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1 the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to initiate federal district court
2 proceedings, by its own attorneys, to enjoin violations of the FTC Act in order to
3 secure approp

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26 ⁴ Seediscussion infra pp. 25-28.

27 ⁵ According to the State Bar of California's Web site, Lucas provided his
28 law practice address as 75 Enterprise, Aliso Viejo, California. UF #29.

1 employed by or affiliated with Lucas Law Center. UF #115-17.⁶ He lent his last
2 name to the purported law firm, and his name and California Bar number were
3 prominently displayed in email correspondence with consumers and on Lucas Law
4 Center's Web sites. UF #32.

5 Defendant Christopher Francis ~~88-00000~~ 617.6400 TD 0.2i000000 TD (r)Tj(o).9.00
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18 ⁶ Lucas graduated from Southwestern University Law School in 1992,
19 and his California Bar number is 163076. UF #37. Lucas regained "active" status
20 with the State Bar of California on June 6, 2008 and was a member of the State Bar
21 of California in active standing until November 2009. UF #38. On November 4,
2009, Lucas was ordered involuntarily inactive by the State Bar of California for
22 posing "a substantial threat of harm to [his] clients or the public" under Business and
23 Professions Code § 6007. UF #39.

24 ⁷ See discussion infra pp. 27, 29-30.

25 ⁸ See CAL. CIV. CODE §§ 2945-2945.11 (West 2009). "These foreclosure
26 consultants, however, often charge high fees, the payment of which is often secured
27 by a deed of trust on the residence to be saved, and perform no service or essentially
a worthless service." Id. § 2945.

28 ⁹ See CAL. CIV. CODE § 2945.1(b)(1).

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payments, but Betts refused. *Id.*

¹³ See discussion *infra* pp. 30-31.

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1 Center representatives assured consumers that they had nothing to lose because
2 Lucas Law Center would provide a full refund if it could not obtain the
3 modification. UF #103. And finally, the Lucas Law Center contract contained a
4 specific provision describing its refund policy. UF #104.

5 Lucas Law Center representatives also callously instructed some consumers
6 to stop making payments on their mortgages. UF #62, 105-08, 143. The
7 representatives claimed that stopping payments would benefit the consumer: “We
8 would tell you personally if you were behind on a payment, you’re going to see a
9 much better modification f9(L)o(on aBr b)o(L-14(tati)(on)-98res) 0 0 -1rr reBr .4-o -9(b

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1 3. Lucas Law Center Did Little or Nothing For Its Fee

2 After receiving consumers' fees, Lucas Law Center provided little, if any, of
3 the promised assistance. Lucas Law Center's representatives routinely avoided
4 consumers' requests for updates on the company's negotiations. UF #111; see also
5 UF #143. Some consumers were required to send in their paperwork multiple
6 times. UF #112. Despite promises to the contrary, consumers had no contact with
7 the purported attorneys who were supposed to be negotiating with their lenders.
8 UF #113.¹⁸ When consumers were able to speak to a representative, the
9 representatives typically told consumers to be patient and assured them that Lucas
10 Law Center was actively negotiating a loan modification on their behalf. UF #120.
11 Consumers who received default notices or collections calls from their lenders
12 were assured by Lucas Law Center that the notices were "normal" or "routine" and
13 consumers should ignore their lenders. UF #121. Representatives often blamed
14 the lenders for the delay. UF #122.

15 Ultimately, however, Defendants did not live up to their promises. In
16 numerous instances, Lucas Law Center failed to obtain the loan modifications it
17 promised to consumers. UF #123. Consumers who (see) Tj ET 1.00000 0.00000 0.00000

21 ¹⁸ Sullivan admitted to one consumer that Lucas Law Center had no
22 attorneys, "just underwriters." UF #114. In fact, the Uncontroverted Facts indicate
23 that Lucas Law Center had only one attorney on staff, Defendant Lucas. See UF
24 #115-19; see also UF #152.

25 ¹⁹ One consumer received an inadequate modification offer for his second
26 mortgage and a offer for his primary mortgage. UF #124. Another consumer
27 received unwanted hardship agreements instead of the promised permanent
28 modifications of his two loans. Id. A third consumer merely received the same
inadequate offer he had obtained before retaining Lucas Law Center to obtain a
better one. Id.

