

ROBB EVANS & ASSOCIATES LLC

Receiver of

The Rodis Law Group, Inc.

America's Law Group

The Financial Group, Inc. dba Tax Relief ASAP

Federal Trade Commission v. Data Medical Capital, Inc, et al.

CASE No. SA-CV-99-1266 AHS (EEx)

**Order Adjudicating Contempt Defendants in Contempt of Court and
Findings of Fact and Conclusions of Law in Support Thereof;
Order for Phase II Proceedings**

Filed January 15, 2010

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

FEDERAL TRADE COMMISSION,)	SA CV 99-1266 AHS (EE x)
)	
Plaintiff,)	
)	
v.)	ORDER ADJUDICATING CONTEMPT
)	DEFENDANTS IN CONTEMPT OF
DATA MEDICAL CAPITAL, INC.,)	COURT AND FINDINGS OF FACT
et al.)	AND CONCLUSIONS OF LAW IN
)	SUPPORT THEREOF; ORDER FOR
)	PHASE II PROCEEDINGS
Defendants.)	
)	

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I.

INTRODUCTION

The Court read and considered all materials submitted in connection with the November 18, 2009 civil contempt hearing, including:

- The FTC's *Ex Parte* Application for Order to Show Cause Why Contempt Defendants Should Not be Held in Contempt (Doc. 91); Memorandum of Points and Authorities in Support of that Application (Doc. 92); and *Ex Parte* Application to Modify Stipulated Final Order; Memorandum in Support (Doc. 94); Contempt Defendants The Rodis Law Group, Inc.'s ("RLG") and Bryan D'Antonio's ("D'Antonio's) oppositions to those applications (Docs. 245, 246, 247); and the FTC's reply briefs (Docs. 271, 272);
- All of the Exhibits submitted by the parties in support of their respective applications and memoranda for or against a finding of civil contempt, including Exhibits 3-30, 32-38, 40-51, 53-65, 68, 76, 84-85, 89-90, 93, 97, 102, 104-109, and 500-501;
- Volumes I-III of Declarations In Support of Federal Trade Commission's *Ex Parte* Applications Seeking Civil Contempt Sanctions and to Modify Stipulated Final Order; Supplemental Declaration of Kenton Johnson (Doc. 275); Supplemental Declaration of Naomi Parnes (Doc. 276); and Declaration of Victor Nguyen (Doc. 277); and all of the related attachments thereto;
- Declarations in support of Opposition of Defendant Bryan D'Antonio to *Ex Parte* Application for Order to Show Cause

1 Why Contempt Defendants Should Not be Held in Contempt,
2 including J. Gregory Dyer; Victoria Vanransom; Consumers
3 Martin Aiello, Bob Barton, Ted Bernard, Bill Dynek, Paulette
4 Olsen, Deborah Ray, Rebecca Spallino, and William Young;
5 Previous Employees Thi Cao, Dianna Castillo, Maria Del
6 Gallego, Aaron Garcia, Linda Le, Christopher Lekawa,
7 Katherina Nguyen, Jamie Norris, Ralph Osborne, and Nadar
8 Qsar; Second Declaration of Nadar Qsar; and all of the
9 related attachments thereto;

- 10 • America's Law Group's ("ALG") designated declarations,
11 including the declarations of Jane Marchman and Nadar Qsar;
- 12 • The FTC's designations of the depositions of Nicholas
13 Chavarela (August 19, 2009); Bryan D'Antonio (June 11,
14 2009); Charles Wayne Farris (August 18, 2009); and Ronald P.
15 Rodis (June 12, 2009);
- 16 • All of the parties' designations - including initial,
17 counter, supplemental, updated, and reply, as appropriate -
18 of the depositions of David Dyssegard (August 24, 2009);
19 Rick McCullar (August 26 and 28, 2009); Nadar Qsar (October
20 27, 2009); Sarah Rudder (August 27, 2009); Juliette Smith
21 (August 27, 2009); and Thomas Yeager (July 28, 2009);
- 22 • The Report of Temporary Receiver's Activities for the Period
23 of May 27, 2009 through June 12, 2009, filed with the Court
24 on June 16, 2009 ("Temp. Receiver's Rpt.," Doc. 119), which
25 the Court approved by Order issued on September 25, 2009
26 (Doc. 230);
- 27 • All other materials filed or lodged in support or opposition
28 in this matter; and;

1 • The arguments made by the parties at the November 18, 2009
2 hearing.

3 The Court grants judicial notice as requested in
4 D'Antonio's Request for Judicial Notice re Ex Parte Application
5 for Order to Show Cause re: Why Contempt Defendants Should Not
6 Be Held in Contempt (Doc. 248).

7 After due consideration of the submissions made before
8 and after the hearing, including all proposed findings of fact
9 and conclusions of law and various parties' objections, the Court
10 finds by clear and convincing evidence the following facts which
11 support the Court's conclusion, as set forth in the following
12 Conclusions of Law, that defendant Bryan D'Antonio and all named
13 contempt citees are in contempt of the Court's July 13, 2001
14 Permanent Injunction.

15 **II.**

16 **FINDINGS OF FACT**

17 **I. The Case and the Parties.**

18 **A. Federal Trade Commission and Prior Proceedings.**

19 1. Plaintiff, the Federal Trade Commission ("FTC" or
20 "Commission"), initiated this action on October 14, 1999, by
21 filing a complaint against D'Antonio and entities he controlled
22 (Doc. 1) and seeking an *ex parte* TRO with an asset freeze, which
23 the Court granted on October 18, 1999 (Doc. 10).

24 2. The Complaint alleged that defendants used general
25 media advertisements to generate inbound telemarketing calls and
26 then made deceptive representations during their telemarketing
27 operation. (Doc. 1.)

28 3. D'Antonio agreed to the Stipulated Final Judgment

1 and Order for Permanent Injunction ("Permanent Injunction") that
2 the Court entered on July 13, 2001. (Doc. 74.)

3 4. The Permanent Injunction, *inter alia*, permanently
4 banned D'Antonio, and "all persons or entities directly or
5 indirectly under [defendants'] control, and all other persons or
6 entities in active concert or participation with them who receive
7 actual notice of this Order by personal service or otherwise, and
8 each such persons, whether acting directly or through any
9 corporation, limited liability company, subsidiary, division, or
10 other device, are hereby permanently restrained and enjoined
11 from: (1) telemarketing or assisting others engaged in
12 telemarketing" ; and (2) making, or assisting in the making of,
13 expressly or by implication, any false or misleading statement or
14 representation of material fact, including, but not limited to,
15 any misrepresentation about any other fact material to a
16 consumer's decision to purchase any employment program."

17 5. In a related criminal proceeding, D'Antonio
18 entered a guilty plea to one count of mail fraud in connection
19 with telemarketing and one count of wire fraud in connection with
20 telemarketing in a criminal indictment alleging similar facts.
21 D'Antonio was sentenced to a term of four years in prison
22 followed by three years supervised release for leading that
23 enterprise. (*U.S. v. D'Antonio*, CR-00158-AHS (C.D. Cal.) J. &
24 Prob./Commitment Order, March 6, 2003, Ex. 108.)

25 6. On May 27, 2009, the FTC filed its *Ex Parte*
26 Application for a Temporary Restraining Order and a Preliminary
27 Injunction, Pending Decision on Its *Ex Parte* Application for An
28 Order to Show Cause Why Contempt Defendants Should Not Be Held in

1 Contempt ("TRO Application"). (Doc. 83.)

2 7. On May 27, 2009, this Court issued a Temporary
3 Restraining Order ("TRO") with an asset freeze and appointment of
4 a Temporary Receiver. (Doc. 85.) The Contempt Defendants were
5 served with the TRO on May 28, 2009. (Doc. 110.)

6 8. On June 22, 2009, the Court issued the requested
7 Preliminary Injunction, including a continued asset freeze and
8 receivership, and set the contempt hearing for July 28, 2009.
9 (Docs. 136, 140, 172.) The contempt hearing was subsequently
10 continued to November 18, 2009.

11 B. Contempt Citees.

12 9. For purposes of this contempt proceeding, the
13 Contempt citees, collectively hereafter referred to as "Contempt
14 Defendants" are:

- 15 a. Bryan D'Antonio ("D'Antonio");
- 16 b. The Rodis Law Group, Inc. ("RLG");
- 17 c. America's Law Group ("ALG"); and
- 18 d. The Financial Group, Inc. ("TFG").

19 1. *Contempt Defendant D'Antonio.*

20 10. D'Antonio provided the FTC with a sworn statement
21 acknowledging receipt of the Permanent Injunction on July 23,
22 2001. (Doc. 95, Ex. 2.)

23 11. D'Antonio controlled the RLG, ALG, and TFG
24 foreclosure prevention and loan modification operation. He
25 oversaw and controlled the business operations of RLG, ALG, and
26 TFG, set basic marketing and operational policies and
27 philosophies, and served as the final senior officer to resolve
28 problems with clients.

1 12. Wayne Farris (aka C. Wayne Farris and Charles
2 Wayne Farris, hereafter "Farris"), a senior manager for Contempt
3 Defendants, and Rob Hart, a sales manager for Contempt
4 Defendants, informed employees that D'Antonio determined how much
5 money the company spent on advertising and that D'Antonio and
6 others spent extensive time developing advertising scripts (Exs.
7 63, 64).

8 13. D'Antonio oversaw critical financial aspects of
9 the operations, including commission structure and funding of
10 leads (Ex. 15), as well as approval of refunds, particularly
11 refunds involving large amounts (Temp. Receiver's Rpt., Doc. 119
12 at 16 (the Temporary Receiver's Report is not paginated
13 consecutively throughout; the page numbers referenced herein are
14 the page numbers assigned to the filed document (Doc. 119)) (Ex.
15 25); Lekawa Decl. ¶¶ 4, 8, Nov. 2, 2009), and approval of advance
16 issuance of employee pay checks (McCullar Dep. 138:13-139:10).
17 D'Antonio also funded the start-up expenses for ALG. (Ex. 27;
18 Temp. Receiver's Rpt., Doc. 119 at 30-31.)

19 14. D'Antonio had signature authority for bank
20 accounts for each of the Contempt Defendants (R. Lewis Decl. ¶¶
21 27-30, Atts. CC, DD, May 18, 2009; Ex. 13, 14, 34) and directed
22 the entities' Controller, Linda Le (L. Le Decl. ¶ 3, Oct. 30,
23 2009), to transfer more than one million dollars in corporate
24 funds to his personal accounts (Exs. 23, 27, 57, 28-30; Temp.
25 Receiver's Rpt., Doc. 119 at 7, 14; Supp. Decl. of K. Johnson,
26 Att. B).

27 15. D'Antonio influenced operational and other
28 policies in areas ranging from matters involving retainer

1 agreement language (Ex. 56) and how to handle retainer agreements
2 received under the RLG name after the business began using the
3 ALG name (Ex. 57) to employee dress code and office space
4 logistics (Ex. 15).

5 16. D'Antonio recruited, first, Ronald P. Rodis
6 ("Rodis"), and then Nicholas Chavarela ("Chavarela"), to be
7 involved with Contempt Defendants' operations. (Rodis Law Group,
8 Inc.'s Opp. To Pl.'s App. For Contempt Order "RLG Opp.," Doc. 245
9 Att. C. (Mar. 6, 2009 letter from Rodis to D'Antonio, describing
10 how D'Antonio influenced Rodis' involvement and describing how
11 D'Antonio's management impacted RLG); McCullar Dep. 110:3-111:20,
12 112:2-13, 114:4-115:2 (D'Antonio and Farris first announced loan
13 modification business pilot program, then offered opportunity for
14 telemarketers to transition from TFG dba Tax Relief ASAP to RLG);
15 Ex. 24; Kane Decl. Att. A; Exs. 21, 24, 53-55 (e-mails
16 establishing D'Antonio's connection to Nick Chavarela, role in
17 recruiting him to replace Rodis, and position of authority in
18 determining whether and how to respond to Chavarela's
19 correspondence.))

20 17. D'Antonio expressly held himself out as CEO of
21 Contempt Defendants. (Dyssegard Dep. 43:10-21, Aug. 25, 2009.)
22 His name, with the title "CEO," appeared on pages of the RLG
23 employee handbook, entitled "Welcome to Rodis Law Group" and
24 "Closing Statement." (Exs. 10, 11.) He identified himself as
25 TFG's president and CEO on documents provided to U.S. Bank. (R.
26 Lewis Decl. ¶ 30, Att. CC at 441, 445, 452.)

27 18. D'Antonio conveyed his authority to staff in
28 various meetings by making statements about corporate goals and,

1 at times, stating that he would fire employees who did not follow
2 his instructions. (McCullar Dep. 62:23-63:8, 110:3-111:8, 112:2-
3 13, 183:23-184:8, 197:8-198:23; J. Smith Dep. 82:6-24, Aug. 27,
4 2009 ("Bryan basically came out and said that what we are going
5 to be doing is just getting as much - bringing in as much money
6 as possible, files. These people are bottom feeders. They
7 didn't really care about their house and we are going to make as
8 much money as possible."); N. Nguyen Decl. ¶ 7-9; J. Smith Decl.
9 ¶ 4; Rudder Decl. ¶¶ 4-7.) D'Antonio hosted Contempt Defendants'
10 Christmas party at the home he shared with Christi D'Antonio, at
11 which he gave a speech, describing the company as a family-owned
12 company and thanking everyone for "all the hard work" they were
13 doing "for our company." (McCullar Dep. 197:8-10, 198:9-19.)

