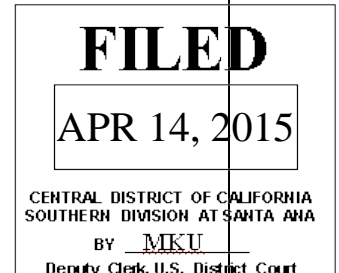


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UNDER SEAL

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DENNY LAKE individually and also
d/b/a JD United, U.S. Crush,
Advocacy Division, Advocacy
Department, Advocacy Agency, and
Advocacy Program; 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

Case No. SACV 15-00585-CJC (JRPx)

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

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

6 Defendants, and

7 CORTNEY GONSALVES,

8 Relief Defendant.

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

10 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
11 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the
12 Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing
13 Act”), 15 U.S.C. §§ 6101-6108, and the 2009 Omnibus Appropriations Act, Public
14 Law 111-8, Section 626, 123 Stat. 524, 678 (Mar. 11, 2009) (“Omnibus Act”), as
15 clarified by the Credit Card Accountability Responsibility and Disclosure Act of
16 2009, Public Law 111-24, Section 511, 123 Stat. 1734, 1763-64 (May 22, 2009)
17 (“Credit Card Act”), and amended by the Dodd-Frank Wall Street Reform and
18 Consumer Protection Act, Public Law 111-203, Section 1097, 124 Stat. 1376,
19 2102-03 (July 21, 2010) (“Dodd-Frank Act”), 12 U.S.C. § 5538, to obtain
20 temporary, preliminary, and permanent injunctive relief, rescission or reformation
21 of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten
22 monies, and other equitable relief for Defendants’ acts or practices in violation of
23 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC’s Telemarketing Sales
24 Rule (“TSR”), 16 C.F.R. Part 310, and the Mortgage Assistance Relief Services
25 Rule (“MARS Rule”), 12 C.F.R. Part 1015, in connection with the marketing and
26 sale of mortgage assistance relief services.

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
3 §§ 1331, 1337(a), and 1345; 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b);
4 and Section 626 of the Omnibus Act, as clarified by Section 511 of the Credit Card
5 Act, and amended by Section 1097 of the Dodd-Frank Act, 12 U.S.C. § 5538.

6 3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2),
7 (c)(1), (c)(2), and (d), and 15 U.S.C. § 53(b).

8 **PLAINTIFF**

9 4. The FTC is an independent agency of the United States Government
10 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC
11 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
12 affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C.
13 §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and
14 enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive
15 telemarketing acts or practices. In addition, pursuant to 12 U.S.C. § 5538, the FTC
16 enforces the MARS Rule, which requires mortgage assistance relief services
17 (“MARS”) providers to make certain disclosures, prohibits certain representations,
18 and generally prohibits the collection of an advance fee.

19 5. The FTC is authorized to initiate federal district court proceedings, by
20 its own attorneys, to enjoin violations of the FTC Act, the TSR, and the MARS
21 Rule, and to secure such equitable relief as may be appropriate in each case,
22 including rescission or reformation of contracts, restitution, the refund of monies
23 paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A)-
24 (B), 57b, 6102(c), and 6105(b); § 626, 123 Stat. at 678, as clarified by § 511, 123
25 Stat. at 1763-64, and amended by § 1097, 124 Stat. at 2102-03, 12 U.S.C. § 5538.

26 **DEFENDANTS**

27 6. Defendant Denny Lake (also d/b/a JD United, U.S. Crush, Advocacy
28 Division, Advocacy Department, Advocacy Agency, and Advocacy Program)

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

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

12 8. Defendant C.C. Enterprises, Inc. (also d/b/a HOPE Services, Trust
13 Payment Center, and Retention Divisions) (“C.C. Enterprises”) is a California
14 corporation with a principal place of business in Lake Forest, California. At times
15 material to this Complaint, acting alone or in concert with others, C.C. Enterprises
16 advertised, marketed, provided, offered to provide, or arranged for others to
17 provide MARS, as defined in 12 C.F.R. § 1015.2, in this district and throughout
18 the United States.

