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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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)

) ORDER GRANTING PLAINTIFF'S
) MOTION FOR SUMMARY JUDGMENT

Following a civil investigation of defendants' business practices, the Federal Trade Commission ("FTC") filed this action against three California corporations – Dinamica Financiera

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1 services primarily through radio advertisements.¹² These advertisements typically ran on Spanish-
2 language radio stations, and were broadcast frequently between September 2005 and October
3 2009.¹³ The advertisements stated that Dinamica could help consumers keep their homes by
4 arranging deferred payments for borrowers who “need[ed] some time to continue making [their]
5 payments” or by negotiating “new,” “reduced,” or “smaller” monthly mortgage payments.¹⁴
6 Consumers understood from the advertisements that Dinamica would help people avoid
7 foreclosure by obtaining “breaks” from required monthly payments or loan modifications that
8 would lower their mortgage payments.¹⁵

9 Benitez drafted and placed the advertisements, and spoke on each advertisement.¹⁶ Esquer
10 knew of the radio advertisements and heard them while he was working at Dinamica.¹⁷ When
11 consumers called in response to the advertisements, they were typically told to come to
12 Dinamica’s offices for an in-person consultation.¹⁸ During these calls, Dinamica’s agents
13 represented that clients’ homes would not be lost to foreclosure if they engaged Dinamica and
14 followed the advice they were given.¹⁹

15 During the first six years of its operation, the primary service Dinamica offered was to
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18 ¹²*Id.*, ¶¶ 83, 139–47, 150, 152. Prior to 2005, Dinamica called consumers who were
19 behind on their mortgage payments. (*Id.*, ¶ 151).

20 ¹³*Id.*, ¶ 139, 152.

21 ¹⁴*Id.*

22 ¹⁵*Id.*, ¶¶ 153–56.

23 ¹⁶*Id.*, ¶¶ 83–84.

24 ¹⁷*Id.*, ¶¶ 61–62.

25 ¹⁸*Id.*, ¶ 157.

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27 ¹⁹*Id.*, ¶¶ 173–75. When an undercover FTC employee called Dinamica, for example, a
28 sales agent represented that “[i]f we start the process, of course, there is no reason to fear losing
the house.” (*Id.*, ¶ 175).

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²⁰*Id.*, ¶¶ 179–89.

²¹*Id.*, ¶¶ 180, 186. Former Dinamica client, Javier Benitez, testified that Dinamica agent “Arreola explained that Dinamica would make an arrangement with [the lender] to grant me a suspension of my mortgage payments for seven months. He said this suspension would give me time to save money for when I would resume making my monthly mortgage payments in March 2008. . . . Mr. Arreola explained that the seven monthly mortgage payments missed would be added at the end of my loan, which I understood as extending the term of my loan by seven months.” (Plaintiff’s *Ex Parte* Application for a Temporary Restraining Order (“TRO App.”), Docket No. 6 (May 19, 2009), Exh. 2 (Declaration of Javier Benitez), ¶¶ 6–7).

²²*Id.*, ¶¶ 182–85. Former Dinamica client, Celia Argueta, testified that Benitez said “he could put all the missed payments at the end of our loans once they came to an agreement with the bank. He was very insistent that he could do this for us. . . . Because I had some doubts about the promises made by Mr. Benitez, I asked if he was sure that he could help us. He told me to trust him, that he had a lot of experience and that he had been doing this for many years. He told us that we shouldn’t worry about the house, to relax, to take the children to the park, that he would fix everything with the bank.” (TRO App., Exh. 1 (Declaration of Celia Argueta), ¶¶ 7–8). Dinamica sales agent Manuel rl005 Tc.kiboue8).TJ9uhild28 1r2.5 108 31eF abodly He to[(E

1 sales agents promised clients that they would secure these modifications, and assured them that
2 Dinamica would handle all issues that their lenders raised.²⁵ In fact, Dinamica representatives told
3 clients not to speak with their lenders as it might disrupt negotiations; they suggested that clients
4 simply convey any communications to Dinamica.²⁶