14 19. On other occasions, mid-and senior-level managers
15 referred to D'Antonio as the person in charge. (Temp. Receiver's
16 Rpt., Doc. 119 at 6-7; Dyssegard Decl. ¶ 15; McCullar Dep.
17 183:16-22; 184:18-185:14.) On one such occasion, Farris likened
18 D'Antonio's status to that of Bill Gates at Microsoft, while
19 chastising staff for making "blind transfers" to D'Antonio
20 (transferring callers directly to D'Antonio without announcing
21 them), saying, "Absolutely nobody should be able to call into the
22 floor and then be passed straight on to [D'Antonio]. . . . Can
23 you imagine calling the customer service department of Microsoft
24 and then being transferred straight to Bill Gates? Come on guys,
25 get a clue!" (Kane Decl. ¶ 12, Att. C.)

26 20. The FTC noticed the depositions of D'Antonio,
27 Rodis, Chavarela, and Farris during the course of these
28 proceedings. Each invoked his Fifth Amendment privilege against

1 self-incrimination as to all questions about D'Antonio's control
2 of and the operations of RLG, ALG, and TFG. (D'Antonio Dep.
3 58:8-62:3, 63:10-22, 65: 7-71:7, 71:14-73:8, 83:21-107:19, June
4 11, 2009; Rodis Dep. 23:13-27:19, 37:3-8, 37:20-22, June 12,
5 2009; Chavarela Dep. 10:23-11:21; 12:16-20, 13:4-14:16, 15:4-6,
6 25:18-26:18, 35:24-39:1, Aug. 19, 2009; Farris Dep. 11:13-12:16,
7 13:5-14:9, 15:8-17:1, 40:14-42:3, 54:18-55:20, 62:5-64:19, 65:11-
8 66:6, 70:19-78:21, 86:20-88:24, Aug. 18, 2009.)

9 2. *Contempt Defendant RLG.*

10 21. RLG, a California corporation, is located at 1100
11 Town and Country Road, Orange, Calif. (R. Lewis Decl. ¶ 42.)

12 22. According to the Temporary Receiver's Report, RLG
13 had gross service revenues approximating \$1.1 million in 2008 and
14 \$6.2 million in 2009. (Temp. Receiver's Rpt., Doc. 119 at 13.)

15 23. Rodis incorporated RLG on October 30, 2008. (R.
16 Lewis Decl. Att. A.)

17 24. The FTC took the deposition of Rodis on June 12,
18 2009, but he declined to answer questions, invoking his Fifth
19 Amendment privilege against self-incrimination, including but not
20 limited to, questions related to: (a) the operations of RLG; (b)
21 the representations RLG made in sales scripts, telephone sales
22 calls, radio advertisements, and websites; (c) RLG's foreclosure
23 prevention and loan modification services; and (d) D'Antonio's
24 control of Contempt Defendants' operations. (Rodis Dep. 23:13-
25 66:22.)

26 25. D'Antonio recruited Rodis to be associated with
27 his foreclosure prevention and loan modification operations and
28 set up the "operational framework" for RLG. (Temp. Receiver's

1 Rpt., Doc. 119 at 5; K. Johnson Decl. ¶¶ 2-3; Kane Decl. ¶¶ 2-3;
2 RLG Opp., Doc. 245 Att. C; McCullar Dep. 110:3-111:20, 112:2-13,
3 114:4-115:2.)

4 26. TFG, controlled by D'Antonio, recruited, hired,
5 and trained sales personnel and legal support personnel servicing
6 RLG. (Temp. Receiver's Rpt., Doc. 119 at 5; K. Johnson Decl. ¶¶
7 2-3; Kane Decl. ¶¶ 2-3.)

8 27. D'Antonio used the titles CEO and Senior Managing
9 Director while at RLG. (Exs. 10, 11; Dyssegard Decl. Att. C at
10 60-61; Temp. Receiver's Rpt., Doc. 119 at 18, 74, 77.)

11 28. D'Antonio, and not Rodis, controlled RLG's
12 operations. On April 1, 2009, RLG filed a Statement of
13 Information with the California Secretary of State, identifying
14 Rodis as CEO for the first time. (RLG Opp. Att. A.) Prior to
15 April 1, 2009, D'Antonio was the only CEO identified for RLG.

16 29. D'Antonio had signature authority over RLG bank
17 accounts and had ultimate authority over transfers of RLG funds
18 to other accounts, including TFG accounts, and made policy and
19 operational decisions regarding the customers that RLG would
20 accept.

21 30. Employees who worked at RLG between November 2008
22 and February 2009 testified that Rodis was a figurehead who did
23 not manage RLG, and who was, at best, minimally involved in
24 providing any services to consumers. (N. Nguyen Decl. ¶¶ 23-26,
25 June 4, 2009; Rudder Decl. ¶¶ 10, 38-41, April 19, 2009.) In a
26 January 22, 2009 e-mail, Rodis told D'Antonio that it was
27 "physically impossible" for him to speak to clients in a timely
28 manner based on the high volume of clients that D'Antonio was

1 bringing in as compared to the amount of staff hired to provide
2 loan modification services. (RLG Opp. Ex. B.)

3 31. In the January 22, 2009 e-mail, Rodis stated that
4 he would no longer take on clients under his name. (*Id.*) In a
5 March 6, 2009 letter, Rodis admitted that he knew about the
6 underlying action against D'Antonio, expressed his disappointment
7 that the details had not been disclosed by D'Antonio, and again
8 expressed dissatisfaction with how D'Antonio ran the operation.
9 (RLG Opp. Att. C.) In an April 6, 2009 e-mail, Rodis related his
10 understanding of the contractual agreements between RLG and TFG,
11 and he outlined D'Antonio's actions to the contrary. (Temp.
12 Receiver's Rpt., Doc. 119, at 77-78.) Despite Rodis' requests
13 and complaints, RLG continued to solicit and bring on clients
14 until April 11, 2009. (McCullar Decl. ¶ 12.) Rodis did not stop
15 ongoing deceptive solicitations in RLG's name. Notwithstanding
16 his dissatisfaction with D'Antonio, and although he maintained a
17 law office at another location (Lewis Decl. Att. D), Rodis did
18 continue working with D'Antonio at the RLG/ALG/TFG complex until
19 May 28, 2009, when the Receiver took control of the premises
20 (Temp. Receiver's Rpt., Doc. 119 at 1).

21 32. Fifteen consumers testified that they rarely or
22 never spoke to Rodis, or spoke to him only after complaining or
23 when facing imminent foreclosure, and did not experience positive
24 results when they did. (Barrett-Sparrow Decl. ¶¶ 13-23, Sept.
25 18, 2009; Brand Decl. ¶¶ 10, 12-13, April 2, 2009; Caley Decl. ¶¶
26 18-30, Sept. 18, 2009; Castro Decl. ¶¶ 10-25, Sept. 22, 2009;
27 Eddinger Decl. ¶¶ 7-12, April 20, 2009; Hottel Decl. ¶¶ 13-20,
28 Sept. 16, 2009; Linares Decl. ¶¶ 11-24, Sept. 29, 2009; Mitchell

1 Decl. ¶¶ 6-8, 12-15, Sept. 17, 2009; Peralta Decl. ¶¶ 10-21,
2 Sept. 25, 2009; Pocasangre Decl. ¶¶ 11-12, November 2, 2009; Reed
3 Decl. ¶¶ 14-26, Oct. 2, 2009; Reyes Decl. ¶¶ 5-19, Sept. 23,
4 2009; Rodriguez Decl. ¶¶ 13-28, Sept. 18, 2009; Servin Decl. ¶¶
5 16-20, 22-28, Sept. 18, 2009; Shusterman Decl. ¶¶ 12-22, Sept.
6 29, 2009.) D'Antonio identified five consumers who testified
7 that Rodis provided assistance.¹ (Aiello Decl. ¶¶ 6-7, Sept. 16,
8 2009; Barton Decl. ¶ 6, Aug. 29, 2009; Bernard Decl. ¶¶ 6-7,
9 Sept. 16, 2009; Dynek Decl. ¶ 5, Sept. 15, 2009; Young Decl. ¶ 7,
10 Sept. 10, 2009.)² However, testimony that Rodis was in contact
11 with five consumers does not refute nor overcome the evidence
12 that Rodis' involvement was minimal.

13 33. Rodis admitted that RLG had not conducted a
14 forensic audit. (Kane Decl. ¶ 6; Temp. Receiver's Rpt., Doc. 119
15 at 10.)

16 3. *Contempt Defendant ALG.*

17 34. ALG is also located at 1100 Town and Country Road,
18 Orange, California. (R. Lewis Decl. ¶ 42.)

19 35. D'Antonio recruited Chavarela to be associated
20 with his foreclosure prevention and loan modification operations.
21 (Exs. 21, 24, 53-55; Temp. Receiver's Rpt., Doc. 119 at 5, 74-77;
22 K. Johnson Decl. ¶¶ 2-3; Kane Decl. ¶¶ 2-3.)

23
24 ¹ RLG also submitted these consumer declarations previously
25 in connection with RLG's September 18, 2009 Application for an
26 order requiring the Receiver to permit Rodis to work for these
clients. (See Doc. 219.)

27 ² D'Antonio submitted testimony from another consumer,
28 Deborah Ray, which references work performed by "Ron and his
staff," but does not clearly contain testimony that Ms. Ray ever
worked directly with Rodis. (Ray Decl. ¶¶ 8-9, Sept. 16, 2009.)

1 36. The FTC took the deposition of Chavarela on August
2 19, 2009. Chavarela invoked his Fifth Amendment privilege
3 against self-incrimination as to all questions, including but not
4 limited to, questions related to: (a) the operations of ALG; (b)
5 the representations ALG made in sales scripts, telephone sales
6 calls, radio advertisements, and websites; (c) ALG's foreclosure
7 prevention and loan modification services; and (d) D'Antonio's
8 control of Contempt Defendants' operations. (Chavarela Dep.
9 10:23-11:21, 13:4-34:15, 39:3-40:24.)

10 37. Chavarela incorporated The Law Offices of Nicholas
11 Chavarela, Inc. on April 1, 2009, and filed a fictitious business
12 name statement on April 9, 2009, indicating he would conduct
13 business as ALG. (Temp. Receiver's Rpt., Doc. 119 at 4.)

14 38. D'Antonio transferred the "operational framework"
15 of RLG to ALG, and TFG, controlled by D'Antonio, funded ALG's
16 start-up and recruited, hired, and trained sales and legal
17 support personnel for the entity. (Ex. 27; Temp. Receiver's
18 Rpt., Doc. 119 at 30-31.)

19 39. On Friday, April 10, 2009, D'Antonio and Farris
20 announced ALG's formation to staff and said that, effective the
21 next day, April 11, 2009, the business would conduct all new
22 sales under the ALG name. (McCullar Decl. ¶ 12.) D'Antonio and
23 the rest of the company management remained the same. (Le Decl.
24 ¶¶ 3; Lekawa Decl. ¶ 4, 8-10; McCullar Decl. ¶¶ 15-16, 19.)

25 40. Nader Qsar began working at RLG in March of 2009,
26 and testified he worked for both RLG and ALG. He did not
27 distinguish between the entities when testifying regarding
28 various topics including the entities' relationships with

1 lenders, legal support department practices, and loan
2 modification results. (Qsar Dep. 20:16-25, 21:16-22:1, 22:22-
3 24:5, 37:3-25; Qsar Decl. ¶¶ 2, 5-8; Second Qsar Decl. ¶ 4-6.)
4 D'Antonio submitted declarations of a number of former employees
5 who similarly referred to RLG and ALG as a single entity in
6 connection with testimony regarding various matters including
7 operations, sales, refund practices, and management. (Castillo
8 Decl. ¶ 7; Le Decl. ¶ 8; Lekawa Decl. ¶¶ 4-6, 8-12; Osborne Decl.
9 ¶¶ 4, 6, 10, 14-15.)

10 41. When identifying attorneys besides Rodis and
11 Chavarela who provided assistance at times, D'Antonio, RLG, and
12 ALG name the same attorneys. (RLG Opp., Doc. 245 at 6
13 (identifying Erik Brimmer, Barbara Marie Dennis, and Jennifer
14 Lee); B.D. Opp., Doc 247 at 13 ("There were five attorneys
15 working on client files, Rodis, Chaverela [sic], Erik Brimmer,
16 Maria Dennis, and Jennifer Lee); Def. ALG's Designated Decls. of
17 Jane A. Marchman and Nader E. Qsar, Doc. 263, at 3 (stating that
18 Erik Brimmer, Barbara Marie ("Maria") Dennis, and Jennifer J. Lee
19 worked with Chavarela on ALG files.))

20 42. In an April 16, 2009 press release issued by
21 Contempt Defendants to announce the "Homeowner's Benefit
22 Program," it states, quoting Chavarela, that ALG "is currently in
23 the process of helping almost 2,000 customers modify their loan
24 payments in order to stay in their homes." (Ex. 59.) The chart
25 that Qsar helped prepare for the Receiver after May 28, 2009 (Ex.
26 38) identified 1,760 RLG clients and 408 ALG clients - a total of
27 2,168. Thus, the press release total of "almost 2,000" clearly
28 referred to the combined total number of clients.

1 43. ALG was merely a continuation of the RLG
2 foreclosure prevention and loan modification operation run by
3 D'Antonio. (Exs. 21, 24; Temp. Receiver's Rpt., Doc. 119 at 74-
4 77; McCullar Decl. ¶¶ 12-19; McCullar Dep. 190:24-191:10, 192:20-
5 25; Pocasangre Decl. ¶ 12.) When the name of the company was
6 changed from RLG to ALG, D'Antonio maintained control over the
7 foreclosure prevention and loan modification operation.
8 (McCullar Decl. ¶ 15.)

9 44. D'Antonio identified himself as Senior Managing
10 Director for ALG to ALG staff (Temp. Receiver's Rpt., Doc. 119 at
11 16 (approving a \$4,000 refund on May 27, 2009) and 30 (approving
12 reimbursement from ALG to TFG on April 21, 2009); Kane Decl. ¶ 3;
13 K. Johnson Decl. ¶ 3). In addition, D'Antonio identified himself
14 as an ALG Director in a sworn financial statement, stating that
15 he earned \$128,000 for two months work (D'Antonio Decl., Doc. 116
16 at 6).

