

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DINAMICA FINANCIERA LLC,
a California limited liability company;

SOLUCIONES DINAMICAS, INC.,
a California corporation;

OFICINAS LEGALES DE ERIC-
DOUGLAS JOHNSON, INC.,
a California corporation;

ERIC DOUGLAS JOHNSON,
an individual;

VALENTIN BENITEZ,
an individual;

JOSE MARIO ESQUER,
an individual; and

ROSA ESQUER
an individual,

Defendants.

Case No. CV 09-03554 MMM (PJWx)

JUDGMENT FOR PLAINTIFF

1 Plaintiff Federal Trade Commission (“FTC” or “Commission”) moved for
2 summary judgment on both counts in its First Amended Complaint. Plaintiff and
3 Defendants Rosa Esquer and Jose Mario Esquer subsequently settled Count Two of the
4 First Amended Complaint. A hearing on plaintiff’s summary judgment motion
5 addressing Count One, the remaining claim in the First Amended Complaint, took place
6 on August 16, 2010. Having considered the moving papers, arguments of counsel, and
7 all other matters presented, the court granted the motion on August 19, 2010.

8 IT IS HEREBY ORDERED THAT:

9 Judgment is hereby entered in favor of the FTC against Dinamica Financiera
10 LLC, Valentin Benitez and Jose Mario Esquer, jointly and severally, in the amount of
11 \$3,746,555.70.

12 Judgment is hereby entered in favor of the FTC against Soluciones Dinamicas,
13 Inc., Valentin Benitez and Jose Mario Esquer, jointly and severally, in the amount of
14 \$1,365,211.90.

15 Judgment is hereby entered in favor of the FTC against Oficinas Legales de Eric-
16 Douglas Johnson, Inc., Valentin Benitez and Eric Douglas Johnson, jointly and
17 severally, in the amount of \$394,493.26.

18 These sums shall become immediately due and payable upon entry of this
19 judgment. These sums shall bear post-judgment interest at the rate of .25 percent.

20 All funds paid pursuant to this judgment shall be deposited into a fund
21 administered by the FTC or its agent to be used for equitable relief, including, but not
22 limited to, consumer redress and any attendant expenses for the administration of such
23 equitable relief. In the event that direct redress to consumers is wholly or partially
24 impracticable or funds remain after redress is completed, the FTC may apply any
25 remaining funds to other equitable relief (including consumer information remedies) as
26 it determines to be reasonably related to defendants’ practices alleged in the First
27 Amended Complaint. Defendants shall have no right to challenge the FTC’s choice of
28 remedies under this Subsection. The FTC, in its sole discretion, may use a designated

1 agent to administer consumer redress. This judgment for equitable monetary relief is
2 solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

3 In accordance with 31 U.S.C. § 7701, defendants are hereby required, unless they
4 have already done so, to furnish to the FTC their respective taxpayer identification
5 number (Social Security number or employer identification number), which shall be
6 used for purposes of collecting and reporting any amount that may be owing by any of
7 the defendants.

8 Defendants relinquish all dominion, control, and title to the funds paid to the
9 fullest extent permitted by law. Defendants shall make no claim to or demand for return
10 of the funds, directly or indirectly, through counsel or otherwise.

11 The court further grants permanent injunctive relief against defendants on the
12 following terms:

13 DEFINITIONS

14 For purposes of this Judgment, the following definitions shall apply:

15 1. “*Assisting others*” includes, but is not limited to, providing any of the
16 following goods or services to another person: (A) performing customer service
17 functions, including, but not limited to, receiving or responding to consumer
18 complaints; (B) formulating or providing, or arranging for the formulation or provision
19 of, any telephone sales script or any other marketing material, including but not limited
20 to, the text of any Internet website, email, or other electronic communication;
21 (C) providing names of, or assisting in the generation of, potential customers;
22 (D) performing marketing services of any kind; or (E) acting or serving as an owner,
23 officer, director, manager, or principal of any entity.

24 2. “*Credit*” means the right granted by a creditor to a debtor to defer payment
25 of debt or to incur debt and defer its payment.

26 3. “*Debt relief good or service*” means any good, service, plan, or program,
27 including debt management plans, debt settlement, debt negotiation, and for-profit
28 credit counseling, represented, expressly or by implication, to renegotiate, settle, or in

1 any way alter the terms of payment or other terms of the debt between a consumer and
2 one or more unsecured creditors, servicers, or debt collectors, including but not limited
3 to, a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured
4 creditor, servicer, or debt collector.