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1 guaranteed full refunds. UF #136. In other instances, consumers' requests for full
2 refundswere simply ignored. UF #137.²³

3 VI. LEGAL ARGUMENT

4 A. Summary Judgment Is Appropriate in This Case

5 Summary judgment is appropriate when the moving party shows that there is
6 "no genuine issue as to any material fact and that the moving party is entitled to
7 judgment as a matter of law." Fed. R. Civ. P. 56(c)(2). Summary judgment is
8 proper when a rational trier of fact would not be able to find for the nonmoving
9 party on the claims at issue. *Matsushita Elec. Indus Co. v. Zenith Radio Corp.*,
10 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538, 552 (1986); *SEC v.*
11 *Murphy*, 626 F.2d 633,

27 ²³ Complaints and refund requests submitted to the BBB after January 28,
28 2009, were never responded to by Lucas Law Center. UF #138.

1 with any probative evidence, Plaintiff FTC is entitled to summary judgment against
2 Defendants as a matter of law.

3 B. Jurisdiction, Venue, and Commerce Requirements Are Met

4 Plaintiff FTC brings this action against Defendants under Sections 5(a) and
5 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), in connection with their
6 deceptive marketing and sale of mortgage loan modification services. This Court
7 has subject matter jurisdiction over this action under 15 U.S.C. §§ 45(a) and 53(b),
8 and 28 U.S.C. §§ 1331, 1337(a), and 1345. UF #1. Personal jurisdiction over
9 Defendants Lucas Law Center “incorporated”, Future Financial Services, LLC, Paul
10 Jeffrey Lucas, Christopher Francis Betts, and Frank Sullivan exists pursuant to the
11 FTC Act’s provision for nationwide service of process, 15 U.S.C. § 53(b). UF #2.
12 Venue is proper in this case because all Defendants reside in and transact or have
13 transacted business in the Central District of California. 15 U.S.C. § 53(b); 28
14 U.S.C. § 1391(b), (c); UF #3-4.²⁴

15 As demonstrated by the consumer declarations and complaints, Defendants
16 operated their deceptive mortgage loan modification services nationwide (see UF
17 #11), thereby affecting the passage of property or messages from one state to
18 another. Such transactions are “in or affecting interstate commerce.” 15 U.S.C. § 53(b).
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27 ²⁴ See also UF #12-13, 27-29, 41-42, 56 (showing that each Defendant
28 resided or transacted business in this District).

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1 Ultimately, most consumers never received the promised loan modification.²⁸ See
2 discussion supra pp. 13-14. The evidence establishing Defendants' violation of
3 Section 5 of the FTC Act has not been controverted.

4 2. Count Two of the Complaint

5 Defendants also have violated Section 5 of the FTC Act by falsely
6 representing that they will give full refunds to consumers if Defendants fail to
7 obtain a modification of their loan. The FTC's uncontroverted evidence, including
8 consumer depositions, declarations, and complaints, and Defendants' own
9 contracts and Web sites establishes that Defendants made these unlawful claims.
10 Consumers were assured that they had nothing to lose by contracting with
11 Defendants because, in the rare instance in which Defendants could not obtain a
12 loan modification, Defendants' fee would be fully refunded. See discussion supra
13 pp. 11-12.

14 Contrary to Defendants' refund representations, once consumers determined
15 that Lucas Law Center had done little or nothing to obtain the guaranteed loan
16 modification, they were stymied in their attempts to obtain a full refund. Lucas
17

18
19 ²⁸ While Lucas Law Center's contract contradicted and disclaimed any
20 guarantee of success, and made specific exclusions to the refund policy, this does not
21 cure Defendants' misrepresentations. See, e.g., Gill, 71 F. Supp.2d at 1044
22 (rejecting argument that representations were not deceptive because contract
23 disclaimed any guarantee); see also FTC v. Connelly, No. SACV 06-701 DOC
24 (RNBx), 2006 U.S. Dist. LEXIS 98263, at *33 (C.D. Cal. Dec. 20, 2006)
25 ("[D]isclaimers are particularly inadequate when they appear in a different context
26 than the claims they purport to repudiate."). Similarly, Defendants' success claims
27 were not cured by providing refunds to some consumers who did not receive
28 modifications. It is well settled that providing refunds does not sanitize
misrepresentations. FTC v. Think Achievement Corp., 312 F.3d 259, 261 (7th Cir.
2002) (argument that misrepresentations are cured by refunds has been "repeatedly
rejected"); FTC v. Slim America, Inc., 77 F. Supp.2d 1263, 1272 (S.D. Fla. 1999)
("[t]he existence of a money-back guarantee . . . is neither a cure for deception nor a
remedy for consumer injury.").