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

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

1 provide MARS, as defined in 12 C.F.R. § 1015.2, in this district and throughout
2 the United States.

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

10 12. Defendant Justin Moreira (a/k/a Justin Mason, Justin King, and Justin
11 Smith) is the operations manager for C.C. Enterprises and D.N. Marketing. At
12 times material to this Complaint, acting alone or in concert with others, Moreira
13 has formulated, directed, controlled, had the authority to control, or participated in
14 the acts and practices of Defendants C.C. Enterprises and D.N. Marketing,
15 including the acts and practices set forth in this Complaint, in this district and
16 throughout the United States.

17 **RELIEF DEFENDANT**

18 13. Relief Defendant Cortney Gonsalves (“Gonsalves”) received funds or
19 assets that can be traced directly to Defendants’ deceptive acts or practices, and she
20 has no legitimate claim to those funds. Gonsalves resides in this district.

21 **COMMON ENTERPRISE**

22 14. Defendants C.C. Enterprises and D.N. Marketing (collectively,
23 “Corporate Defendants”) have operated as a common enterprise while engaging in
24 the deceptive acts and practices and other violations of law alleged in this
25 Complaint. Corporate Defendants have conducted the business practices described
26 below through interrelated companies under common control, with common
27 employees, and with commingled funds. C.C. Enterprises and D.N. Marketing
28 each run an essentially identical modification operation, including the same pitch,

1 the same process, and the same means of stealing consumers' mortgage payments.
2 Because the Corporate Defendants have operated as a common enterprise, each of
3 them is jointly and severally liable for the acts and practices alleged herein.
4 Defendants Caldaronello, Nelson, Pacios, and Moreira have formulated, directed,
5 controlled, had the authority to control, or participated in the acts and practices of
6 the Corporate Defendants that constitute the common enterprise.

7 **ASSISTING & FACILITATING**

8 15. Defendant Lake, through the Advocacy Department, assists and
9 facilitates the acts and practices alleged herein; therefore, Lake is jointly and
10 severally liable for the acts and practices that are in violation of the TSR and the
11 MARS Rule.

12 **COMMERCE**

13 16. At all times material to this Complaint, Defendants have maintained a
14 substantial course of trade in or affecting commerce, including the acts and
15 practices alleged herein, as "commerce" is defined in Section 4 of the FTC Act, 15
16 U.S.C. § 44.

17 **GOVERNMENT MORTGAGE ASSISTANCE**

18 17. Numerous mortgage lenders and servicers have offered certain
19 borrowers the opportunity to modify loans that have become unaffordable. Many
20 of these loan modification programs have expanded as lenders participate in the
21 federal government's "Making Home Affordable" program, a plan to stabilize the
22 U.S. housing market and help consumers reduce their monthly mortgage payments
23 to more affordable levels. The Making Home Affordable program includes the
24 Home Affordable Modification Program, in which the federal government has
25 committed up to \$75 billion to keep consumers in their homes by preventing
26 foreclosures. The mortgage assistance relief services marketed and sold by
27 Defendants are not connected with the Making Home Affordable program or
28

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

3 **DEFENDANTS' BUSINESS ACTIVITIES**

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

21 ***Phase One - HOPE Defendants' Initial Pitch***

22 19. HOPE Defendants induce consumers to call them through mailed
23 marketing materials advertising loan modifications, and through unsolicited
24 outbound telemarketing calls. HOPE Defendants target distressed and desperate
25 homeowners facing foreclosure, and especially those who have failed to obtain
26 relief from their lenders or servicers.

27 20. HOPE Defendants go to great lengths to initially imply, and later
28 represent, to consumers that they are affiliated with or approved by the United

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

4 21. Inside the mailers, the top left is marked “PERSONAL AND
5 CONFIDENTIAL.” The top right corner includes what looks like an official
6 government seal, similar to the one found on the back right of the one-dollar bill.
7 Above the seal are the words “New HAMP Benefits,” and below is a Reference
8 Number, an example of which is printed below:

9 **NEW HAMP BENEFITS**



11
12
13 **Reference Number: 123556**

14 22. HOPE Defendants represent that the consumer may be eligible for a
15 “New 2014 Home Affordable Modification Program” or “HAMP 2.” HOPE
16 Defendants claim that the program is “an aggressive update to Obama’s original
17 modification program,” and that “[y]our bank is now incentivized by the
18 government to lower your interest rate through the New HAMP 2 Program.”