5 4. “*Defendants*” means all of the Individual Defendants and Corporate
6 Defendants, individually, collectively, or in any combination. “*Corporate Defendants*”
7 means Dinamica Financiera LLC, Soluciones Dinamicas, Inc., and Oficinas Legales de
8 Eric-Douglas Johnson. “*Individual Defendants*” means Valentin Benitez, Jose Mario
9 Esquer, and Eric Douglas Johnson.

10 5. “*Financial related good or service*” means any good, service, plan, or
11 program that is represented, expressly or by implication, to (A) provide any consumer,
12 arrange for any consumer to receive, or assist any consumer in receiving, credit, debit,
13 or stored value cards; (B) improve, or arrange to improve, any consumer’s credit record,
14 credit history, or credit rating; (C) provide advice or assistance to any consumer with
15 regard to any activity or service the purpose of which is to improve a consumer’s credit
16 record, credit history, or credit rating; (D) provide any consumer, arrange for any
17 consumer to receive, or assist any consumer in receiving, a loan or other extension of
18 credit; (E) provide any consumer, arrange for any consumer to receive, or assist any
19 consumer in receiving, debt relief goods or services; (F) provide any consumer, arrange
20 for any consumer to receive, or assist any consumer in receiving any service
21 represented, expressly or by implication, to renegotiate, settle, or in any way alter the
22 terms of payment or other terms of the debt between a consumer and one or more
23 secured creditors, servicers, or debt collectors.

24 6. “*Federal homeowner relief or financial stability program*” means any
25 program (including its sponsoring agencies, telephone numbers, and Internet websites)
26 operated or endorsed by the United States government to provide relief to homeowners
27 or stabilize the economy, including but not
28

1 any other program sponsored or operated by the United States Department of the
2 Treasury; (D) the HOPE for Homeowners program, any program operated or created
3 pursuant to the Helping Families Save Their Homes Act, and any other program
4 sponsored or operated by the Federal Housing Administration; or (E) any program
5 sponsored or operated by the United States Department of Housing and Urban
6 Development (“HUD”), the HOPE NOW Alliance, the Homeownership Preservation
7 Foundation, or any other HUD-approved housing counseling agency.

8 7. **“For-profit”** means any activity organized to carry on business for the
9 profit of the entity engaging in the activity or that of its members.

10 8. **“Material fact”** means any fact that is likely to affect a person’s choice of,
11 or conduct regarding, goods or services.

12 9. **“Mortgage loan modification or foreclosure relief service”** means any
13 good, service, plan, or program that is represented, expressly or by implication, to assist
14 a consumer in any manner to (A) stop, prevent, or postpone any home mortgage or deed
15 of trust foreclosure sale; (B) obtain or arrange a modification of any term of a home
16 loan, deed of trust, or mortgage; (C) obtain any forbearance from any mortgage loan
17 holder or servicer; (D) exercise any right of reinstatement of any mortgage loan;
18 (E) obtain, arrange, or attempt to obtain or arrange any extension of the period within
19 which the owner of property sold at foreclosure may cure his or her default or reinstate
20 his or her obligation; (F) obtain any waiver of an acceleration clause contained in any
21 promissory note or contract secured by a deed of trust or mortgage on a residence in
22 foreclosure or contained in that deed of trust; (G) obtain a loan or advance of funds that
23 is connected to the consumer’s home ownership; (H) avoid or ameliorate the
24 impairment of the consumer’s credit record, credit history, or credit rating that is
25 connected to the consumer’s home ownership; (I) save the consumer’s residence from
26 foreclosure; (J) assist the consumer in obtaining proceeds from the foreclosure sale of
27 the consumer’s residence; (K) obtain or arrange a pre-foreclosure sale, short sale, or
28 deed-in-lieu of foreclosure; (L) obtain or arrange a refinancing, recapitalization, or

1 reinstatement of a home loan, deed of trust, or mortgage; (M) audit or examine a
2 consumer's mortgage or home loan application; or (N) obtain, arrange, or attempt to
3 obtain or arrange any extension of the period within which the renter of property sold
4 at foreclosure may continue to occupy the property. The foregoing shall include any
5 manner of claimed assistance, including, but not limited to, debt, credit, budget, or
6 financial counseling; receiving money for the purpose of distributing it to creditors;
7 contacting creditors or servicers on behalf of the consumer; and giving advice of any
8 kind with respect to filing for bankruptcy.

9 10. "**Person**" means a natural person, organization, or other legal entity,
10 including a corporation, partnership, proprietorship, association, cooperative, or any
11 other group or combination acting as an entity.

12 11. "**Servicer**" means any beneficiary, mortgagee, trustee, loan servicer, loan
13 holder, or other entity that performs loan or credit account administration or processing
14 services and/or its authorized agents.

15 12. The words "**and**" and "**or**" shall be understood to have both conjunctive
16 and disjunctive meanings.