1 Law Center routinely denied consumers' requests for full refunds. Some
2 consumers received partial refunds but only after making multiple calls and
3 experiencing lengthy delays. While a few consumers obtained full refunds after
4 complaining to government agencies and the BBB, other consumers' requests for
5 full refunds were continuously denied or simply ignored. See discussion supra pp.
6 14-15. The evidence establishing Defendants' violation of Section 5 of the FTC
7 Act has not been controverted.

8 E. The Receiver's Reports Confirm the FTC's Uncontroverted
9 Evidence

10 The Report of Temporary Receiver's Activities For the Period of July 9,
11 2009 Through July 13, 2009 ("Receiver's 1stR
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²⁹ One file was indeterminate. UF #146.

³⁰ See Defendants Lucas Law Center Incorporated, Future Financial Services LLC, Paul Jeffrey Lucas, Christopher Francis Betts, and Frank Sullivan First Amended Answer / Brief in Opposition to Plainti

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³¹ Of the random sample of 63 files, 13 represented only structured

1 929 n.12 (9th Cir. 2009) (affirming summary judgment in favor of the FTC).³⁴

2 Therefore, D

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22 ³⁴ See also Gill, 71 F. Supp. 2d at 1049 n.21 (“Even assuming that
23 defendants do have thousands of satisfied consumers, it does not excuse their
24 violation of the law.”); FTC v. Silueta Distribs, Inc., 1995 U.S. Dist. LEXIS 22254,
25 at *16 n.6, 1995-1 Trade Cas. (CCH) ¶ 70918 (N.D. Cal. Feb. 24, 1995) (“[T]he
26 existence of some satisfied consumers is not a defense to liability.”).

27 ³⁵ See also Nationwide Life Ins. Co. v. Richards, 541 F.3d 903, 911 (9th
28 Cir. 2008) (“When a party asserts the privilege against self-incrimination in a civil
case, the district court has discretion to draw an adverse inference from such
assertion.”) (citing Doe ex rel. Rudy-Glanzer v. Glanzer, 232 F.3d 1258, 1264 (9th

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2d 993, 1011 (N.D. Ind. 2000), af

1 provided that Lucas Law Center would be responsible for the delivery of legal
2 services, but it delegated much of the delivery of these services to non-attorneys
3 employed by either company. UF #17. The agreement further required FFS to
4 train and supervise these employees according to Lucas Law Center's guidelines
5 and policies. UF #19. According to the agreement, FFS employees were required
6 to represent themselves as "being with [Lucas Law Center]," or "employees of the
7 law firm." UF #18. Use of a shared office space and a common work force
8 demonstrates there is no separation of companies or distinction between the
9 corporate Defendants.

10 Second, while Defendant Betts owned FFS, he also played a prominent role
11 in the management of Lucas Law Center. See UF #45-49. Betts served as a billing
12 and administrative contact for Lucas Law Center. UF #45-46. Both he and Lucas
13 described Betts as one of Lucas Law Center's top managers. UF #47, 49. These
14 facts demonstrate that there is no real distinction between the individual
15 Defendants and their companies.

16 Finally, the common enterprise is used to perpetuate a fraud, and unjust loss
17 and injury would result from treating the corporate Defendants separately because
18 both companies are involved actively in the deception. FFS received more than
19 half of Lucas Law Center's revenues during the life of the scam. Compare UF #26
20 (Lucas Law Center paid over \$4 million to FFS as management fees), with UF
21 #139 (Lucas Law Center earned over \$7 million in revenue).³⁹ However, FFS
22 remained in the shadows with only the name Lucas Law Center provided to the
23 public by the joint operation. UF #18, 21. Clearly, FFS cloaked itself in the guise
24 of the purported "law firm" Lucas Law Center in order to extract illegal advance
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28 ³⁹ This was FFS's sole source of income. UF #25.