17 45. D'Antonio controlled the ALG funds. D'Antonio,
18 Sandy Le, and Ngoc Mong Le were the signatories on the bank
19 accounts of The Law Offices of Nicholas Chavarela, Inc. - but,
20 significantly, Chavarela was not. (Exs. 13, 14; Temp. Receiver's
21 Rpt., Doc. 119 at 7.) D'Antonio's approval was required for
22 refunds to ALG customers (Temp. Receiver's Rpt., Doc. 119 at 16).
23 D'Antonio wired \$100,000 from an ALG account to a personal
24 account on May 8, 2009. (Supp. Decl. of K. Johnson, Att. A-4.)

25 46. According to the Temporary Receiver's Report, ALG
26 had gross service revenues of approximately \$986,000 in 2009.
27 (*Id.* at 13.)

28 47. Chavarela admitted that ALG had not conducted a

1 forensic audit. (Kane Decl. ¶ 6; Temp. Receiver's Rpt., Doc. 119
2 at 10.)

3 4. *Contempt Defendant TFG*

4 48. TFG has not entered an appearance or contested any
5 of the allegations in the FTC's motions and applications.

6 49. TFG is also located at 1100 Town and Country Road,
7 Orange, California. (R. Lewis Decl. ¶ 42.)

8 50. D'Antonio is a signatory on multiple TFG bank
9 accounts. (*Id.* ¶ 28, Att. CC-421.)

10 51. D'Antonio identified himself as the Owner,
11 Secretary, President, and Chief Executive Officer ("CEO") of TFG
12 to U.S. Bank, a bank used by TFG. (*Id.* ¶ 30, Att. CC-440-41,
13 452.)

14 52. D'Antonio controlled TFG and all of the activities
15 it performed in conjunction with RLG and ALG. (Temp. Receiver's
16 Rpt., Doc. 119 at 5; Kane Decl. ¶ 3; K. Johnson Decl. ¶ 3.)

17 53. D'Antonio approved transfers of funds from ALG
18 accounts to TFG accounts. (Temp. Receiver's Rpt., Doc. 119 at
19 30-31.) Funds were transferred between RLG and TFG on multiple
20 occasions. (R. Lewis Decl. ¶ 32, Att. GG.)

21 54. Although some RLG employee paychecks were issued
22 from RLG (*see, e.g.,* Qsar Dep. 28:4-8), many other RLG employee
23 paychecks were issued from a TFG bank account, issued by "The
24 Financial Group, Inc. dba Tax Relief ASAP." (R. Lewis Decl. ¶
25 31, Att. II-473-561; McCullar Decl. ¶ 7; Dyssegard Dep. 114:12-
26 17.)

27 55. Charges for RLG's services appeared on customers'
28 accounts as both TFG and Tax Relief ASAP, as well as RLG. (Brand

1 Decl. ¶ 9; Barrett-Sparrow Decl. Ex. 5; Castro Decl. Exs. 4, 6,
2 7; Hottel Decl. Ex. 4; Linares Decl. Ex. 4; Pocasangre Decl. Att.
3 B-15; Reyes Decl. Ex. 1-9, Ex. 4-20; K. Rodriguez Decl. Ex. 4-
4 17.) Other consumers made checks payable to RLG. (Peralta Decl.
5 Ex. 2; Pocasangre Decl. Att. B; Reed Decl. Ex. 3.)

6 56. RLG, ALG, and TFG used the same human resources,
7 accounting, and information technology staff. (Temp. Receiver's
8 Rpt., Doc. 119 at 5, 8; McCullar Decl. ¶ 17; Le Decl. ¶ 3; Lekawa
9 Decl. ¶ 4, 8-10.)

10 **II. Contempt Defendants' Business Practices.**

11 **A. Telemarketing.**

12 57. Contempt Defendants' foreclosure rescue and loan
13 modification operation relied upon a nationwide radio campaign in
14 conjunction with websites to generate thousands of inbound
15 telephone calls from consumers. (R. Lewis Decl. ¶ 14; Kolozsvary
16 Decl. ¶¶ 1-10, Atts. A-C; Temp. Receiver's Rpt., Doc. 119 at 8.)
17 Contempt Defendants' did not make outbound cold calls to procure
18 customers.

19 58. When consumers called the advertised numbers, they
20 reached telemarketers at RLG or ALG, who made various
21 representations regarding Contempt Defendants' services.
22 (Barrett-Sparrow Decl. ¶¶ 4-5; Brand Decl. ¶ 2; Caley Decl. ¶¶ 4-
23 5; Castro Decl. ¶¶ 4-5; Eddinger Decl. ¶¶ 2-3; Hottel Decl. ¶¶ 4-
24 5; Mitchell Decl. ¶¶ 5-6; Pocasangre Decl. ¶¶ 2-3; Reed Decl. ¶¶
25 4, 6; Rodriguez Decl. ¶¶ 4, 6; Shusterman Decl. ¶¶ 4-5; R. Lewis
26 Decl. ¶¶ 4, 7.)

27 59. Consumer Holly Johnson contacted ALG via its
28 website, after hearing a radio advertisement for ALG. She was

1 subsequently contacted by an ALG telemarketer. (H. Johnson Decl.
2 ¶¶ 2-3.) Similarly, consumer Thomas Yeager initially contacted
3 RLG via its website, but testified regarding RLG's aggressive
4 radio campaign in Nevada. (Yeager Dep. 11:18-13:7, July 28,
5 2009.)

6 60. Contempt Defendants employed as many as eighty
7 telemarketers, or "intake officers," in February 2009.
8 (Dyssegard Decl. ¶ 12.) By May 2009, former employee Ralph
9 Osborne oversaw all of Contempt Defendants' telemarketing
10 activity, supervising a sales team of fifty telemarketers and
11 five supervisors. (Osborne Decl. ¶ 6.) Osborne trained
12 telemarketers with "explicit instructions about what they could
13 say and what they could not say to clients." (*Id.* ¶ 14.)
14 Osborne and other intake supervisors in fact trained Contempt
15 Defendants' telemarketers to misrepresent the companies' history
16 of success, the likelihood of obtaining a loan modification, and
17 other material facts. The telemarketers that Osborne supervised
18 were provided with, and used, deceptive telemarketing scripts.

19 61. The radio advertisements, websites, and
20 telemarketers' pitches induced consumers to purchase Contempt
21 Defendants' services. (Barrett-Sparrow Decl. ¶¶ 6-10; Brand
22 Decl. ¶ 9; Caley Decl. ¶¶ 4-17; Castro Decl. ¶¶ 5-10; Eddinger
23 Decl. ¶ 6; Hottel Decl. ¶¶ 5-10; H. Johnson Decl. ¶¶ 3-7; Linares
24 Decl. ¶¶ 5-10; Mitchell Decl. ¶¶ 6-10; Pocasangre Decl. ¶¶ 5-8;
25 Reed Decl. ¶¶ 7-14; Reyes Decl. ¶¶ 5-8; Rodriguez Decl. ¶¶ 6-10;
26 Servin Decl. ¶¶ 7-15; Shusterman Decl. ¶¶ 6-7, 10, 12.)

27 62. D'Antonio invoked his Fifth Amendment privilege
28 against self-incrimination as to all questions, including but not

1 limited to, questions related to: (a) his control of and the
2 operations of RLG, ALG, and TFG; (b) the representations RLG and
3 ALG made in sales scripts, telephone sales calls, radio
4 advertisements, and websites; and (c) RLG's and ALG's foreclosure
5 prevention and loan modification services. (D'Antonio Dep. 17:9-
6 35:6, 36:8-71:13, 93:13-107:19.)

7 B. Material Misrepresentations.

8 63. From October 2008 to mid-April 2009, D'Antonio
9 marketed purported mortgage rescue services through RLG.
10 (McCullar Decl. ¶ 12.) On or about April 10, 2009, D'Antonio and
11 Farris announced a change in the operation's business name from
12 RLG to ALG. (*Id.* ¶ 12.)

13 64. ALG's and RLG's websites were all but identical,
14 using the same 800-number for consumers to call for free
15 consultations. (R. Lewis Decl. ¶ 22, *compare* Ex. 3 with Ex. 4.)
16 One RLG consumer testimonial from "Randy E." thanking RLG for
17 saving his home and reducing his principal balance was recycled
18 into a testimonial for ALG. (Ex. 5.) This testimonial is
19 fictitious because ALG admitted that none of its customers
20 received mortgage loan modifications. (Ex. 106.)

21 65. ALG's radio advertisements are very similar to
22 RLG's, encouraging consumers to hire ALG's experienced lawyers
23 and "Put the power of America's Law Group on your side and keep
24 your home." (Exs. 36, 60, 61.)

25 66. RLG's and ALG's telemarketing scripts and
26 marketing materials were almost identical. (Temp. Receiver's
27 Rpt., Doc. 119 at 8-9; K. Johnson Decl. ¶ 4; Kane Decl. ¶ 4;
28 *compare, e.g.,* Ex. 6 (RLG "Seven Things" telemarketing script) to

1 Ex. 17 (ALG "Seven Things" telemarketing script.))

2 1. *Contempt Defendants Misrepresented That They*
3 *Would Stop Foreclosures.*

4 67. Contempt Defendants represented that they would
5 stop foreclosures and save consumers' homes. They made these
6 representations in radio advertisements, on their websites, and
7 in telemarketing calls and written communications with consumers.
8 (Dyssegard Decl. ¶¶ 4, 7, 9; Barrett-Sparrow Decl. ¶ 9; Brand
9 Decl. ¶ 4; Caley Decl. ¶¶ 4, 6-12; Castro Decl. ¶ 7, Ex. 1-8;
10 Eddinger Decl. ¶ 4; Hottel Decl. ¶ 5; H. Johnson Decl. ¶ 4;
11 Linares Decl. ¶ 7; Mitchell Decl. ¶ 6; Peralta Decl. ¶ 6;
12 Pocasangre Decl. ¶ 7; Reyes Decl. ¶¶ 5-6; Rodriguez Decl. ¶ 7;
13 Servin Decl. ¶ 11; Shusterman ¶ 4; R. Lewis Decl. ¶¶ 13,15, Att.
14 I-123:7-8, 14-16, Att. J-125:14-15, Att. K-129:13-15, Att. L-
15 147:15-16, Att. O-217:11-12, Att. U-378:24-379:7, Att. V-386-87.)

16 68. Contempt Defendants told consumers they never lost
17 a home to foreclosure. (See, e.g., R. Lewis Decl., Att. L-146:4-
18 9, Att. M-168:5-7, Att. O-204:23-205:4, Att. R-300:17-20, Att. U-
19 378:22-379:7; Barrett-Sparrow Decl. ¶ 9; Rodriguez Decl. ¶ 7.)

20 69. Contrary to these promises, consumers lost homes
21 to foreclosure. (Brand Decl. ¶¶ 11,14; Eddinger Decl. ¶¶ 7, 9-
22 10; Reyes Decl. ¶¶ 17-18, 23; see also Rudder Decl. ¶ 27; J.
23 Smith Decl. ¶ 30 (legal support staff were unable to prevent the
24 loss of some consumers' homes to foreclosure); RLG Opp. Att. B
25 (Rodis states foreclosure client lost his home and hired another
26 attorney who threatened malpractice.)) Other consumers listed
27 their homes for sale when RLG failed to help them. (Rodriguez
28 Decl. ¶ 31; Shusterman Decl. ¶ 26.)

1 70. Moreover, as many as fifty RLG customers had
2 foreclosure sales scheduled after they became clients. (See,
3 e.g., Castro Decl. ¶ 23; Mitchell Decl. ¶ 19; Servin Decl. ¶ 31;
4 see also Rudder Decl. ¶ 37; J. Smith Decl. ¶ 29.)

5 2. *Contempt Defendants Misrepresented That They*
6 *Would Modify Consumers' Mortgages.*

7 71. Contempt Defendants represented that they would
8 "rewrite" and modify mortgages by negotiating substantially lower
9 interest rates, lower and more affordable monthly payments, and
10 reduced principal balances. Contempt Defendants told consumers
11 they routinely obtained these results and had a 90% or 100%
12 success rate in obtaining loan modifications. (Barrett-Sparrow
13 Decl. ¶¶ 7-10; Brand Decl. ¶ 7; Caley Decl. ¶¶ 6-14; Castro Decl.
14 ¶¶ 5-9; Hottel Decl. ¶¶ 5-9; H. Johnson Decl. ¶¶ 3-4; Linares
15 Decl. ¶¶ 6-9; Mitchell Decl. ¶ 8; Peralta Decl. ¶ 6; Pocasangre
16 Decl. ¶¶ 5-8; Reed Decl. ¶¶ 7-8; Reyes Decl. ¶¶ 5-6; Rodriguez
17 Decl. ¶¶ 6-7; Servin Decl. ¶¶ 8-11; Shusterman Decl. ¶¶ 5-7;
18 Yeager Dep. 16:24-17:12, 22:21-24:14, 24:18-25:5, Ex. 40; R.
19 Lewis Decl. ¶ 8, Att. G-64:2-4, 69:22-23, 79:7-8, Att. H-105:8-
20 10, 106:1-3, Att. J-125:9-13, Att. L-145:6-10, Att. M-158:7-11,
21 163:2-7, Att. N-185:20-25, 187:19-188:2, Att. O-205:13-21, Att.
22 Q-268:17-20, Att. R-294:17-295:6, Att. S-321:9-10, Att. T-353:22-
23 25; Dyssegard Decl. ¶¶ 6-7, 9, Att. B; Temp. Receiver's Rpt.,
24 Doc. 119 at 9, 33-46; K. Johnson Decl. ¶ 4; Kane Decl. ¶ 4.)