19 23. In addition, HOPE Defendants encourage consumers to “[t]ake
20 advantage of this offer that the government has put in place to help consumers like
21 you.” Their advertising also claims: “You may qualify for this limited time
22 government program. Call . . . to see how much the government sponsored loan
23 program can save you on a monthly basis.”

24 24. In numerous instances, consumers begin their interactions with HOPE
25 Defendants by speaking over the telephone with one of their “intake
26 representatives.”
27
28

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

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

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

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

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

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

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

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

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

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

5 34. HOPE Defendants then send consumers a “Consumer Information
6 Packet” which reaffirms HOPE Defendants’ oral claims that MHA has accepted
7 the consumer’s modification application. They typically state: “Enclosed is the
8 proposed modification agreement through the Making Home Affordable program.”
9 HOPE Defendants then partially complete the actual “Request For Mortgage
10 Assistance (RMA)” with the consumer’s data. This form is found on MHA’s
11 website and has the MHA logo on the front. Notably, the version HOPE
12 Defendants send to consumers omits the form’s seventh and final page. That page
13 warns consumers to “BEWARE OF FORECLOSURE RESCUE SCAMS,” and
14 “never make your mortgage payments to anyone other than your mortgage
15 company without their approval.”

16 35. HOPE Defendants urge consumers to sign and return the documents
17 as quickly as possible. HOPE Defendants tell consumers that, as soon as HOPE
18 Defendants receive the signed documents and the first payment, the lender can no
19 longer foreclose on the consumer’s home. HOPE Defendants also represent that,
20 once the consumer makes all of the required payments, he or she will receive a
21 modification.

22 36. In numerous instances, HOPE Defendants instruct consumers not to
23 talk with their lender during this process because it will purportedly give the lender
24 a reason to void the purported modification. In other instances, HOPE Defendants
25 suggest to consumers that they may speak to their lender if they like, but that there
26 is no need to do so.

27 37. Moreover, HOPE Defendants warn consumers that the low-level
28 lender representative with whom the consumer communicates likely will be

1 unaware of the modification due to the lender's size and disorganization. HOPE
2 Defendants represent that they have experience working either for lenders or with
3 them, and often "the [lender's] left hand does not talk to the right hand."

4 38. In numerous instances, HOPE Defendants strongly advise consumers
5 against speaking with an attorney, notwithstanding foreclosure notices, sale dates,
6 and foreclosure hearings. HOPE Defendants also tell consumers that lawyers are
7 expensive and unnecessary given the relief HOPE Defendants provide.

8 39. In HOPE Defendants' general commercial communications, as
9 defined in 12 C.F.R. § 1015.2, they fail to state: "HOPE Defendants are not
10 associated with the government, and our service is not approved by the government
11 or your lender," or "[e]ven if you accept this offer and use our service, your lender
12 may not agree to change your loan." In fact, they state just the opposite.

13 40. In HOPE Defendants' consumer-specific commercial
14 communications, as defined in 12 C.F.R. § 1015.2, they fail to include the
15 following disclosures:

- 16 a. "You may stop doing business with us at any time. You may
17 accept or reject the offer of mortgage assistance we obtain from
18 your lender [or servicer]. If you reject the offer, you do not have to
19 pay us. If you accept the offer, you will have to pay us [insert
20 amount or method for calculating the amount] for our services."
21 b. "HOPE Defendants are not associated with the government, and
22 our service is not approved by the government or your lender."
23 c. "Even if you accept this offer and use our service, your lender may
24 not agree to change your loan."
25 d. "If you stop paying your mortgage, you could lose your home and
26 damage your credit."