17 **I.**

18 **BAN ON MORTGAGE LOAN MODIFICATION**
19 **AND FORECLOSURE RELIEF SERVICES**

20 **IT IS ORDERED** that Defendants, whether acting directly or through any other
21 person, is permanently restrained and enjoined from

22 A. Advertising, marketing, promoting, offering for sale, or selling any
23 mortgage loan modification or foreclosure relief service; and

24 B. Assisting others engaged in advertising, marketing, promoting, offering for
25 sale, or selling any mortgage loan modification or foreclosure relief service.

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

**PROHIBITED REPRESENTATIONS RELATING TO
FINANCIAL RELATED GOODS AND SERVICES**

IT IS FURTHER ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Judgment by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any

o

- 1 f. that the credit does not have a prepayment penalty or that no
2 prepayment penalty and/or other fees or costs will be
3 incurred if the consumer subsequently refinances; and
4 g. that the interest rate(s) or annual percentage rate(s) are fixed
5 rather than adjustable or adjustable rather than fixed;

6 2. That any person can improve any consumer's credit record, credit
7 history, or credit rating by permanently removing negative
8 information from the consumer's credit record, credit history, or
9 credit rating, even where such information is accurate and not
10 obsolete;

11 3. Any person's ability to improve or otherwise affect a consumer's
12 credit record, credit history, or credit rating or ability to obtain
13 credit;

14 4. Any aspect of any debt relief good or service, including but not
15 limited to, the amount of savings a consumer will receive from
16 purchasing, using, or enrolling in such debt relief good or service;
17 the amount of time before which a consumer will receive settlement
18 of the consumer's debts; or the reduction or cessation of collection
19 calls; and

20 5. That a consumer will receive legal representation;

21 B. Advertising or assisting others in advertising credit terms other than those
22 terms that actually are or will be arranged or offered by a creditor or lender.

23
24 **III.**

25 **PROHIBITED REPRESENTATIONS RELATING TO**
26 **ANY GOODS OR SERVICES**

27 **IT IS FURTHER ORDERED** that Defendants and their successors, assigns,
28 officers, agents, servants, employees, and attorneys, and those persons or entities in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 contract or agreement with any consumer, in conjunction with the sale of any mortgage
2 loan modification or foreclosure relief service, entered into by any Defendant prior to
3 the effective date of this Judgment.

4 **V.**

5 **PROHIBITION ON SALE OF CUSTOMER INFORMATION**

6 **IT IS FURTHER ORDERED** that Defendants and their successors, assigns,
7 officers, agents, servants, employees, and attorneys, and those persons or entities in
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **VII**

2 **COMPLIANCE REPORTING**

3 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions
4 of this Judgment may be monitored:

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

in the business entity about which a Defendant learns less than thirty (30)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

for the person's termination, if applicable;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 shall be within five (5) days of service of this Judgment upon such
2 Defendant. For new personnel, delivery shall occur prior to them
3 assuming their responsibilities. For any business entity resulting from any
4 change in structure set forth in Subsection A.2 of the Section titled
5 “Compliance Reporting,” delivery shall be at least ten (10) days prior to
6 the change in structure.

7 B. Individual Defendant as control person: For any business that an
8 Individual Defendant controls, directly or indirectly, or in which such
9 Defendant has a majority ownership interest, such Defendant must deliver
10 a copy of this Judgment to (1) all principals, officers, directors, and
11 managers of that business; (2) all employees, agents, and representatives
12 of that business who engage in conduct related to the subject matter of the
13 Judgment; and (3) any business entity resulting from any change in
14 structure set forth in Subsection A.2 of the Section titled “Compliance
15 Reporting.” For current personnel, delivery shall be within five (5) days
16 of service of this Judgment upon such Defendant. For new personnel,
17 delivery shall occur prior to them assuming their responsibilities. For any
18 business entity resulting from any change in structure set forth in
19 Subsection A.2 of the Section titled “Compliance Reporting,” delivery
20 shall be at least ten (10) days prior to the change in structure.

21 C. Individual Defendant as employee or non-control person: For any
22 business where an Individual Defendant is not a controlling person of a
23 business but otherwise engages in conduct related to the subject matter of
24 this Judgment, such Defendant must deliver a copy of this Judgment to all
25 principals and managers of such business before engaging in such conduct.

26 D. Defendants must secure a signed and dated statement acknowledging
27 receipt of the Judgment, within thirty (30) days of delivery, from all
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

X

ACKNOWLEDGMENT OF RECEIPT OF JUDGMENT

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Judgment as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Judgment.

XI

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Judgment.

Dated: August 19, 2010


MARGARET M. MORROW
UNITED STATES DISTRICT JUDGE