1 fees from distressed homeowners.⁴⁰ To treat the corporate Defendants separately
2 would serve only to frustrate the consumer p

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24 ⁴⁰ This becomes especially apparent considering that Lucas Law Center
25 was only incorporated in June 2008 (UF #12), and that its sole attorney, Defendant
26 Lucas (UF #116-17), only regained active status with the state bar the same month
27 (UF #38). During this time, the only legal services Lucas Law Center provided were
28 mortgage loan modification services. UF #24.

⁴¹ See U.S. Oil & Gas, 1987 U.S. Dist. LEXIS 16137, at *61-63 (citing, inter alia, P.F. Collier & Son Corp. v. FTC, 427 F.2d 261, 267 (6th Cir. 1970)).

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Sullivan al

1 complained about the status of their loan modification applications, Sullivan
2 became involved in the matters. UF #64. Representatives forwarded consumer
3 complaints and refund requests to him via email. UF #65. Sullivan decided
4 whether to issue refunds, or to deny them in whole or in part. UF #66-67. These
5 facts also demonstrate that Sullivan was well aware of the deceptive practices of
6 Lucas Law Center.⁴⁴ Sullivan has demonstrated his participation in, his authority
7 to control, and his knowledge of the deceptive practices of LucasLaw Center.

8 The individual Defendants' positions with and actions in furtherance of the
9 business demonstrate their ability to control the common enterprise, subjecting
10 each to injunctive liability. Additionally, the individual Defendants have the
11 requisite knowledge of Lucas Law Center's deceptive acts and practices to be
12 subject to monetary liability. Defendants' knowledge of the deceptive acts and
13 practices is demonstrated by their own advertisements, their Web site contents,
14 LucasLaw Center's representations, contract terms, consumer complaints to Lucas
15 Law Center and to the BBB, and private lawsuits. The knowledge of Defendant
16 Lucas is further demonstrated by the fact that he allowed Lucas Law Center to
17 operate using his name and California Bar number. Moreover, Lucas, Betts, and
18 Sullivan knew of mounted complaints to BBB.

27 ⁴⁴ Sullivan even admitted to one consumer that Lucas Law Center had no
28 attorneys, just "underwriters." UF #114.

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1 1112 (quoting Porter v. Warner Holding Co., 328 U.S. 395,398,66 S Ct. 1086,
2 1089, 90 L. Ed. 1332, 1337 (1946)); FTC v. Gem Merch. Corp., 87 F.

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27 ⁴⁶ See also FTC v. Gill , 71 F. Supp.2d 1030,1047 (C.D. Cal. 1999)
28 (following W.T. Grant), aff'd, 265 F.3d 944 (9th Cir. 2001).

1 Without an injunction, “the defendant is free to return to his old ways.” W.T.
2 Grant, 345 U.S. at 632.

3 a. Court has the authority to issue “fencing-in” relief

4 In addition to enjoining the specific conduct at issue in the Complaint, the
5 Court has broad authority to enjoin unlawful acts that may be anticipated from
6 Defendants’ past conduct, and to model injunctive orders to fit the exigencies of
7 the case. Five-Star Auto Club, 97 F. Supp.2d at 536 (citing FTC v. Kitco of Nev.,
8 Inc., 612 F. Supp. 1282, 1296 (D. Minn. 1985)). As the court noted in FTC v.
9 Wolf, “Broad injunctive provisions are often necessary to prevent transgressors
10 from violating the law in a new guise.” 1996 U.S. Dist. LEXIS 1760, at *26, 1997-
11 1 Trade Cas. (CCH) ¶ 71713 (S.D. Fla. 1996) (citing FTC v. Ruberoid Co., 343
12 U.S. 470, 473, 72 S. Ct. 800, 803, 96 L. Ed. 1081, 1087 (1952)).

13 The Supreme Court has recognized the necessity of “fencing-in relief” in
14 FTC orders:

15 The Commission is not limited to prohibiting the illegal practice in the
16 precise form in which it is found to have existed in the past. Having
17 been caught violating the Act, respondents must expect some fencing
18 in.