27 41. HOPE Defendants tell consumers that a representative from the
28 Advocacy Department will contact them. HOPE Defendants sometimes refer to

1 the Advocacy Department as “the Advocacy Division,” “the Advocacy Agency,”
2 or “the Advocacy Program” when speaking with consumers.

3 42. HOPE Defendants tell consumers that the Advocacy Department will
4 help the consumer obtain an even better modification than the one purportedly
5 obtained through MHA, or will continue working on the consumer’s paperwork to
6 finalize the modification.

7 ***Phase Three - Defendant Lake Exacerbates the Fraud***

8 43. Lake’s role is critical because it doubles, triples, or quadruples the
9 consumer’s loss. Lake’s Advocacy Department works to keep consumers from
10 realizing the falsity of HOPE Defendants’ claims so that the consumer will
11 continue to make all of the monthly trial payments.

12 44. After consumers make their first payment, a representative from
13 Lake’s Advocacy Department contacts them. The Advocacy Department
14 representatives reiterate that they work with HOPE Defendants, or are “calling on
15 behalf of” HOPE Defendants; they are able to reach consumers easily because
16 HOPE Defendants share each consumer’s file with the Advocacy Department.

17 45. The Advocacy Department representatives tell consumers that their
18 role is to pursue additional remedies for HOPE Defendants’ clients. They
19 generally ask additional financial questions and request additional documentation.
20 The Advocacy Department representatives then use the consumer’s information to
21 send form letters and complaints to politicians (ranging from Congresspersons to
22 local officials) and miscellaneous government agencies that may or may not have
23 anything to do with mortgage relief.

24 46. In some instances, the Advocacy Department also communicates with
25 the consumers’ lenders. They reiterate to all consumers, however, that consumers
26 do not need to speak with their lenders directly—the Advocacy Department will
27 “take care of everything.”
28

1 47. Lake's Advocacy Department also tells consumers that it is a
2 "nonprofit." They do not ask for money, and they make clear that consumers do
3 not have to pay additional fees. If asked about fees, the Advocacy Department
4 representatives reply that HOPE Defendants are paying the Advocacy Department.

5 48. Lake's Advocacy Department maintains frequent contact with
6 consumers throughout the period when the monthly trial mortgage payments are
7 due. When consumers raise concerns about continued foreclosure warnings, sale
8 date notices, and even court dates, Lake's Advocacy Department reassures them.
9 They generally emphasize that the process is continuing, or nearing completion,
10 and that work is being done on their behalf to secure a modification.

11 49. Lake and his employees at the Advocacy Department know or
12 consciously avoid knowing that: HOPE Defendants are representing to consumers
13 that a loan modification is in place, HOPE Defendants have not obtained
14 modifications for the consumers, and it is highly unlikely that any consumer will
15 receive a modification as a result of the Advocacy Department's efforts. By
16 keeping consumers on the hook for months, Defendant Lake's assistance to the
17 HOPE Defendants doubles, triples, or quadruples consumers' losses. Some
18 consumers lose their homes. All consumers lose the payments they make to the
19 HOPE Defendants while dealing with Lake and his Advocacy Department. Most
20 consumers incur additional penalties and interest as they fall further behind on
21 their mortgages while the Advocacy Department continues the HOPE Defendants'
22 fraud.

Defendants' Massive Fraud

23
24 50. Despite their claims, HOPE Defendants do not obtain modifications,
25 or even attempt to obtain modifications. They do not submit consumers'
26 applications to any governmental agency or nonprofit. HUD has no formal process
27 for receiving consumers' modification applications, which are properly directed to
28 their lenders, not to HUD. MHA is a program that HUD and the Treasury

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

3 51. HOPE Defendants do not place consumers' reinstatement fees or trial
4 mortgage payments in trust, nor do they forward them to consumers' lenders, nor
5 do they return them to consumers.

6 52. Instead, HOPE Defendants steal consumers' reinstatement fees and
7 trial payments. They have paid Defendant Lake tens of thousands of dollars for his
8 substantial assistance in contacting consumers who have purchased their purported
9 loan modification services.