25 72. For example, Contempt Defendants' representations
26 include, but are not limited to the following:

27 a. Telemarketers told Mary Barrett-Sparrow that
28 they "could reduce the principal balance of [her] home

1 loan by fifty percent (50%)” and “they could probably
2 take [her] interest rate down to about three percent
3 (3%).” (Barrett-Sparrow Decl. ¶ 7.)

4 b. RLG telemarketer “Shu” told Deborah Caley
5 that she “did not know of any instance where one of
6 RLG’s clients lost his home to foreclosure,” that “RLG
7 would certainly lower [her] interest rate, and possibly
8 reduce it by as much as 4%,” and that “RLG had a high
9 success rate because it had relationships with
10 lenders.” (Caley Decl. ¶ 11.)

11 c. RLG promised John Hottel a reduced interest
12 rate and reduced principal balance and stated that
13 interest rate reductions of 4-5% were typical. (Hottel
14 Decl. ¶¶ 5-6.)

15 d. Mark Berman, an RLG telemarketer, told
16 Maricela Pocasangre that RLG reduced interest rates
17 “100 percent of the time” and promised her an interest
18 rate reduction of between three and six percent.
19 (Pocasangre Decl. ¶ 5; R. Lewis Decl. Att. S-321:6-14.)

20 e. Rodis told Mary Reyes that RLG was
21 ninety percent (90%) successful. (Reyes Decl. ¶ 6.)

22 73. The evidence of Contempt Defendants’
23 representations, submitted via consumer testimony, transcripts of
24 recordings between telemarketers and consumers, and former
25 employees, matches the representations in Contempt Defendants’
26 sales scripts, including “rebuttal scripts,” about the high
27 likelihood that Contempt Defendants would negotiate a mortgage
28 loan modification resulting in substantial reductions in monthly

1 mortgage payments. For example, scripts prompted telemarketers
2 to tell consumers that:

3 a. "Now when we take on a client we routinely
4 postpone trustee sales, lower monthly payments and even
5 negotiate for a reduction in principal loan amounts."
6 (Ex. 9; Temp Receiver's Rpt., Doc. 119 at 42; see also
7 Exs. 6, 8, 17, 18 (substantially similar
8 representations about "routine" or "typical" results.))

9 b. "As A Law Firm We Have Not Taken On A Case We
10 Can't Resolve." (Temp. Receiver's Rpt., Doc. 119 at
11 33.)

12 c. "We are a Law Firm, if we do take you on as a
13 client, we will significantly REDUCE your payments,
14 even potentially lowering your principal balance, and
15 getting the lenders to forgive any late payments you
16 may have incurred." (*Id.* at 36.)

17 d. "What is your success rate in cases like
18 mine? A) Well, we wouldn't take you on as a client if
19 we weren't confident we can help you." (*Id.*)

20 e. "We are a Law Firm, our job is to save your
21 home." (*Id.*)

22 74. The Receiver found copies of scripts containing
23 these representations on one-third to one-half of the work areas
24 in the telemarketers' work areas. (K. Johnson Decl. ¶ 4.)

25 75. Telemarketers also told customers that they would
26 not lose their homes even if they paid Contempt Defendants
27 instead of making a mortgage payment. (R. Lewis Decl. Att. M-
28 167:25-168:7, Att. O-211:14-215:22, Att. P-234:25-235:5, Att. S-

1 333:5-14; Att. U-378:24-379:7; Barrett-Sparrow Decl. ¶ 8; Caley
2 Decl. ¶ 12; Hottel Decl. ¶ 8; Linares Decl. ¶ 9; Pocasangre Decl.
3 ¶ 7; Reed Decl. ¶ 9; Reyes Decl. ¶ 6; Servin Decl. ¶ 8.) These
4 representations correspond to sales script language prompting
5 telemarketers to tell consumers that

6 if you "feel that is it [sic] in your best
7 interest not to make your payments [sic],
8 you don't have to and we will neg. any future
9 late payments you incur to be
10 eliminated/waived." Also, most of our
11 clients . . . what they "elect" to do is save
12 those payments and create a cash reserve
13 fund.

14 (Ex. 8.)

15 76. RLG did not deliver on its promises to modify
16 mortgage loans. In addition to the consumers who received
17 foreclosure notices and lost their homes, multiple consumers
18 testified about the lack of results obtained on their behalf by
19 Contempt Defendants. (See, e.g., Barrett-Sparrow Decl. ¶¶ 16-24;
20 Caley Decl ¶¶ 18-31; Castro Decl. ¶¶ 10-24; Hottel Decl. ¶¶ 13-
21 21; Mitchell Decl. ¶¶ 10-14; Peralta Decl. ¶¶ 9-16; Pocasangre
22 Decl. ¶¶ 11-12; Reed Decl. ¶¶ 14-23; Rodriguez Decl. ¶¶ 11-24;
23 Servin Decl. ¶¶ 16-26; Shusterman Decl. ¶¶ 12-22.)

24 77. Consumer testimony submitted by the Contempt
25 Defendants demonstrates a lack of the promised results. Of
26 eight consumer declarants submitted by D'Antonio, half did not
27 obtain successful results, despite having retained RLG's services
28 six to eight months before the Receiver took control of Contempt

1 Defendants' premises. (See Aiello Decl., Doc. 252-2; Bernard
2 Decl., Doc 252-4; Dynek Decl., Doc. 252-5; Young Decl., Doc. 252-
3 9.) Of the remaining four declarants, two testified that they
4 received mortgage loan modifications (Olsen Decl., Doc. 252-6;
5 Spallino Decl., Doc. 252-8), and the other two, each of whom had
6 multiple properties, testified that they experienced only partial
7 success with Contempt Defendants' assistance (Barton Decl., Doc.
8 252-3; Ray Decl. 252-7).

9 78. Qsar created a chart indicating fifty-one loan
10 modifications for 2,138 combined clients of RLG and ALG. (Ex.
11 38). He estimated that "fifty-one plus another probably handful,
12 dozen, still that needed to go to the attorney for final review,
13 so I would say close to a hundred" RLG customers received loan
14 modifications. (Qsar Dep. 96:21-24.)

15 79. ALG admitted in its Further Responses and
16 Objections to Plaintiff FTC's First Set of Interrogatories that
17 it attained no completed loan modifications on behalf of clients
18 who retained services while the operation used the name ALG.
19 (Ex. 106.)

20 80. The Receiver reviewed files for the fifty-one
21 customers that Qsar identified as "mod approved," plus an
22 additional 43 files identified by Rodis, and found that eight
23 received completed loan modifications. (Temp. Receiver's Rpt.,
24 Doc. 119 at 6, 11; Kane Decl. ¶¶ 7.)

25 81. In an April 12, 2009 email, D'Antonio admitted
26 that eleven out of 1,311 clients - or 0.84% - were categorized as
27 "Mod Approved." (Kane Decl. Att. B; V. Nguyen Decl. Att. B.)
28 Qsar testified that "Mod Approved" meant that a lender had

1 actually approved a modification. (Qsar Dep. 35: 11-14.)

2 82. FTC economist Patrick McAlvanah identified a
3 random sample comprised of fifty-five customers of Contempt
4 Defendants³; the FTC was able to locate files for forty-nine of
5 those customers among the business records obtained from Contempt
6 Defendants' premises. A review of the paper files, as well as
7 the corresponding "Activity Logs" (logs documenting Contempt
8 Defendants' conversations and other actions performed in
9 connection with the files, sometimes called "con logs" (McCullar
10 Dep. 72:11-15)), revealed that one of the forty-nine received a
11 mortgage loan modification (Parnes Decl. ¶ 6, October 21, 2009;
12 Supp. Parnes Decl. ¶¶ 6-7, Nov. 10, 2009).

13 3. *Contempt Defendants Misrepresented That*
14 *Highly Qualified Attorneys Would Prevent*
15 *Foreclosures and Negotiate Modified*
16 *Mortgages.*

17 83. Contempt Defendants told consumers that
18 experienced attorneys would aggressively negotiate on their
19 behalf. In radio advertisements, websites, e-mails, and
20 telemarketing calls, Contempt Defendants told consumers they had
21 multiple attorneys with foreclosure prevention and mortgage loan
22 modification expertise. (Dyssegard Decl., Att. B; R. Lewis Decl.

23
24 ³ The fifty-five customers were selected from a sub-set of
25 1,208 of the collective total of RLG and ALG clients by
26 restricting a "date name" field to yield an initial pool
27 comprised of individuals who became customers of Contempt
28 Defendants between October 2008 and February 2009 - a data pool
that, given Contempt Defendants' telemarketing claims that it
takes six weeks to three months to complete a loan modification,
would be most likely to yield favorable results for Contempt
Defendants. (See McAlvanah Decl. ¶¶ 4-5.)

1 Att. I-121:7-12, Att. J-125: 6-8, Att. K-129:9-12; Att. M-160:17-
2 19, Att. N-185:20-25, Att. O-198:19-24, Att. P-229:14-18, Att. R-
3 297:12-16, 302:7-19, Att. S-324:18-23, Att. U-377:22-23, Att. V-
4 386-87, Att. Y-408-09, Att. QQ-584; Castro Decl. Ex. 1-8.)

5 84. Contempt Defendants' representations about their
6 staff and experience, which were often intermingled with other
7 representations about successful results, included, but were not
8 limited to telling consumers:

9 a. "My staff of real estate attorneys will fight
10 for you. I have been protecting homeowners like you
11 since 1996, and my team of experienced attorneys are
12 highly skilled in negotiating lower interest rates and
13 even lowering your principal balance. Yes, I said even
14 lowering your principal balance." (R. Lewis Decl. Att.
15 I-121:8-13 (radio advertisement.))

16 b. "[Lenders] won't do anything for you unless
17 you have an attorney in your corner. So, that's why
18 we're so successful at what we do. We're actually 100
19 percent successful. We've never had one instance where
20 a lender is not willing to work with us." (R. Lewis
21 Decl. Att. N-185:20-25 (telemarketer.))

22 c. "[W]e're a law firm. We're a law firm.
23 We're made up of several real estate attorneys and
24 we've been doing this for over a decade now, so before
25 this mortgage meltdown even started. . . . if the
26 California Bar Association would let us use the word
27 "guarantee" we would be because we are 100 percent
28 successful. We've never ever had one instance where a

1 lender is not willing to work with us." (R. Lewis
2 Decl. Att. R-302:7-19 (telemarketer.))

3 d. "We are not mortgage brokers, nor realtors.
4 We are skilled Attorneys who act as tough negotiators
5 between the homeowner and the lender With our
6 state of the art software and professional staff of
7 attorneys, paralegals, compliance officers, asset
8 managers, real estate agents and brokers we have the
9 experience necessary to achieve the most dynamic
10 resolutions available and help stop foreclosure fast
11 and effectively in this troubled market." (R. Lewis
12 Decl. Att. V-386-87 (RLG website.))

13 e. "We are not mortgage brokers, nor realtors.
14 We are a law firm with licensed attorneys who act as
15 tough negotiators between the home owner and lender . .
16 . . With our state of the art software and professional
17 staff of licensed attorneys, paralegals, compliance
18 officers, asset managers, real estate agents and
19 brokers we have the experience necessary to achieve the
20 most dynamic resolutions available and help stop
21 foreclosure fast and effectively in this troubled
22 market." (*Id.* Att. Y-408-09 (ALG website.))

23 f. "[RLG] is the leading Law Firm in the
24 country, specializing in renegotiating mortgage
25 contracts. Ron Rodis has personally been involved in
26 real estate law since 1996 and has extensive contract
27 and litigation experience. The other attorneys on
28 staff are all highly skilled in real estate law and

1 renegotiating mortgage contracts." (Castro Decl. Ex.
2 1-8 (e-mail from telemarketer to consumer); see also
3 Linares Decl. Ex. 1-7; Temp. Receiver's Rpt., Doc. 119
4 at 39-40.))

5 85. These claims induced consumers to pay for Contempt
6 Defendants' purported services. For example:

7 a. "I wanted a firm with actual lawyers to
8 handle my loan modification case since the bank likely
9 had attorneys on its side. Thus, RLG was more
10 appealing to me than other companies, because its
11 advertisement made it seem that the firm consisted of
12 several experienced attorneys that would be handling my
13 loan modification." (Hottel Decl. ¶ 4.)

14 b. "I felt comfortable ultimately hiring RLG and
15 paying the upfront fee in part because I believed that
16 RLG was a reputable law firm." (Caley Decl. ¶ 10.)

17 c. "The biggest selling point for me, however,
18 was that [the telemarketer] told me that an attorney
19 would ultimately be responsible for my case. This was
20 the primary reason that I decided to hire RLG in
21 January 2009." (Servin Decl. ¶ 11; see also *id.* ¶ 4.)

22 d. Other consumers' testimony similarly
23 demonstrates that the claims about the experience and
24 role of attorneys induced them to pay Contempt
25 Defendants' retainer fees. (Barrett-Sparrow Decl. ¶¶ 9-
26 10; Castro Decl. ¶ 6; Reed Decl. ¶ 5, 7; Reyes Decl. ¶¶
27 5-8; Shusterman Decl. ¶ 10.)

28 86. The evidence of Contempt Defendants'

1 representations about the number and experience of attorneys and
2 others on staff, submitted via consumer testimony, transcripts of
3 recordings between telemarketers and consumers, former employee
4 testimony, radio advertisement transcripts, and copies of the RLG
5 and ALG websites, matches the representations in Contempt
6 Defendants' sales scripts. Scripts, which the Receiver found in
7 one-third to one-half of the telemarketers' work areas, prompted
8 telemarketers to, *inter alia*, tell consumers that:

9 a. "Our lead attorney Ron Rodis has been doing
10 this since 1996 and every case he has brought on has
11 had principle [sic] reduction or rate reduction."
12 (Temp. Receiver's Rpt., Doc. 119 at 33.)