19 FTC v. Colgate-Palmolive Co., 380 U.S. 374, 395, 85 S. Ct. 1035, 1048, 13 L. Ed.
20 2d 904, 920 (1965) (citations omitted); see FTC v. J.K. Publ’ns, Inc., 99 F. Supp.
21 2d 1176, 1209 (C.D. Cal. 2000). “These ‘fencing in’ provisions are needed to
22 prevent similar and related violations from occurring in the future.” Trans World
23 Accounts, Inc. v. FTC, 594 F.2d 212, 215 (9th Cir. 1979) (citing FTC v. Mandel
24 Bros., Inc., 359 U.S. 385, 392, 79 S. Ct. 818, 824, 3 L. Ed. 2d 893, 899 (1959)).

25 b. The Court may impose occupational bans

26 The fencing-in relief the Court is authorized to impose includes ordering
27 occupational bans. The Ninth Circuit approved and explained the need for this
28 type of relief in Sterling Drug, Inc. v. FTC:

1 In drafting the [FTC] Act, Congress recognized that “there is no limit
2 to human inventiveness in [the advertising] field.” Accordingly, it
3 authorized the Commission to draft orders encompassing all of an
4 advertiser’s products or all products in a broad product category in
5 order to “fence in” known violators of the Act. “Fencing-in
6 provisions serve to ‘close all roads to the prohibited goal, so that [the
7 FTC’s] order may not be by-passed with impunity.’”

8 741 F.2d 1146,1154 (9th Cir. 1984)(citations omitted; second and third alteration
9 in original); see also Kraft, Inc. v. FTC, 970 F.2d 311,326 (7th Cir. 1992)(“The
10 FTC has discretion to issue multi-product orders so-called ‘fencing-in’ orders that
11 extend beyond violations of the Act to prevent violators from engaging in similar
12 deceptive practices in the future.”). To keep defendants from engaging

17 ⁴⁷ See, e.g., FTC v. Gill , 265 F.3d 944,957-58 (9th Cir. 2001)(ban on
18 participation in credit-repair business); FTC v. Universal Premium Servs., Inc., No.
19 CV06-0849 SJO (OPx), slip op. at 6-7 (C.D. Cal. Feb. 26, 2007), aff’d sub nom. FTC
20 v. MacGregor, 2009 U.S. App. LEXIS 28661 (9th Cir. 2009)(ban on telemarketing
21 and on the sale or marketing of program memberships); FTC v. Medicor, LLC, 2002
22 U.S. Dist. LEXIS 16220, at *3-4, 2002-2 Trade Cas. (CCH) ¶ 73,759 (C.D. Cal.
23 2002)(ban on telemarketing and on marketing of work-at-home medical billing
24 opportunities); FTC v. NCH, Inc., 1995 U.S. Dist. LEXIS 21096, at *8-9, 1995-2
25 Trade Cas. ¶ 71,114 (D. Nev. 1995), aff’d, 106 F.3d 407 (9th Cir. 1997)(ban on
26 prize-promotion telemarketing).

25 Courts in other circuits have issued bans as well. See FTC v. Global Mktg.
26 Group, Inc., No. 8:06-cv-2272-T-33TGW, slip op. at 7 (M.D. Fla. Dec. 24, 2008)
27 (bans on telemarketing and payment processing); FTC v. Tashman, No. 98-07058-
28 CIV-Ryskamp, slip op. at 19 (S.D. Fla. July 11, 2006)(ban on marketing of
franchises and business opportunities); FTC v. CheckInvestors, Inc., No. 03-2115
(JWB), 2005 U.S. Dist. LEXIS 37199, at *8 (D.N.J. Jul. 18, 2005), aff’d, 502 F.3d

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159 (3d Cir. 2007) (ban on engaging in debt collection); FTC v. World Media Brokers Inc., No. 02-C-6985, slip op. at 6-7 (N.D. Ill. June 22, 2004) (bans on telemarketing and selling lottery tickets); FTC v. Bay Area Bus. Council, Inc., No. 02-C-5762, slip op. at 6 (N.D. Ill. Apr. 14, 2004), aff'd, 423 F.3d 627 (7th Cir. 2005) (ban on all telemarketing in U.S. and ban on sale of credit-related products); FTC v. Capital Choice Consumer Credit, Inc., No. 02-21050 CIV, 2004 WL 5149998, at *48 (S.D. Fla. Feb. 20, 2004) (ban on marketing credit cards); FTC v. Consumer Alliance, Inc., No. 02-C-2429, slip op. at 5-6 (N.D. Ill. Oct. 17, 2003) (bans on telemarketing, selling credit card protection services, and selling credit-related products); Think Achievement, 144 F. Supp.2d at 1018, 1024 (ban on telemarketing and on marketing car

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⁴⁸ See supra note 10.