10 53. As a result of the fraud, distressed homeowners have lost nearly \$2
11 million. Individual losses that often roughly equal several mortgage payments are
12 more than the many already-financially distressed consumers can bear. Some
13 declare bankruptcy, and some lose their homes.

14 **VIOLATIONS OF THE FTC ACT**

15 54. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or
16 deceptive acts or practices in or affecting commerce."

17 55. Misrepresentations or deceptive omissions of material fact constitute
18 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

19 **COUNT I**

20 **(HOPE Defendants)**

21 56. In numerous instances in connection with the advertising, marketing,
22 promotion, offering for sale, sale, or performance of mortgage assistance relief
23 services, HOPE Defendants have represented, directly or indirectly, expressly or
24 by implication:

- 25 a. That HOPE Defendants will obtain mortgage modifications for
26 consumers that will make their payments substantially more
27 affordable, will substantially lower their interest rates, and/or will
28 help them avoid foreclosure;

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

57. In truth and in fact:

- a. HOPE Defendants typically do not obtain mortgage modifications for consumers that will make their payments substantially more affordable, will substantially lower their interest rates, or help them avoid foreclosure;
- b. A consumer's trial payments and/or reinstatement fee payment are not held in his or her lender's trust account, paid to the lender at the end of the trial period, or refunded;
- c. HOPE Defendants are not affiliated with, endorsed or approved by, or otherwise associated with the United States government, the MHA program, HUD, or NACA;

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

9 58. Therefore, HOPE Defendants’ representations as set forth in
10 Paragraph 56 of this Complaint, are false and misleading and constitute a deceptive
11 act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

12 **VIOLATIONS OF THE MARS RULE**

13 59. In 2009, Congress directed the FTC to prescribe rules prohibiting
14 unfair or deceptive acts or practices with respect to mortgage loans. Omnibus Act,
15 § 626, 123 Stat. at 678, as clarified by Credit Card Act, § 511, 123 Stat. at 1763-
16 64. Pursuant to that direction, the FTC promulgated the MARS Rule, 16 C.F.R.
17 Part 322, all but one of the provisions of which became effective on December 29,
18 2010. The remaining provision, Section 322.5, became effective on January 31,
19 2011. These provisions were later recodified at 12 C.F.R. Part 1015.

20 60. The HOPE Defendants are “mortgage assistance relief service
21 provider[s]” as defined by the MARS Rule, 12 C.F.R. § 1015.2. Under the MARS
22 Rule, a “mortgage assistance relief service provider” is “any person that provides,
23 offers to provide, or arranges for others to provide, any mortgage assistance relief
24 service” other than the dwelling loan holder, the servicer of a dwelling loan, or any
25 agent or contractor of such individual or entity. 12 C.F.R. § 1015.2.

26 61. Lake is a “person” as defined by the MARS Rule, 12 C.F.R. § 1015.2.
27 Under the MARS Rule, a “person” means any individual, group, unincorporated
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1 association, limited or general partnership, corporation, or other business entity.

2 12 C.F.R. § 1015.2.

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

- 6 a. The likelihood of negotiating, obtaining, or arranging any
7 represented service or result. 12 C.F.R. § 1015.3(b)(1);
- 8 b. The amount of time it will take the mortgage assistance relief
9 service provider to accomplish any represented service or result.
10 12 C.F.R. § 1015.3(b)(2);
- 11 c. That a mortgage assistance relief service is affiliated with,
12 endorsed or approved by, or otherwise associated with (i) the
13 United States government, (ii) any governmental consumer
14 assistance plan (iii) any Federal, State, or local government
15 agency, unit, or department, (iv) any nonprofit housing counselor
16 agency or program, (v) the maker, holder, or servicer of the
17 consumer's dwelling loan, or (vi) any other individual, entity, or
18 program. 12 C.F.R. § 1015.3(b)(3)(i)-(vi); and
- 19 d. The consumer's obligation to make scheduled periodic payments
20 or any other payments pursuant to the terms of the consumer's
21 dwelling loan. 12 C.F.R. § 1015.3(b)(4).
- 22 e. The terms or conditions of any refund, cancellation, exchange, or
23 repurchase policy for a mortgage assistance relief service,
24 including but not limited to the likelihood of obtaining a full or
25 partial refund, or the circumstances in which a full or partial refund
26 will be granted, for a mortgage assistance relief service. 12 C.F.R.
27 § 1015.3(b)(6).
- 28