13 b. "[W]e are a law firm, and we won't take on
14 your case unless we are confident we can help your
15 situation." (*Id.* at 34)

16 c. "How come I couldn't do this on my own? What
17 makes you different? A) Well, you don't have a Law
18 Degree, do you? You are hiring a Law Group that has
19 been re-writing mortgage contracts since 1996. Our
20 Legal Team will be fighting on your behalf with their
21 Legal Team." (*Id.* at 35.)

22 d. "We are a Law Firm, if we do take you on as a
23 client, we will significantly REDUCE your payments,
24 even potentially lowering your principal balance, and
25 getting the lenders to forgive any late payments you
26 may have incurred." (*Id.* at 36.)

27 e. "We are a law firm made up of real estate
28 attorneys who have been helping homeowners save their

1 homes from foreclosure and battling mortgage lenders
2 for more than a decade now . . . So we were rewriting
3 the terms and conditions of our clients' mortgages way
4 before the term "Loan Modification" was even used.

5 (Ex. 7.)

6 f. "We are NOT a loan modification company. We
7 are a Law Firm. Our Attorneys are Federally Licensed,
8 we represent you in court, will they?" and "All of our
9 Attorneys are licensed in Federal Court so we will be
10 able to represent you in any State." (Temp. Receiver's
11 Rpt., Doc. 119 at 36 (scripted responses to "Typical
12 Objections" about how Contempt Defendants are different
13 and how they can represent consumers outside of
14 California.))

15 87. Contempt Defendants did not employ the promised
16 "team" or "staff" of experienced real estate attorneys
17 purportedly working aggressively on customers' behalf. Rodis was
18 the only lawyer whose involvement with RLG spanned the entire
19 October 2008 to May 2009 time period. (Rudder Decl. at 90 ¶ 15;
20 J. Smith Decl. ¶¶ 12-13.)

21 88. Rodis' involvement with the great majority of
22 customer files was minimal (N. Nguyen Decl. ¶¶ 23-26; Rudder
23 Decl. ¶¶ 10, 38-41), and for the limited number of customer files
24 he did work on, his involvement was often reluctant, amounted
25 primarily to assuaging irate customers, and rarely involved
26 discussions with lenders. (Rudder Decl. ¶¶ 38-40; J. Smith Decl.
27 ¶¶ 31-32; see also Rodis Dep. 58:9-22; 59:1-8.)

28 89. In January 2009, Rodis acknowledged that it was

1 "physically impossible" for him to speak to clients in a timely
2 manner based on the high volume of clients (RLG Opp. Ex. B.)
3 Consumer Testimony corroborates Rodis' and former employee
4 testimony regarding his limited involvement.

5 90. D'Antonio hired Chavarela in March 2009, initially
6 as Senior Partner at RLG. (Exs. 24, 53.) Chavarela was later
7 identified as ALG's managing attorney. (Ex. 59.) Chavarela
8 declined to answer questions regarding his experience at his
9 deposition, instead invoking his Fifth Amendment right against
10 self-incrimination as to all questions. (Chavarela Dep. 11:2-
11 13:3.) However, at the November 18, 2009 contempt hearing,
12 Chavarela's counsel noted that Chavarela has been admitted to
13 practice for less than two years (see also R. Lewis Decl. Att.
14 NN) and stated that Chavarela had taken continuing legal
15 education courses regarding mortgages and loan modification.

16 91. Besides Rodis and Chavarela, other attorneys at
17 times worked on customer files, but they lacked the promised
18 experience. Nhahanh Nguyen worked at RLG for just three days in
19 February 2009 (N. Nguyen Decl. ¶ 2); she was admitted to practice
20 in November 2008 (*id.* ¶ 3; R. Lewis Decl. Att. PP). Erik Brimmer
21 transferred to RLG from TFG dba Tax Relief ASAP in January or
22 February 2009; he lacked experience with mortgage loan
23 modifications and "shadowed" existing legal support staff to
24 learn what to do. (Rudder ¶ 17; J. Smith Decl. ¶¶ 13-14.)
25 Contempt Defendants identify Brimmer, as well as Barbara Marie
26 "Maria" Dennis, and Jennifer Lee, as attorneys involved with the
27 operation. RLG's Opposition Brief states that Brimmer and Dennis
28 worked for RLG from January to May 2009 and that Lee joined the

1 staff in May 2009, and D'Antonio, RLG, and ALG each claim that
2 Brimmer, Dennis, and Lee were attorneys who assisted Rodis and
3 Chavarela. Otherwise, there is no record evidence regarding
4 these employment dates, or the experience of either Dennis or
5 Lee.

6 92. Most of the non-attorney staff did not have
7 foreclosure prevention or loan modification experience, and
8 Contempt Defendants did not provide instruction or training in
9 preventing foreclosures or obtaining loan modifications between
10 November 2008 and mid-April 2009. (See Rudder Decl. ¶¶ 19, 29-
11 30, J. Smith ¶ 22; Temp. Receiver's Rpt., Doc. 119 at 5-6; K.
12 Johnson Decl. ¶ 5; Kane Decl. ¶ 5; Qsar Dep. 75:21-77:13.) To
13 the extent that Contempt Defendants began hiring staff with more
14 experience and started providing more training in mid-April, the
15 timing of the changed practices coincided with public
16 announcements about law enforcement activity in the mortgage loan
17 and foreclosure relief area.

18 4. *Contempt Defendants Misrepresented That They*
19 *Conducted "Forensic" Analyses of Consumers'*
20 *Mortgages.*

21 93. Contempt Defendants also told consumers they would
22 conduct forensic analyses of their mortgages to use as leverage
23 in negotiations with lenders. (Temp. Receiver's Rpt., Doc. 119
24 at 9.) The websites and telemarketers claimed that experienced
25 real estate attorneys would carefully review and analyze
26 consumers' mortgages for legal violations. (Brand Decl. ¶ 8; R.
27 Lewis Decl. Att. M-164:20-165:7, Att. V-386.)

28 94. The websites highlighted Contempt Defendants'

1 promises to conduct a customized forensic review of each
2 consumer's case:

3 There simply is not one right solution for
4 everyone, and no one can tell you what is
5 right for you without thoroughly analyzing
6 your legal rights, financial situation and a
7 **forensic audit** of your loan documents. We
8 understand the mortgage industry from years
9 of experience and will use leverage to
10 negotiate to benefit you.

11 (R. Lewis Decl. Att. V-386, Att. Y-409; Exs. 3, 4.) (Emphasis
12 added.)

13 95. Contempt Defendants admit they did not conduct a
14 single "forensic analysis" of a customer's mortgage loan
15 documents. (Temp. Receiver's Rpt., Doc. 119 at 10; Kane Decl. ¶
16 6; see also Qsar Dep. 21:16-21.)

17 96. Both Rodis and Chavarela stated that any such
18 audit "would need to be outsourced," but there is no evidence
19 that Contempt Defendants ever outsourced such an audit. (Temp.
20 Receiver's Rpt., Doc. 119 at 10; Kane Decl. ¶ 6.) Both Rodis and
21 Chavarela declined to answer questions regarding forensic audits
22 during their respective depositions, instead invoking their Fifth
23 Amendment rights against self-incrimination as to all questions.
24 (Rodis Dep. 41:7-19, 56:9-57:8; Chavarela Dep. 21:6-19, 24:16-
25 25:8.)

26 //

27 //

28 //

1 5. *Contempt Defendants Changed Policies and*
2 *Practices After They Learned of the FTC's*
3 *Investigation.*

4 a. Contempt Defendants introduced
5 disclaimers and terminated a group of
6 recent telemarketer hires after they
7 learned of the FTC's investigation.

8 97. D'Antonio suspected there was an FTC investigation
9 sometime between January 14, 2009, and early February 2009.

10 Christi D'Antonio held a meeting, which Bryan D'Antonio attended,
11 at which she told staff to be careful what they said on the phone
12 and directed them to follow up on every single file by the end of
13 the day, because they "had caught wind of an FTC investigation."

14 (Rudder Dep. 83:3-84:12.) The meeting took place sometime after
15 a meeting with Bryan D'Antonio that Sarah Rudder testified took
16 place on January 14, 2009 (Rudder Dep. 66:8-73:14), and before
17 Rudder resigned from RLG in early February 2009 (Rudder Decl. ¶
18 2).

19 98. During the same period, in late January or early
20 February 2009, RLG instructed its telemarketers to add a "no
21 guarantee" disclaimer at the end of the sales pitch. (Dyssegard
22 Decl. ¶¶ 2, 10; McCullar Dep. 163:21-164:4.)

23 99. To the extent RLG may have provided the disclaimer
24 to consumers, telemarketers were instructed to do so only *after*
25 they concluded their sales pitch, including the
26 misrepresentations. (See Dyssegard Decl. ¶ 10; Dyssegard Dep.
27 136:2-9; McCullar Dep. 265:13-23.) Similarly, Contempt
28 Defendants' retainer agreements included a "No Guarantee-

1 Scheduling" provision. (See, e.g., Barrett-Sparrow Decl. Ex. 1;
2 Caley Decl. Ex. 2; Doc. 131 Ex. C.) The provision appears,
3 however, at the end of three pages of legalese addressing such
4 topics as arbitration, referral fees, jurisdiction, and
5 severability. (Barrett-Sparrow Decl. Ex. 1; Caley Decl. Ex. 2;
6 Doc. 131, Ex. C.) The agreement disclaims any representations
7 regarding success or outcome (Barrett-Sparrow Decl. Ex. 1; Caley
8 Decl. Ex. 2; Doc. 131, Att. C at 19), but was sent to consumers
9 only *after* telemarketers completed the sales pitch that contained
10 numerous promises about results. (R. Lewis Decl. Att. G-79:4-9
11 (RLG telemarketer told FTC undercover investigator that, despite
12 retainer agreement language, loan would be modified); see also
13 Temp. Receiver's Rpt., Doc. 119 at 34 (script for rebutting
14 question "What is my guarantee?" directs telemarketers to state
15 "We only bring on cases that we are confident we can help" or
16 that law firms cannot guarantee an outcome, but "we won't take on
17 your case unless we are confident we can help your situation");
18 *id.* at 37 (script for rebutting questions about refunds, "we
19 wouldn't take you on as a client if we weren't confident we can
20 help you."))

21 100. During the corresponding time period, in early
22 February 2009, Contempt Defendants terminated Dyssegard, along
23 with the other telemarketers who had been in his class of new
24 hires. (Dyssegard Decl. ¶ 2.)

25 101. Contempt Defendants made an effort to hire more
26 legal support staff around the same time period, beginning in
27 February or March 2009. (Castillo Decl. ¶ 5.)

28 //

1 b. Contempt Defendants implemented other
2 operational changes after the FTC and
3 other federal and state law enforcement
4 agencies announced a crackdown on
5 mortgage relief fraud.

6 102. On April 6, 2009, the FTC, the United States
7 Department of Justice (DOJ), the United States Department of
8 Housing and Urban Development (HUD), and state Attorneys General
9 announced a crackdown on fraud and deception in the mortgage
10 relief area. FTC Chairman Jon Leibowitz, Treasury Secretary
11 Timothy Geithner, United States Attorney General Eric Holder, HUD
12 Secretary Shaun Donovan, and Illinois Attorney General Lisa
13 Madigan participated in a widely covered press conference. Among
14 other actions and initiatives, the FTC announced four law
15 enforcement actions alleging deceptive practices by loan
16 modification companies, including one in Orange County,
17 California. (Supp. Parnes Decl. Att. B., Doc. 276.)

18 103. Shortly thereafter, Contempt Defendants
19 purportedly took steps to implement policies and procedures to
20 return client phone calls and keep track of client files. These
21 policies were largely unsuccessful, as consumers still had a
22 difficult time reaching someone at RLG or ALG who could answer
23 their questions. (See Caley Decl. ¶ 24; Hottel Decl. ¶ 18;
24 Mitchell Decl. ¶¶ 13-14; Reed Decl. ¶ 20; Servin Decl. ¶ 23;
25 Shusterman Decl. ¶ 18.) In addition, the Receiver found that, on
26 May 28, 2009, the client files "were not physically maintained in
27 a systematic or orderly manner." (K. Johnson Decl. ¶ 6.)
28 Contempt Defendants also hired additional legal support personnel

1 and made a concerted effort to submit a large number of loan
2 modification packages to lenders, including "aged" clients whose
3 files had been sitting untouched for months. (Qsar Dep. 75:21-
4 77:13; DelGallego Decl. ¶ 5.)

5 104. Qsar, who began work with Contempt Defendants on
6 March 6, 2009 (Qsar Decl. ¶ 1), testified that 700 loan
7 modification application packages were submitted during his
8 tenure (Qsar Dep. 22:2-13), and that he implemented effective new
9 policies in mid-April 2009 (*id.* 14:5-15:1). Even this were true,
10 and the Court does not find it to be true that 700 loan packages
11 were submitted, it would mean that virtually every loan
12 modification package submitted to lenders by the Contempt
13 Defendants was submitted during the six-week period between the
14 government's April 6, 2009 announcement of a crackdown on loan
15 modification fraud and entry of the TRO.

16 106. According to the Temporary Receiver's Report, the
17 combined entities' books and records disclose total intake of
18 \$12,116,252 from consumers, with \$1,483,469 thereof refunded to
19 consumers. (Temp. Receiver's Rpt., Doc. 119 at 90-91.)

20 **III.**

21 **CONCLUSIONS OF LAW**

22 **I. The Court Has Inherent Power to Enforce the Permanent**
23 **Injunction through Civil Contempt**

24 **A. Jurisdiction.**

25 1. The Court has jurisdiction over this matter for
26 all purposes, as specifically reserved in Section XV ("Continued
27 Jurisdiction") of the Permanent Injunction. (Doc. 74.)

