18 have been added to the sales pitch in approximately late January 2009 and  
19 consumers were sent a four-page fine print retainer agreement, rife with legalese,  
20 noting that RLG had not made guarantees but only expressed opinions and making  
21 the patently untrue claim that RLG had made "no representations" about the cases  
22 outcome. However, these statements do not change the "net impression" of RLG's  
23 false promises to consumers. Having been exposed to Contempt Defendants'  
24 predatory sales efforts, including that RLG was 100% successful and had never  
25 lost a home to foreclosure, that even if they did not make their mortgage payments  
26 they would not lose their homes, and that RLG would get them affordable monthly  
27 payments with lower interest rates and reduced principal balances, these limited  
28 statements do not vitiate the "net impression" that Contempt Defendants would  
prevent foreclosures and obtain highly favorable loan modifications. *See FTC v.*  
*Cyberspace.com, LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006) ("net impression"  
representation misleading even if it also contains truthful disclosures); *FTC v.*  
*Medlab, Inc.*, No. C 08-822 SI, slip op. at 7-8 (N.D. Cal. April 21, 2009) (parties  
cannot "innoculate themselves" from net impression with cautionary statements).

1 Second, D'Antonio's loan modification operations misrepresent that  
2 multiple attorneys with many years of experience in stopping foreclosures and  
3 negotiating mortgage loan modifications review customers' files and aggressively  
4 negotiate on customers' behalf. D'Antonio's loan modification operations  
5 advertise that experienced staff conduct forensic analyses of customers' mortgage  
6 loan documents and leverage the results of those analyses in negotiations with  
7 lenders and their legal departments.

8 In fact, as noted in Section II.C., D'Antonio's loan modification operations  
9 do not have the "team" or "staff" of attorneys with the experience prominently  
10 featured in its sales pitches. Rodis was the only attorney whose involvement with  
11 RLG spanned the time period from October 2008 to mid-April 2009, and former  
12 RLG staff describe his involvement on customer files as minimal, if he worked  
13 on them at all. Although RLG employed one other attorney, Nguyen, and  
14 borrowed another, Brimmer, from D'Antonio's tax relief operation, Nguyen did  
15 not have anything approaching the advertised experience, and left RLG after only  
16 a few days or a week, and Brimmer was not an experienced real estate attorney.  
17 With respect to ALG, Chavarela is under thirty years of age, was admitted to  
18 practice in California a year and a half ago, and incorporated Chavarela Law  
19 Office less than two months ago. D'Antonio simply has not come close to  
20 providing the mortgage loan expertise he promises consumers.

21 Finally, RLG attorneys do not conduct a "forensic analysis" of customer  
22 files, pursue legal action against lenders, or, in most instances, even negotiate  
23 with lenders' legal departments. Rather, as evidenced by RLG, at best,  
24 overwhelmed non-attorneys struggle just to get sales dates postponed, on rare  
25 occasions submitted loan modifications and, on even rarer occasions, if any,  
26 obtained loan modifications.

1           B.     Contempt Defendants Should Pay Compensatory Sanctions

2           After appropriate contempt proceedings,<sup>22</sup> Contempt Defendants should be  
3 ordered to compensate consumers victimized by their contumacious acts.

4           Sanctions for civil contempt can serve two purposes: to coerce the defendant into  
5 compliance or to compensate victims for losses sustained by the contempt.

6           *United States v. United Mine Workers of America*, 330 U.S. 258, 303-304, 67 S.  
7 Ct. 677, 701, 91 L. Ed. 884, 918 (1947); *see also* *FTC v. Kuykendall*, 371 F.3d  
8 745, 764 (10th Cir. 2004) (FTC may seek contempt sanctions in an amount  
9 reflecting the defendants' gross receipts).

10           In a civil contempt action, “[t]he measure of the court’s power . . . is  
11 determined by the requirements of full remedial relief.” *McComb v. Jacksonville*  
12 *Paper Co.*, 336 U.S. 187, 193-94, 69 S. Ct. 497, 501, 93 L. Ed. 2d 599, 605  
13 (1949). Accordingly, the court may award compensatory damages in an amount  
14 sufficient “to make reparation to the injured party and restore the parties to the  
15 position they would have held had the injunction been obeyed.” *Vuitton et Fils,*  
16 *S.A. v. Carousel Handbags*, 592 F.2d 126, 130 (2d Cir. 1979).

17           Here, Contempt Defendants have defrauded consumers out of thousands of  
18 dollars by falsely promising foreclosure prevention and loan modification  
19 services. Contempt Defendants’ should compensate consumers for the monetary  
20 harm caused by their contumacious behavior.<sup>23</sup>

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23  
24           <sup>22</sup> In order to allow the proposed Receiver time to evaluate the Contempt  
25 Defendants’ finances and present a complete report to the Court, as well as to  
26 allow the FTC time to process the evidence to be gathered pursuant to expedited  
discovery, the FTC asks that the contempt hearing be set in approximately 60 days.

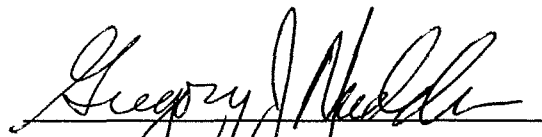
27           <sup>23</sup> As noted above, the FTC is concurrently filing, pursuant to Federal Rule  
28 of Civil Procedure 60(b), a motion to modify the Permanent Injunction to ban  
D’Antonio from marketing or selling any mortgage-related product or service.

1 IV. CONCLUSION

2 Through a foreclosure prevention and mortgage loan modification  
3 telemarketing scheme, D'Antonio, and the entities he controls, are falsely  
4 promising consumers that expert attorneys will fight for them, preventing  
5 foreclosures and obtaining loan modifications that will keep them in their homes.  
6 In so doing, Contempt Defendants violated the Permanent Injunction.  
7 Accordingly, the FTC requests that the Court enter the proposed Order to Show  
8 Cause.

9  
10  
11 Date Submitted: May 26, 2009

Respectfully submitted,

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