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

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

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

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

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

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

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

10 68. Pursuant to the Omnibus Act, § 626, 123 Stat. at 678, as clarified by
11 the Credit Card Act, § 511, 123 Stat. at 1763-64 and amended by the Dodd-Frank
12 Act, § 1097, 124 Stat. at 2102-03, 12 U.S.C. § 5538, and pursuant to Section
13 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the MARS Rule
14 constitutes an unfair or deceptive act or practice in or affecting commerce, in
15 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

16 **COUNT II**

17 **(HOPE Defendants)**

18 69. In numerous instances, in the course of providing, offering to provide,
19 or arranging for others to provide mortgage assistance relief services, HOPE
20 Defendants, in violation of the MARS Rule, 12 C.F.R. § 1015.3(b)(1)-(4), have
21 misrepresented, expressly or by implication, material aspects of their services,
22 including, but not limited to:

- 23 a. HOPE Defendants' likelihood of obtaining mortgage modifications
24 for consumers that will make their payments substantially more
25 affordable;
- 26 b. The amount of time it will take the HOPE Defendants to provide a
27 loan modification;
- 28

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

17 **COUNT III**

18 **(HOPE Defendants)**

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

24 **COUNT IV**

25 **(HOPE Defendants)**

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

- 1 a. In all general commercial communications –
- 2 i. “[HOPE Defendants] are not associated with the
- 3 government, and our service is not approved by the
- 4 government or your lender,” in violation of the MARS Rule,
- 5 12 C.F.R. § 1015.4(a)(1); and
- 6 ii. “Even if you accept this offer and use our service, your
- 7 lender may not agree to change your loan,” in violation of
- 8 the MARS Rule, 12 C.F.R. § 1015.4(a)(2);
- 9 b. In all consumer-specific commercial communications –
- 10 i. “You may stop doing business with us at any time. You
- 11 may accept or reject the offer of mortgage assistance we
- 12 obtain from your lender [or servicer]. If you reject the offer,
- 13 you do not have to pay us. If you accept the offer, you will
- 14 have to pay us [insert amount or method for calculating the
- 15 amount] for our services,” in violation of the MARS Rule,
- 16 12 C.F.R. § 1015.4(b)(1);
- 17 ii. “[HOPE Defendants] are not associated with the
- 18 government, and our service is not approved by the
- 19 government or your lender,” in violation of the MARS Rule,
- 20 12 C.F.R. § 1015.4(b)(2);
- 21 iii. “Even if you accept this offer and use our service, your
- 22 lender may not agree to change your loan,” in violation of
- 23 the MARS Rule, 12 C.F.R. § 1015.4(b)(3); and
- 24 iv. “If you stop paying your mortgage, you could lose your
- 25 home and damage your credit,” in violation of the MARS
- 26 Rule, 12 C.F.R. § 1015.4(c).
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COUNT V

(HOPE Defendants)

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

COUNT VI

(Defendant Lake)

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

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

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

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

VIOLATIONS OF THE TELEMARKETING SALES RULE

77. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. The FTC adopted the original TSR in 1995, extensively amended it in 2003, and amended certain sections thereafter. 16 C.F.R. Part 310.

78. The HOPE Defendants are “seller[s]” or “telemarketer[s]” engaged in “telemarketing” as defined by the TSR, 16 C.F.R. § 310.2(aa), (cc), and (dd).

1 Under the TSR, a “telemarketer” means any person who, in connection with
2 telemarketing, initiates or receives telephone calls to or from a customer or donor.
3 16 C.F.R. § 310.2(cc). A “seller” means any person who, in connection with a
4 telemarketing transaction, provides, offers to provide, or arranges for others to
5 provide goods or services to a customer in exchange for consideration. *Id.*
6 § 310.2(aa).