28 //

1 B. Legal Standard for Civil Contempt.

2 2. The Court has the inherent power to enforce its
3 Permanent Injunction through civil contempt. *Shillitani v.*
4 *United States*, 384 U.S. 364, 370, 86 S. Ct. 1531, 1535, 16 L. Ed.
5 2d 622 (1966). As a party to the original action, the FTC may
6 invoke the court's power by initiating a proceeding for civil
7 contempt. *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 444-
8 45, 31 S. Ct. 492, 55 L. Ed. 797 (1911). The contempt "need not
9 be willful," and there is no good faith exception to the
10 requirement of obedience to a court order. *Stone v. City and*
11 *County of San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992); *In re*
12 *Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir.
13 1987).

14 3. "The standard for finding a party in civil
15 contempt is well settled: 'The moving party has the burden of
16 showing by clear and convincing evidence that the contemnors
17 violated a specific and definite order of the court. The burden
18 then shifts to the contemnors to demonstrate why they were unable
19 to comply.'" *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239
20 (9th Cir. 1999) (citations omitted). The contemnors "must show
21 they took every reasonable step to comply." *Stone*, 968 F.2d at
22 856; *SEC v. Children's Internet, Inc.*, 2009 WL 2160660, *2 (N.D.
23 Cal., July 20, 2009).

24 4. Third parties, such as RLG, ALG, and Financial
25 Group, are subject to an injunctive order when they are "in
26 active concert or participation with [a party]" and "receive
27 actual notice of [the order] by personal service or otherwise."
28 Fed. R. Civ. P. 65(d)(2).

1 C. The Permanent Injunction Applies to Contempt
2 Defendants.

3 5. Clear and convincing evidence establishes that the
4 Permanent Injunction applies to all of the Contempt Defendants.

5 1. *Contempt Defendant D'Antonio Is Bound by the*
6 *Permanent Injunction.*

7 6. The Permanent Injunction binds D'Antonio because
8 he was a party to the original litigation in this matter and
9 signed an affidavit declaring that he received that order.

10 2. *Contempt Defendant RLG Is Bound by the*
11 *Permanent Injunction.*

12 7. The Permanent Injunction binds RLG because it had
13 actual notice of the Permanent Injunction and acted in concert
14 and participation with D'Antonio. Fed. R. Civ. P. 65(d).

15 8. The knowledge of a company's officer and manager
16 is imputed to the company. Cal. Civ. Code § 2332; *See Bank of*
17 *New York v. Fremont General Corp.*, 523 F.3d 902, 911 (9th Cir.
18 2008) ("Generally, the knowledge of a corporate officer within
19 the scope of his employment is the knowledge of the corporation."
20 *Meyer v. Glenmoor Homes, Inc.*, 246 Cal. App. 2d 242, 54 Cal.
21 Rptr. 786, 800-01 (1966)."); *United States v. One Parcel of Land*
22 *Located at 7326 Highway 45 North, Three Lakes, Oneida County,*
23 *Wisconsin*, 965 F.2d 311, 316 (7th Cir. 1992) ("a corporation
24 'knows' through its agents"); *People v. Forest E. Olson, Inc.*,
25 137 Cal. App. 3d 137, 140, 186 Cal. Rptr. 804, 806-07 (Cal. Ct.
26 App. 1982). *See also FTC v. Neiswonger*, 494 F. Supp. 2d 1067,
27 1079 (E.D. Mo. 2007) ("Personal service is not required under
28 Rule 65(d). All that is required is knowledge of the mere

1 existence of the injunction; not its precise terms. Furthermore,
2 direct evidence is not required to sustain the FTC's burden of
3 showing actual notice." (citation omitted)).

4 9. D'Antonio was a *de facto* officer and manager of
5 RLG. D'Antonio identified himself as Chief Executive Officer
6 ("CEO") and Senior Manager of RLG in corporate documents and in
7 written and verbal communications to employees, and he
8 demonstrated control of RLG by providing the initial financing of
9 the company, subsequently directing allocation of company funds,
10 exercising hiring and firing authority, dictating company sales
11 strategy, and making other operational decisions. D'Antonio was
12 a signatory on all of RLG's bank accounts.

13 10. D'Antonio, Rodis, and Chavarela each asserted
14 their Fifth Amendment privilege against self-incrimination when
15 questioned at their depositions about D'Antonio's title,
16 ownership, and control over RLG, TFG, and ALG. Therefore, the
17 Court infers that D'Antonio was in fact an officer, principal,
18 and owner of RLG, TFG, and ALG, and that he controlled their
19 daily operations. See *SEC v. Gemstar-TV Guide Int'l, Inc.*, 401
20 F.3d 1031, 1046 (9th Cir. 2005) (citing *SEC v. Colello*, 139 F.3d
21 674, 677 (9th Cir. 1998)).

22 11. D'Antonio was the *de facto* principal and CEO of
23 RLG/ALG from their inception through May 28, 2009. *John Paul*
24 *Lumber Co. v. Agnew et al.*, 125 Cal. App. 2d 613, 619, 270 P.2d
25 1044, 1048 (1954) ("A *de facto* officer of a private corporation
26 is defined as being one who has the reputation of being the
27 officer he assumes to be in the exercise of the functions of the
28 office, and yet is not a good officer in point of law; and as one

1 who is in possession of an office and discharging its duties
2 under color of authorities.") D'Antonio controlled the
3 operations until the Receiver took control on May 28, 2009. From
4 its incorporation on October 20, 2008 through April 1, 2009, when
5 RLG filed a notice with the California Secretary of State listing
6 Ronald Rodis as its sole officer, D'Antonio was the only person
7 who claimed to be CEO of RLG. D'Antonio's actual knowledge of
8 the Permanent Injunction, while he acted as *de facto* principal
9 and CEO of RLG, is imputed to RLG. *FTC v. Vocational Guides,*
10 *Inc.*, 2009 WL 943486 at *15, ¶ 22 (M.D. Tenn. April 6, 2009)
11 ("Because Jackson was Grant Info's *de facto* principal and
12 controlled the company, his knowledge of the Final Order . . . is
13 imputed to Grant Info.")

14 12. In addition, D'Antonio's actual knowledge of the
15 Permanent Injunction is imputed to RLG as its agent acting within
16 the scope of his agency. D'Antonio exercised ultimate decision-
17 making authority over RLG's contumacious marketing activities.
18 He was, at a minimum, a senior manager with actual and apparent
19 authority over RLG's advertisements, telemarketing, individual
20 telemarketing pitches, collection of fees from consumers, refunds
21 to consumers, and the relative amount of funding to provide to
22 the marketing and service fulfillment sides of RLG's operations.
23 D'Antonio was, if not a principal, RLG's agent for all activities
24 related to RLG's contumacious activities, and, therefore, his
25 actual knowledge of the Permanent Injunction is imputed to RLG.
26 Cal. Civ. Code § 2332. ("As against a principal, both principal
27 and agent are deemed to have notice of whatever either has notice
28 of, and ought, in good faith and the exercise of ordinary care

1 and due diligence, to communicate to the other.”)

2 13. Rodis, whose name and law license were used by
3 RLG, had actual knowledge of the Permanent Injunction since at
4 least March 6, 2009.

5 14. RLG acted in concert with D’Antonio. RLG was the
6 entity through which D’Antonio engaged in telemarketing and made
7 misrepresentations about RLG’s foreclosure and loan modification
8 services, from October 2008 through mid-April 2009.

9 3. *Contempt Defendant ALG Is Bound by the*
10 *Permanent Injunction.*

11 15. The Permanent Injunction binds Contempt Defendant
12 ALG because it had actual notice of the Permanent Injunction and
13 acted in concert and participation with D’Antonio. Fed. R. Civ.
14 P. 65(d).

15 16. Like RLG, ALG received actual notice of the
16 Permanent Injunction through D’Antonio because he was a *de facto*
17 principal, officer, and controlling manager of ALG (which did not
18 have any formal officers).

19 17. D’Antonio identified himself as a Senior Director
20 of ALG in corporate documents and written communications to
21 employees and demonstrated control of ALG by providing the
22 initial financing of the company, subsequently directing
23 allocation of company funds, exercising hiring and firing
24 authority, dictating company sales strategy, and making other
25 operational decisions. D’Antonio was a signatory on all of ALG’s
26 bank accounts. ALG was a continuation of D’Antonio’s foreclosure
27 prevention and loan modification operation begun as RLG.

28 18. In addition, ALG received actual notice of the

1 Permanent Injunction through D'Antonio's role as its agent with
2 control over ALG's telemarketing operations and general
3 advertising.

4 19. ALG also acted in concert with D'Antonio. ALG was
5 the entity through which D'Antonio continued to engage in
6 telemarketing and make misrepresentations about foreclosure and
7 loan modification services, from mid-April 2009 until May 28,
8 2009, when Contempt Defendants were served with the TRO.

9 4. *Contempt Defendant TFG Is Bound by the*
10 *Permanent Injunction.*

11 20. The Permanent Injunction binds Contempt Defendant
12 TFG because it had actual notice of the Permanent Injunction and
13 acted in concert or participation with D'Antonio. Fed. R. Civ.
14 P. 65(d).

15 21. Like RLG and ALG, TFG received actual notice of
16 the Permanent Injunction through D'Antonio because he was a *de*
17 *facto* principal, officer, and controlling manager of TFG.

18 22. D'Antonio identified himself as a Senior Director
19 of TFG in corporate documents and in written and verbal
20 communications to employees, and demonstrated control of TFG by
21 directing allocation of company funds, exercising hiring and
22 firing authority, dictating company sales strategy, and making
23 other operational decisions.

24 23. In addition, TFG received actual notice of the
25 Permanent Injunction through D'Antonio's role as its agent with
26 control over TFG's telemarketing operations and general
27 advertising.

28 24. TFG received actual notice of the Permanent

1 Injunction against D'Antonio because TFG was the alter ego of
2 D'Antonio. The Contempt Defendant TFG acted on behalf of
3 D'Antonio and therefore acted with his knowledge.

4 25. TFG was in active concert or participation with
5 D'Antonio, RLG, and ALG. TFG shared human resources, accounting,
6 and information technology staff with ALG and RLG, and D'Antonio
7 was a signatory on bank accounts for all three corporate Contempt
8 Defendants. TFG was integrally involved with the management and
9 allocation of funds between the entities, as well as with the
10 mortgage rescue operations.

11 26. TFG has not made an appearance or contested this
12 proceeding in any way and is therefore in default. Based on
13 TFG's default, along with D'Antonio's assertion of his Fifth
14 Amendment privilege against self-incrimination when questioned at
15 his deposition about his title, ownership, and control over TFG,
16 as well as the clear and convincing evidence of D'Antonio's
17 control over TFG, the Court concludes that TFG had actual notice
18 of the Permanent Injunction and acted in concert with D'Antonio.

19 5. *TFG Was an Alter Ego of D'Antonio, and*
20 *Therefore Is Bound by the Permanent*
21 *Injunction.*

22 27. TFG is bound by the Permanent Injunction as the
23 alter ego of D'Antonio. As alter ego of D'Antonio, TFG shares
24 D'Antonio's knowledge of the Permanent Injunction. "Under the
25 alter ego doctrine, . . . [w]hen the corporate form is used to
26 perpetrate a fraud, circumvent a statute, or accomplish some
27 other wrongful or inequitable purpose, the courts will ignore the
28 corporate entity and deem the corporation's acts to be those of

1 the persons or organizations controlling the corporation, in most
2 instances the equitable owners." *Sonora Diamond Corp. v.*
3 *Superior Court*, 83 Cal. App. 4th 523, 538, 99 Cal. Rptr. 2d 824
4 (2000); *See also Troyk v. Farmers Group, Inc.*, 171 Cal. App. 4th
5 1305, 1342-43, 90 Cal. Rptr. 589, 619-20 (2009).

6 28. To determine whether TFG is the alter ego of
7 D'Antonio, the Court inquires whether: (1) there is a "unity of
8 interest and ownership" between TFG and D'Antonio, and (2) there
9 will be an "inequitable result" if the company's acts "are
10 treated as those of a corporation alone." *Sonora Diamond*, 83
11 Cal. App. 4th at 538.⁴ TFG meets this test. First, the
12 Contempt Defendants used the same employees and offices and were
13 all controlled by D'Antonio and his senior managers. There is no
14 evidence that the Contempt Defendants followed corporate
15 formalities. They acted interchangeably and in concert to market
16 and sell mortgage loan modification and foreclosure rescue
17 services. D'Antonio controlled all expenditures by RLG, TFG, and
18 ALG, and transferred money between these entities and ultimately
19 to his personal accounts. As the person with ultimate control
20 over all of their assets, and the person who profited directly
21 from their practices, D'Antonio was the equitable owner of RLG,
22 TFG, and ALG.

23 _____
24 ⁴Factors for the trial court to consider include the
25 commingling of funds and assets of the two entities, identical
26 equitable ownership in the two entities, use of the same offices
27 and employees, disregard of corporate formalities, identical
28 directors and officers, and use of one as a mere shell or conduit
for the affairs of the other. . . . No one characteristic
governs, but the courts must look at all the circumstances to
determine whether the doctrine should be applied." *Troyk* 171
Cal. App. 4th at 1342, 90 Cal. Rptr. at 619 (citations omitted).

1 29. Allowing the non-party Contempt Defendant TFG to
2 circumvent the Permanent Injunction would frustrate the equitable
3 purposes of the Permanent Injunction, undermine the inherent
4 authority of this Court to enforce its orders, and be an
5 "inequitable result." *Troyk*, 171 Cal. App. 4th at 1343, 90 Cal.
6 Rptr. at 620-21.