⁴⁹ See Ethics Alert: Legal Services to Distressed Homeowners and Foreclosure Consultants on Loan Modifications, Committee on Professional Responsibility and Conduct, T

1 unsuspecting consumers spans two decades. In the mid-1990s he caused over \$19
2 million in investor injury in a fraudulent securities market manipulation scheme,
3 leading to a criminal conviction in 2000. A few years later, Betts became involved
4 with a bogus “non-profit” credit counseling scheme for which he refused to return
5 illegally obtained receivership assets. More recently, Betts has turned to deceiving
6 distressed homeowners with false promises of mortgage loan modifications, while
7 consoling them with false promises of mortgage loan modifications, while

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22 ⁵⁰ The reasons for this broader ban against Betts are similar to those in
23 *FTC v. Tashman*, No. 98-07058-CIV-Ryskamp, slip op. at 13 (S.D. Fla. July 11,
24 2006). In that case, individual defendant Tashman had a long history of recidivism
25 in SEC and FTC cases where he controlled and participated in misrepresentations
26 resulting in consumers losing thousands of dollars each. *Id.* Due to Tashman's
27 recidivism, the court found it “unreasonable to expect that he will refrain from such
28 activities in the future,” and broadly banned him from marketing any franchise
business venture, or investment. *Id.* It is similarly unreasonable to expect that Betts
will refrain from using the tactics he has developed over decades to bilk financially
desperate consumers out of their money.

1 Telemarketing Sales Rule, 16 C.F.R. Part 310.⁵¹ While Section III does not ban
2 these Defendants from these industries, this “fencing-in” relief is necessary to
3 prevent them from violating the law in a new guise⁵²

4 Section IV of the FTC’s proposed Final Order enjoins all Defendants from
5 making misrepresentations of material fact relating to the marketing or sale of any
6 good, service, plan, or program. A non-exhaustive list of material facts is included
7 as guidance. However, Section IV serves to broadly enjoin Defendants from
8 deceptive activities that would violate, at a minimum, Section 5 of the FTC Act, 15
9 U.S.C. § 45.

10 B. Monetary Relief

11 1. Measure of monetary relief

12 For the FTC to recover monetary damages in a summary judgment, it “must
13 show that its calculations reasonably approximated the amount of customers’ net
14 losses, and then the burden shifts to the defendant to show that those figures were
15 inaccurate.” *FTC v. Febré*, 128 F.3d 530, 535 (7th Cir. 1997) (citing *SEC v. Lorin*,
16 76 F.3d 458, 462 (2d Cir. 1996); *HUD v. Cost Control Mktg. & Sales Mgmt. of*
17 *Va., Inc.*, 64 F.3d 920, 927 (4th Cir. 1995)). Even when the defendants’ record-
18 keeping prevents distinguishing unlawful gains from the lawful, the risk falls on
19 the wrongdoer whose conduct created the uncertainty. *Febré*, 128 F.3d at 535.

24 ⁵¹ See 74 Fed. Reg. 41988, 42005-09, 42020 (Aug. 19, 2009) (to be
25 codified at 16 C.F.R. § 310.4(a)(5)), available at
26 <http://www.ftc.gov/opa/2009/07/R411001tsmprm.pdf>.

27 ⁵² Notably, Defendants’ business records appear to indicate they were
28 involved in referring consumers to another company for debt settlement services. See
UF #153.

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⁵³ Even when it is impossible or impracticable to locate and reimburse all of Defendants' victims, the Court m

1 2. Amount of monetary relief

2 Defendants deceived thousands of desperate homeowners throughout the
3 United States. After conducting a thorough forensic accounting, the
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27 ⁵⁴ This type of provision has been entered by this District in an FTC case
28 before. See *FTC v. Universal Premium Servs., Inc.*, No. CV06-0849 SJO (OPx), slip
op. at 14-15 (C.D. Cal. Feb. 26, 2007).

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