7 79. Lake is a “person” as defined by the TSR, 16 C.F.R. § 310.2(w).
8 Under the TSR, a “person” means any individual, group, unincorporated
9 association, limited or general partnership, corporation, or other business entity.
10 *Id.*

11 80. The TSR prohibits sellers and telemarketers from misrepresenting
12 directly or by implication, in the sale of goods or services, any of the following
13 material information:

- 14 a. Any material aspect of the performance, efficacy, nature, or central
15 characteristics of goods or services that are the subject of a sales
16 offer. *Id.* § 310.3(a)(2)(iii); and
17 b. Any material aspect of the nature or terms of the seller’s refund,
18 cancellation, exchange, or repurchase policies. *Id.*
19 § 310.3(a)(2)(iv).

20 81. The TSR prohibits any person from providing substantial assistance or
21 support to any seller or telemarketer when that person knows or consciously avoids
22 knowing that the seller or telemarketer is engaged in any act or practice that
23 violates 16 C.F.R. §§ 310.3(a), 310.3(c), 310.3(d), or 310.4. *Id.* § 310.3(b).

24 82. It is an abusive telemarketing act or practice and a violation of the
25 TSR for any seller or telemarketer to request or receive payment of any fee or
26 consideration in advance of obtaining a loan or other extension of credit when the
27 seller or telemarketer has guaranteed or represented a high likelihood of success in
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1 obtaining or arranging a loan or other extension of credit for a person. *Id.*
2 § 310.4(a)(4).

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

7 **COUNT VII**

8 **(HOPE Defendants)**

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

- 13 a. That HOPE Defendants will obtain mortgage modifications for
14 consumers that will make their payments substantially more
15 affordable, will substantially lower their interest rates, and/or will
16 help them avoid foreclosure;
- 17 b. That a consumer's trial payments and/or reinstatement fee payment
18 will be held in his or her lender's trust account and be paid to his
19 or her lender at the end of the trial period to finalize his or her
20 modification;
- 21 c. That HOPE Defendants are affiliated with, endorsed or approved
22 by, or otherwise associated with the United States government, the
23 MHA program, HUD, or NACA;
- 24 d. That HOPE Defendants communicate with specialized
25 departments, divisions, or "higher-ups" at the maker, holder, or
26 servicer of the consumer's dwelling loan;
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- e. That the consumer's lender can no longer foreclose on the consumer's house after HOPE Defendants receive signed documents and the first payment from the consumer;
- f. That HOPE Defendants typically deliver a loan modification within several months.

85. In truth and in fact:

- a. HOPE Defendants do not obtain mortgage modifications for consumers that will make their payments substantially more affordable, will substantially lower their interest rates, or help them avoid foreclosure;
- b. A consumer's trial payments and/or reinstatement fee payment are not held in his or her lender's trust account or paid to the lender at the end of the trial period;
- c. HOPE Defendants are not affiliated with, endorsed or approved by, or otherwise associated with the United States government, the MHA program, HUD, or NACA;
- d. HOPE Defendants do not communicate with specialized departments, divisions, or "higher-ups" at the maker, holder, or servicer of the consumer's dwelling loan;
- e. The consumer's lender can foreclose on the consumer's house after HOPE Defendants receive signed documents and the first payment from the consumer;
- f. HOPE Defendants typically do not deliver a loan modification within several months.

86. HOPE Defendants' acts and practices, as described in Paragraph 84 of this Complaint, are deceptive telemarketing acts or practices that violate Section 310.3(a)(2)(iii) of the TSR. 16 C.F.R. § 310.3(a)(2)(iii).

COUNT VIII

(HOPE Defendants)

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3 87. In numerous instances, in connection with the telemarketing of its
4 services, HOPE Defendants misrepresented, directly or indirectly, expressly or by
5 implication, material aspects of the nature or terms of their refund, cancellation,
6 exchange, or repurchase policies, including that HOPE Defendants will return the
7 money the consumer paid them if the consumer does not receive a modification.