7 6. *Corporate Contempt Defendants Are Bound by*
8 *the Permanent Injunction as a Common*
9 *Enterprise.*

10 30. Contempt Defendants acted as a common enterprise.
11 Participants in a "common enterprise" share liability for the
12 unlawful practices of any of the participants without regard to
13 their corporate identities or affiliation. The factors courts
14 typically consider to determine the existence of a "common
15 enterprise" include: (1) whether purportedly separate
16 corporations share employees, officers and office space; (2)
17 whether corporate entities deal at arms-length; (3) whether
18 corporate entities have their own substantive businesses; and (4)
19 whether there is a commingling of corporate assets. *See, e.g.,*
20 *FTC v. J.K. Publications*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal.
21 2000) (common enterprise found where corporate defendants were
22 under individual defendant's common control, shared office space,
23 employees, and officers); *See also Sunshine Art Studios v. FTC*,
24 481 F.2d 1171, 1173, 1175 (1st Cir. 1973); *Delaware Watch Co. v.*
25 *FTC*, 332 F.2d 745, 746 (2d Cir. 1964); *Waltham Precision*
26 *Instrument Co. v. FTC*, 327 F.2d 427, 431 (7th Cir. 1964); *FTC v.*
27 *Ameridebt*, 343 F. Supp. 2d 451, 462 (D. Md. 2004); *CFTC v. IBS,*
28 *Inc.*, 113 F. Supp. 2d 830, 849 (W.D.N.C. 2000); *FTC v. U.S. Oil &*

1 *Gas Corp.*, 1987 U.S. Dist. Lexis 16137 (S.D. Fla. July 10, 1987).

2 31. In this case, the corporate Contempt Defendants
3 shared office space, managers, employees, human resources,
4 accounting, and IT support. The funds of RLG, ALG, and TFG were
5 commingled, as D'Antonio moved money freely between corporate
6 accounts and to his personal accounts. D'Antonio also used
7 various corporate accounts to accept payment from consumers and
8 to pay employees. The corporate Contempt Defendants worked
9 together to market mortgage modification and foreclosure rescue
10 services. Most significantly, RLG, ALG, and TFG were under the
11 common control of Bryan D'Antonio and his senior managers.

12 32. The Contempt Defendants are jointly and severally
13 liable as a common enterprise. *J.K. Publications*, 99 F. Supp. 2d
14 at 1202. As a common enterprise, the corporate Contempt
15 Defendants shared the actual knowledge of the Permanent
16 Injunction with each other, and thus the actual notice of any
17 corporate Contempt Defendant is imputed to each of the corporate
18 Contempt Defendants.

19 **II. Contempt Defendants Violated a Definite and Specific**
20 **Court Order.**

21 A. The Permanent Injunction is Definite and Specific.

22 33. The relevant provisions of the Permanent
23 Injunction - the telemarketing definition (in "Definitions"),
24 Section I ("Permanent Ban") and Section II ("Prohibited
25 Representations") are definite and specific.

26 1. *The Telemarketing Ban Is Definite and*
27 *Specific.*

28 34. Section I.B. of the Permanent Injunction bans

1 D'Antonio, and those in active concert with him, from:
2 engaging in, or receiving any remuneration of
3 any kind whatsoever from, holding any
4 ownership interest, share, or stock in, or
5 serving as an officer, director, trustee,
6 general manager of, or consultant or advisor
7 to, any business entity engaged, or assisting
8 others engaged in any of these activities, in
9 whole or in part, in . . . [t]elemarketing or
10 assisting others engaged in telemarketing.

11 (Doc. 74 at 5-6.)

12 35. The Permanent Injunction defines the term
13 "telemarketing" as "[a] plan, program or campaign which is
14 conducted to induce the purchase of goods or services by the use
15 of one or more telephones and which involves more than one
16 interstate telephone call." (*Id.* at 4.) The Contempt
17 Defendants' practice of marketing and selling their mortgage loan
18 modification and foreclosure rescue services ("to induce the
19 purchase of . . . services") during thousands of interstate
20 telephone calls that were initiated by consumers in response to
21 Contempt Defendants' Internet and radio advertising (the "plan,
22 program or campaign") fits within this definition of
23 telemarketing and is prohibited by the Permanent Injunction.

24 36. "Telemarketing" does not mean, nor could it be
25 understood to mean, only outbound telephone sales calls to
26 persons with whom the callers have no prior relationship (*i.e.*
27 "cold-call" telemarketing). There is no such limitation in the
28 definition. The definition of "telemarketing" and the injunctive

1 prohibition against it in the 2001 Order are not vague, but clear
2 and unambiguous on their face.

3 37. The Court need not look beyond the four corners of
4 the Order to determine its scope when the provisions are clear on
5 their face. *Firefighters Local Union No. 1784 v. Stotts*, 467
6 U.S. 561, 574, 104 S. Ct. 2576, 2585, 81 L. Ed. 2d 483 (1984)
7 ("the 'scope of a consent decree must be discerned within its
8 four corners, and not by reference to what might satisfy the
9 purposes of one of the parties to it'") (quoting *United States v.*
10 *Armour & Co.*, 402 U.S. 673, 681-82, 91 S. Ct. 1752, 1757-58
11 (1971)); *Stone*, 968 F.2d at 861.

12 38. Telemarketing is sufficiently defined by the
13 Order, without reference to any outside source, to include all
14 campaigns that use telephones and interstate telephone calls to
15 complete sales. The definition describes Contempt Defendants'
16 telephone sales operations. There is no need to look beyond the
17 Order to consider D'Antonio's interpretation of the Order.

18 39. To look outside the four corners of the Permanent
19 Injunction to either the circumstances under which the Permanent
20 Injunction was entered or the common understanding of the term
21 "telemarketing" does not help D'Antonio. In the original action
22 against D'Antonio, the Commission alleged that defendants used
23 general media advertisements to generate inbound telemarketing
24 calls and then made deceptive representations during their
25 telemarketing operations. D'Antonio admitted to these inbound
26 telemarketing practices by pleading guilty to an indictment
27 alleging the same facts. The telemarketing ban stemming from his
28 inbound telemarketing scheme was designed - at a minimum - to

1 prohibit future, similar, inbound telemarketing. Thus,
2 D'Antonio's argument, which is made through counsel and without
3 sworn testimony, that he did not understand the ban to apply to
4 inbound telemarketing is not credible.

5 40. The American Heritage Dictionary defines
6 "telemarketing" as "the business or practice of marketing goods
7 or services by telephone." (4th Ed. 2009.) This definition is
8 consistent with that in the Permanent Injunction and covers the
9 Contempt Defendants' inbound telemarketing program. D'Antonio's
10 reliance on the FTC's Telemarketing Sales Rule, 16 CFR Part 310
11 ("TSR"), does not support excluding inbound telemarketing from
12 the scope of the Preliminary Injunction. The original, and still
13 primary, purpose of the TSR, as set forth in the authorizing
14 legislation, is to prevent telemarketing fraud, not to stop
15 irritating cold call telemarketing.⁵ The TSR's definitions of
16 "telemarketing" and "telemarketer" ("any person who, in
17 connection with telemarketing, initiates or receives telephone
18 calls to or from a customer or donor") describe the Contempt
19 Defendants' telephone sales operation. 16 C.F.R. §§ 310.2 (bb)
20

21 ⁵ See Telemarketing & Consumer Fraud & Abuse Prevention Act,
22 15 U.S.C. § 6101: (1) Telemarketing differs from other sales
23 activities in that it can be carried out by sellers across State
24 lines without direct contact with the consumer. Telemarketers
25 also can be very mobile, easily moving from State to State. (2)
26 Interstate telemarketing fraud has become a problem of such
27 magnitude that the resources of the Federal Trade Commission are
28 not sufficient to ensure adequate consumer protection from such
fraud. (3) Consumers and others are estimated to lose \$40
billion a year in telemarketing fraud. (4) Consumers are
victimized by other forms of telemarketing deception and abuse.
(5) Consequently, Congress should enact legislation that will
offer consumers necessary protection from telemarketing deception
and abuse.

1 and (cc).

2 41. D'Antonio suggests, through counsel, that he read
3 the definition of telemarketing to incorporate certain exceptions
4 in the TSR to its general requirements. However, the Commission
5 may seek broader remedies against individuals whom it sues in
6 Federal Court for engaging in deceptive, inbound telemarketing,
7 and the Court may proscribe a defendant's future conduct in
8 consideration of his past conduct. See *FTC v. J.K. Publications*,
9 99 F. Supp. 2d at 1176. Even had D'Antonio supplied evidence
10 that he subjectively understood the definition of "telemarketing"
11 in the Permanent Injunction to incorporate the TSR's exceptions,
12 this understanding would not be reasonable given the clarity of
13 the definition, the totality of the circumstances, and the common
14 meaning of the term.

15 42. D'Antonio contends that he reasonably believed
16 the Permanent Injunction prohibited "telemarketing" when selling
17 "business ventures" because both bans are in the same section of
18 the Permanent Injunction, separated by the word "and." This
19 narrow reading of the Permanent Injunction would ignore the
20 definitions section, which states that "[t]he terms 'and' and
21 'or' have both conjunctive and disjunctive meanings."⁶ Most
22 importantly, D'Antonio offered no evidence concerning his
23 understanding of the Permanent Injunction, choosing instead to
24 remain silent.

25
26 ⁶ D'Antonio's counsel suggests that D'Antonio was not
27 sophisticated enough to incorporate this definition. This
28 purported lack of sophistication is inconsistent with the claim
that he based his understanding on Federal Register notices
related to the FTC's 2004 do-not-call amendments to the TSR.

1 43. D'Antonio also argues that it would be
2 impracticable for him to know whether inbound telemarketing calls
3 were interstate. Given Contempt Defendants' national advertising
4 and nationwide distribution of customers, the argument lacks
5 merit.

6 2. *The Prohibition on Misrepresenting Material*
7 *Facts Is Clear and Definite.*

8 44. Section II of the Permanent Injunction prohibits
9 D'Antonio, and those in active concert with him, from
10 misrepresenting, "in connection with the advertising, marketing,
11 promoting, telemarketing, offering for sale, or sale of any good
12 or service, . . . any fact material to a consumer's decision to
13 buy or accept the good or service." (Doc. 74 at 8-9.)

14 45. The Permanent Injunction provides "fair and well-
15 defined notice" that telemarketing and making material
16 misrepresentations are prohibited. See *Reno Air Racing Assoc.,*
17 *Inc. v. McCord*, 452 F.3d 1126, 1132 (9th Cir. 2006).

18 B. The FTC Established by Clear and Convincing
19 Evidence That Contempt Defendants Violated the
20 Permanent Injunction's Prohibition Against
21 Telemarketing.

22 46. There is clear and convincing evidence that
23 Contempt Defendants violated the Permanent Injunction's
24 telemarketing ban. Contempt Defendants' operation was based on a
25 concerted telemarketing campaign. Contempt Defendants devoted
26 significant resources to their nationwide radio advertising,
27 which, along with their websites, directed consumers to call a
28 toll-free telephone number. Thereafter, Contempt Defendants'

1 dozens of telemarketers fielded thousands of consumer calls and
2 made false promises of modified mortgage loans with lower
3 interest rates and substantially reduced monthly payments. The
4 telemarketers used scripted sales pitches and "rebuttal" scripts
5 to induce consumers to purchase the Contempt Defendants' mortgage
6 loan modification and foreclosure rescue services. D'Antonio,
7 TFG, RLG, and ALG all participated directly in the telemarketing
8 campaign. Therefore, Contempt Defendants violated the Permanent
9 Injunction by engaging in telemarketing.

10 C. The FTC Has Established by Clear and Convincing
11 Evidence That Contempt Defendants Violated the
12 Permanent Injunction's Prohibition Against Making
13 Material Misrepresentations.

14 47. There is clear and convincing evidence that
15 Contempt Defendants violated the Permanent Injunction's ban
16 against making material misrepresentations. Contempt Defendants
17 made numerous material misrepresentations to market and sell
18 foreclosure prevention and mortgage loan modification services.
19 Specifically, Contempt Defendants falsely represented to
20 consumers that: (1) none of their clients had ever lost a home
21 to foreclosure; (2) consumers would receive mortgage loan
22 modifications with substantially reduced interest rates, reduced
23 principal balances, and substantially reduced and affordable
24 monthly payments; and, (3) highly experienced attorneys would
25 fight for them in ways that included conducting "forensic audits"
26 that would compel lenders to offer affordable mortgage terms.

27 //

28 //

1 1. *Contempt Defendants Misrepresented the Nature*
2 *of the Services Provided, Their History of*
3 *Success, and the High Likelihood That*
4 *Contempt Defendants Would Negotiate a*
5 *Substantially Reduced Mortgage Payment.*

6 48. Contempt Defendants misrepresented that they
7 employed multiple attorneys with foreclosure prevention and loan
8 modification expertise and had never lost a home to foreclosure.

9 Contempt Defendants did not employ the number of
10 attorneys promised, or attorneys with the promised
11 qualifications. Contempt Defendants did not have ten to twelve
12 years of experience successfully negotiating reduced mortgage
13 modifications. Neither RLG nor ALG conducted forensic audits,
14 pursued legal action against lenders, or, in most instances, even
15 negotiated with lenders' legal departments.

16 49. Although Contempt Defendants were sometimes
17 successful in delaying foreclosure sales for their clients, a
18 significant number of Contempt Defendants' customers lost their
19 homes to foreclosure.

20 50. Contempt Defendants made express and implied
21 representations to consumers that they would successfully reduce
22 consumers' monthly mortgage rates by negotiating with their
23 lenders to drastically reduce interest rates and principal
24 balances. Contempt Defendants, in their national radio
25 advertisements, Internet website, and telemarketing pitches, told
26 consumers that they routinely obtained lower interest rates,
27 lower monthly payments, and reduced principal balances. Once
28 consumers called the toll-free number, Contempt Defendants'

1 telemarketers repeated these claims, frequently asserting a 90%
2 or 100% success rate over a ten to twelve year history of
3 successful modifications for their clients.