8 88. In truth and in fact, HOPE Defendants do not return all of the money
9 the consumer paid them if the consumer does not receive a modification.

10 89. HOPE Defendants' acts and practices, as described in Paragraph 87 of
11 this Complaint, are deceptive telemarketing acts or practices that violate Section
12 310.3(a)(2)(iv) of the TSR. 16 C.F.R. § 310.3(a)(2)(iv).

COUNT IX

(HOPE Defendants)

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15 90. In numerous instances, in connection with the telemarketing of
16 services, HOPE Defendants requested or received payment of a fee or
17 consideration in advance of obtaining a loan or other extension of credit after
18 representing a high likelihood of success in obtaining or arranging a loan or other
19 extension of credit to consumers.

20 91. HOPE Defendants' acts or practices, as described in Paragraph 90 of
21 this Complaint, are abusive telemarketing acts or practices that violate section
22 310.4(a)(4) of the TSR. 16 C.F.R. § 310.4(a)(4).

COUNT X

(Defendant Lake)

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25 92. In numerous instances in connection with the contacting and
26 communicating with consumer clients on behalf of HOPE Defendants, Defendant
27 Lake provided substantial assistance or support to sellers and telemarketers.
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1 93. Lake knew or consciously avoided knowing that HOPE Defendants
2 were engaged in acts or practices that violated the TSR as set forth in Counts VII-
3 IX above.

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

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

9 **COUNT XI**

10 **(Relief Defendant Gonsalves)**

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

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

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

22 **CONSUMER INJURY**

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

THIS COURT’S POWER TO GRANT RELIEF

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2 100. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
3 to grant injunctive and such other relief as the Court may deem appropriate to halt
4 and redress violations of any provision of law enforced by the FTC. The Court, in
5 the exercise of its equitable jurisdiction, may award ancillary relief, including
6 rescission or reformation of contracts, restitution, the refund of monies paid, and
7 the disgorgement of ill-gotten monies, to prevent and remedy any violation of any
8 provision of law enforced by the FTC.

9 101. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the
10 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief
11 as the Court finds necessary to redress injury to consumers resulting from
12 Defendants’ violations of the TSR, including rescission and reformation of
13 contracts and the refund of money.

14 102. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 626 of the
15 Omnibus Act authorize this Court to grant such relief as the Court finds necessary
16 to redress injury to consumers resulting from Defendants’ violations of the MARS
17 Rule, including rescission and reformation of contracts and the refund of money.

PRAYER FOR RELIEF

18
19 Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act,
20 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C.
21 § 6105(b), the Omnibus Act, and the Court’s own equitable powers, requests that
22 the Court:

23 A. Award Plaintiff such preliminary injunctive and ancillary relief as
24 may be necessary to avert the likelihood of consumer injury during the pendency
25 of this action, and to preserve the possibility of effective final relief, including, but
26 not limited to, a temporary and preliminary injunction, an order freezing assets,
27 immediate access, and appointment of a receiver;

1 B. Enter a permanent injunction to prevent future violations of the FTC
2 Act, the TSR, and the MARS Rule by Defendants;

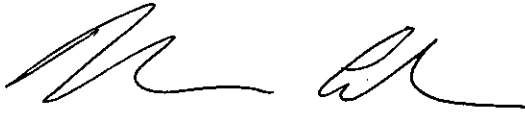
3 C. Award such relief as the Court finds necessary to redress injury to
4 consumers resulting from Defendants' violations of the FTC Act, the TSR, and the
5 MARS Rule, including but not limited to, rescission or reformation of contracts,
6 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

7 D. Enter an order requiring Relief Defendants to disgorge all funds and
8 assets, or the value of the benefit they received from the funds and assets, which
9 are traceable to HOPE Defendants' deceptive and unlawful practices; and

10 E. Award Plaintiff the costs of bringing this action, as well as such other
11 and additional relief as the Court may determine to be just and proper.

12 Respectfully submitted,

13 Jonathan E. Nuechterlein
14 General Counsel

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16 Dated: 4/13/2015

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