4 The Contempt Defendants did not "routinely" negotiate
5 reduced interest rates for its clients nor have a success rate of
6 90% or 100%. Even accepting the Contempt Defendants' contention
7 of 100 successful loan modifications for more than 2,000 clients,
8 the result is less than five percent. The Receiver, after having
9 reviewed the case files and corresponding computer files for each
10 of the clients identified by Rodis and Chavarela as a successful
11 modification, could substantiate only eight files wherein the
12 borrower had been offered and accepted a mortgage loan
13 modification by their lender.

14 51. ALG admitted that it did not successfully modify
15 any mortgage loans.

16 52. The FTC found one successful modification in its
17 random survey of 49 RLG clients who first contacted RLG at least
18 three months before May 28, 2009. This is not "routine" success.
19 Contempt Defendants' advertising and marketing claims of routine
20 success, and their frequent claims of 90 % or 100% success over
21 10 to 12 years of operation, were false.

22 53. Contempt Defendants' express claims to consumers
23 that they would only take them on as clients if they could
24 dramatically reduce their mortgage payments were false.

25 54. Contempt Defendants' telemarketers, relying on
26 scripts provided by Contempt Defendants, misrepresented the
27 extensive experience and uniform success of the attorneys that
28 would be working for them, and they made repeated express and

1 implied misrepresentations to consumers that they would, in fact,
2 obtain a significant mortgage payment reduction for them in a
3 relatively short period of time. In many instances, Contempt
4 Defendants' telemarketers told consumers that they would be
5 better off paying for Contempt Defendants' services than
6 continuing to make mortgage payments because Contempt Defendants
7 had never lost a home to foreclosure and because of the
8 inevitable and substantial reduction in payment that their
9 attorneys would negotiate for the consumer.

10 55. The content of RLG's and ALG's websites, radio
11 advertisements, sales scripts, and other marketing materials were
12 virtually identical, and telemarketers for both entities made the
13 same misrepresentations. When RLG stopped accepting new clients,
14 its telemarketers became telemarketers of the foreclosure and
15 loan modification services under ALG's name. RLG and ALG both
16 misrepresented that they would conduct forensic audits and
17 aggressively negotiate on consumers' behalf, and both relied on
18 the same deceptive customer "testimonial." ALG continued to use
19 RLG's telemarketing scripts, including misrepresentations that it
20 had a long history of success in negotiating substantially
21 reduced mortgage payments and misrepresentations that it would
22 successfully negotiate a substantially reduced mortgage payment
23 for all of its customers.

24 56. ALG continued RLG's misrepresentations that it had
25 ten to twelve years of experience. ALG also falsely touted its
26 successful representation of over 2,000 homeowners in an April
27 16, 2009 press release , even though it had a total of only 408
28 clients as of May 28, 2009, and had not successfully obtained a

1 loan modification for any of its clients.

2 2. *Contempt Defendants' Misrepresentations Were*
3 *Material.*

4 57. Contempt Defendants' misrepresentations to
5 potential customers about the nature of the services they would
6 provide, the experience of their lawyers, their history of
7 success in preventing foreclosure and negotiating a mortgage
8 modification, and the extremely high likelihood that they could
9 negotiate substantial reductions in mortgage loan payments were
10 false and deceptive. See *FTC v. Cyberspace.com, LLC*, 453 F.3d
11 1196, 1199 (9th Cir. 2006) (a practice is deceptive "(1) if it is
12 likely to mislead consumers acting reasonably under the
13 circumstances (2) in a way that is material.") These
14 misrepresentations were clearly material to consumers' decisions
15 to purchase services from Contempt Defendants. *FTC v. Five-Star*
16 *Auto Club, Inc.*, 97 F.Supp. 2d 502, 528 (S.D.N.Y. 2000) (internal
17 citations omitted) ("Consumer reliance on express claims is []
18 presumptively reasonable. . . . It is reasonable to interpret
19 express statements as intending to say exactly what they say.")
20 Therefore, Contempt Defendants made material misrepresentations
21 in violation of the Permanent Injunction.

22 3. *Contempt Defendants' Disclaimers Did Not*
23 *Change the Net Impression of the*
24 *Misrepresentations.*

25 58. Starting sometime in February 2009, Contempt
26 Defendants began to provide consumers with a verbal and written
27 disclaimer that results were not "guaranteed." However, these
28 disclosures were given only after consumers heard or saw Contempt

1 Defendants' deceptive advertising, and after Contempt Defendants'
2 telemarketers made repeated false claims about the nature of the
3 services they would provide, the experience of their lawyers,
4 their history of success in preventing foreclosure and
5 negotiating a mortgage modification, and the great likelihood
6 that they could negotiate substantial reductions in mortgage loan
7 payments. Scripts used by Contempt Defendants prompted the
8 telemarketers to repeat and stress the deceptive claims about
9 history of success and the high likelihood that they would
10 negotiate a substantial reduction in mortgage loan payments even
11 while answering consumers' questions about the "no guarantee"
12 policy. The false promises overshadowed the disclaimers;
13 consequently, the disclaimers did not alter the "net impression"
14 conveyed by Contempt Defendants' misrepresentations. See
15 *Cyberspace.com, LLC*, 453 F.3d at 1200 ("net impression"
16 representation misleading even if it also contains truthful
17 disclosures); *FTC v. Medlab, Inc.*, No. C 08-822 SI, slip op. at
18 7-8 (N.D. Cal. April 21, 2009) (parties cannot "innoculate
19 themselves" from net impression with cautionary statements); *FTC*
20 *v. Vocational Guides, Inc.*, 2009 WL 943486, *16, ¶¶ 25-27 (M.D.
21 Tenn. April 6, 2009) (disclaimer did not change the net
22 impression because "[t]he 'no guarantee' caveat in the script was
23 buried in a series of upbeat pronouncements about the easy
24 availability of grant money.")

25 4. *Evidentiary Objections are Overruled in Part*
26 *and Sustained in Part.*

27 59. D'Antonio objects that consumer testimony about
28 the telephone conversations that those consumers had with

1 Contempt Defendants' telemarketers is inadmissible hearsay. For
2 the most part, these statements recount the sales pitches made by
3 Contempt Defendants' telemarketers to these consumers. These
4 statements are not hearsay because the FTC is not introducing
5 them for the truth of the matter asserted, but rather to show
6 that the statements were made. *United States v. Gibson*, 690 F.2d
7 697, 700 (9th Cir. 1982) ("The investor's testimony was offered
8 to prove the existence of a scheme; the statements were not
9 offered for their truthfulness. The purpose of the testimony was
10 solely to establish the fact that the salesmen and employees had
11 made the statements.") In those instances where the testimony
12 about the conversation is offered for the truth of the matter
13 asserted, and is therefore hearsay, it is still admissible as a
14 statement of an agent for a party pursuant to Fed. R. Evid.
15 801(d)(2)(D).

16 The Temporary Receiver's Report is hearsay insofar as
17 the Court is asked to make factual findings based on the various
18 conclusions drawn by the Receiver as to how the entities were
19 operated (pages 3 through 14), and D'Antonio's objections thereto
20 are sustained. However, certain facts referred to therein stand
21 uncontroverted, e. g., the amounts of revenue and refunds based
22 on the companies' books and records, and have been relied on by
23 all parties in their arguments and proposed findings of fact and
24 conclusions of law, and, are, therefore, accepted as correct for
25 these proceedings. In addition, the Report has attached to it
26 numerous exhibits, particularly office e-mails, that disclose how
27 D'Antonio and his associates operated the Contempt Defendant
28 entities. D'Antonio's objections to the communications found by

1 the Receiver, or communications made directly to the Receiver,
2 whether in attachments or in pages 3 through 14, are overruled.

3 The remaining parties' objections on foundation and
4 hearsay grounds as to numerous declarations submitted by
5 plaintiff as well as Contempt Defendants are overruled. The
6 Court's findings are based on those facts found to be reliable
7 and admissible.

8 D. The Contempt Defendants Did Not Substantially
9 Comply with the Permanent Injunction.

10 60. Contempt Defendants D'Antonio and RLG argue that
11 they were in substantial compliance with the Permanent Injunction
12 based upon a "good faith and reasonable interpretation of the
13 order." *In re Dual-Deck Video Cassette Recorder Antitrust*
14 *Litigation*, 10 F.3d 693, 695 (9th Cir. 1993) ("Substantial
15 compliance' with the court order is a defense to civil contempt,
16 and is not vitiated by 'a few technical violations' where every
17 reasonable effort has been made to comply.")

18 The FTC has proven, by clear and convincing evidence,
19 that the Contempt Defendants' violations of the Permanent
20 Injunction were substantive and that Contempt Defendants did not
21 make reasonable efforts to comply.

22 61. Contempt Defendant D'Antonio's purported
23 understanding that the Permanent Injunction's telemarketing
24 prohibition did not apply to Contempt Defendants' telephone
25 marketing campaign is neither in good faith nor reasonable.
26 Contempt Defendants have not proffered any alternative "good
27 faith and reasonable" interpretation of the prohibition on
28 material misrepresentations.

1 62. Contempt Defendants' operation of a large-scale,
2 nationwide telemarketing operation cannot be considered a "merely
3 technical" violation of the prohibition against telemarketing.
4 The Contempt Defendants' advertising and telemarketing were
5 permeated with material misrepresentations. They operated a
6 multi-million dollar telemarketing fraud to obtain substantial
7 fees from desperate consumers who, concerned with losing their
8 homes, ended up paying for services the Contempt Defendants did
9 not deliver.

10 63. Contempt Defendants argue that they were in
11 substantial compliance with the Permanent Injunction because they
12 made good faith efforts to provide the promised services to their
13 customers, focusing on purported improvements in the "legal
14 department" starting in mid-April, 2009.

15 The Contempt Defendants continued to engage in
16 telemarketing in violation of the Order until the Receiver took
17 possession pursuant to the TRO on May 28, 2009. The Contempt
18 Defendants also continued to make material misrepresentations in
19 their national radio advertisements, on their website, in a press
20 release, in telemarketing pitches to consumers, and in emails to
21 potential clients until their marketing was stopped pursuant to
22 the TRO on May 28, 2009.

23 The Contempt Defendants were well aware that they were
24 inducing consumers to purchase their services by making material
25 misrepresentations, yet continued to make these representations.
26 There is no evidence that Contempt Defendants had obtained or
27 could obtain the promised results for their new clients.

28 64. Although the Contempt Defendants made some

1 improvements to their practices, there is strong reason for the
2 Court to question whether the changed practices, which started in
3 mid-April - nearly six months after the first consumers started
4 retaining Contempt Defendants' services - were voluntary. See
5 *FTC v. Sage Seminars, Inc.*, No. C 95-2854 SBA, 1995 WL 798938, at
6 *6 (N.D. Cal. Nov. 2, 1995) (citing *United States v. W.T. Grant*
7 *Co.*, 345 U.S. 629, 632 n.5, 73 S. Ct. 894, 97 L.Ed. 1303 (1953)
8 (acknowledging that courts should be skeptical of evidence of
9 changed practices when the timing demonstrates anticipation of
10 suit).

11 65. Contempt Defendants point to consumer refunds of
12 \$1,483,469 (out of \$12,116,252 in total customer payments) as
13 evidence of substantial compliance. Although many consumers
14 received full or, more commonly, partial refunds, many consumers
15 found it difficult or impossible to obtain refunds. Furthermore,
16 the argument that providing refunds somehow makes the falsity of
17 an ad irrelevant "has been repeatedly rejected." *FTC v. Think*
18 *Achievement*, 312 F.3d 259, 261 (7th Cir. 2002) ("No one would buy
19 something knowing it was worthless and that therefore he would
20 get a refund of his purchase price."); *Cyberspace.com*, 453 F.3d
21 at 1201-1202 ("Similarly, the fact that companies provided
22 consumers a toll free number to call for refunds does not affect
23 our conclusion that the solicitation" was deceptive); *FTC v.*
24 *Pantron*, 33 F.3d 1088, 1103 (9th Cir. 1994) ("the existence of a
25 money-back guarantee is insufficient reason as a matter of law to
26 preclude a monetary remedy."); *Vocational Guides, Inc.*, 2009 WL
27 943486, at *16, ¶¶ 28 - 29 (rejecting defense that contemnors did
28 not violate prohibition against material misrepresentations

1 because refunds provided.)

2 **III. Contempt Defendants Face Sanctions to be Determined**

3 66. Courts have the authority to impose sanctions for
4 violations of their orders, including coercing compliance with
5 the order, requiring compensation for losses sustained as a
6 result of failure to comply with the order, or both. *United*
7 *States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04
8 (1947); *Koninklijke Philips Elec. N.V. v. KXD Tech., Inc.*, 539
9 F.3d 1039, 1042 (9th Cir. 2008) (purpose of civil contempt is
10 coercive or compensatory).

11 **IV.**

12 **CONCLUSION**

13 In accordance with the foregoing, the Court finds and
14 concludes that all Contempt Defendants are in contempt of the
15 Court's Permanent Injunction issued July 13, 2001.

16 A Phase II hearing to determine appropriate sanctions
17 and to adjudicate the FTC's Ex Parte Motion to Modify the
18 Permanent Injunction shall be held on March 1, 2010, at 2:00 p.m.
19 A separate minute order sets the briefing schedule.

20 IT IS SO ORDERED.

21 The Clerk shall serve this Order on all counsel
22 involved with the Order to Show Cause re Contempt.

23 DATED: January 15, 2010.

24 **ALICEMARIE H. STOTLER**
25 _____
26 ALICEMARIE H. STOTLER
27 UNITED STATES DISTRICT JUDGE
28