5 Typically, Dinamica charged clients the equivalent of one month's mortgage payment for
6 its services; in some instances, it instructed clients to pay Dinamica rather than the lender.²⁷
7 Despite Dinamica's assurances, many of its clients ultimately lost their homes through
8 foreclosure.²⁸ Although it told clients who inquired that it was in negotiations with their lender,
9 Dinamica often waited months before contacting lenders, if it contacted them at all.²⁹ Dinamica

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11 and that we were struggling to make my mortgage payments. . . . I remember that Mr. Benitez
12 said words to the effect of, 'Don't worry about that. . . . Everything is going to be fixed.' . . .
13 Mr. Benitez told us that if we made our monthly mortgage payment to Dinamica Financiera, I
14 would be able to remain in my house without making any further payments until February 2009.
15 Mr. Benitez said that the payment of \$3,184.29 would guarantee that he would act in my name
16 and that Dinamica Financiera would negotiate a lower mortgage payment with my lender. He said
17 that the efforts of Dinamica Financiera would result in my lender reducing the amount of my
18 monthly mortgage payments to the original amount of \$2,200." (TRO App., Exh. 3 (Declaration
19 of Elsa Espinoza), ¶ 6).

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21 ²⁵SUF, ¶¶ 193–206.

22 ²⁶*Id.*, ¶¶ 210–11. Former Dinamica client, Javier Benitez, stated that a Dinamica agent told
23 him "that I would not have to send another mortgage payment to Wilshire [his lender] until March
24 2008, and advised me not to contact Wilshire during this time because that would get in the middle
25 of his negotiations." (TRO App., Exh. 2 (Declaration of Javier Benitez), ¶ 7).

26 ²⁷*Id.*, ¶¶ 162–63.

27 ²⁸*Id.*, ¶¶ 213, 215–18. Defendants knew that many of their clients' homes had been sold
28 at foreclosure sales as the files were marked "sold." (*Id.*, ¶ 225).

²⁹*Id.*, ¶¶ 222–23. Argueta stated that she and her husband hired Dinamica in May 2008
after being assured by Benitez that he would negotiate an agreement with the bank to save their
house from foreclosure. Although Dinamica assured them that negotiations were in progress,
Argueta received a call from the bank regarding missed mortgage payments and was told that no
one had contacted the bank on her behalf. After Argueta received notice of a scheduled
foreclosure sale in June, Benitez told her not to worry because that things were in process.
Subsequently, another Dinamica employee called to say that nothing could be done to stop the

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³⁷ *Id.*

1 (“Soluciones”) on May 22, 2008.⁴⁶

2 Benitez was the primary decision maker behind the move to Soluciones, and was its
3 “owner in fact.”⁴⁷ Benitez held the same management role at Soluciones as at Dinamica,
4 supervising staff, directing advertising, working with clients, and directing operations.⁴⁸ Esquer
5 worked with Benitez to transfer Dinamica’s business as aew0767 -1-M5054 Tc-.sd directingnd the move to ope

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16 ⁴⁶*Id.*, ¶¶ 6–10.

17 ⁴⁷*Id.*, ¶¶ 74–77.

18 ⁴⁸*Id.*, ¶¶ 72–89.

19 ⁴⁹*Id.*, ¶ 76.

20 ⁵⁰*Id.*, ¶¶ 35–50.

21 ⁵¹*Id.*, ¶¶ 21, 70.

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23 ⁵²*Id.*, ¶¶ 173–96. Former client Wendy Romo testified that Soluciones agent Argelia
24 Zambrano told her and her husband that “the payments [they] had already missed . . . would
25 simply be tacked on to the back end of our loan.” Romo stated that, “[t]he way Ms. Zambrano
26 explained it, we would simply make up all of our missed payments at the end of our mortgage
term.” (*Id.*, ¶ 190).

27 ⁵³*Id.*, ¶ 83–84.

28 ⁵⁴*Id.*, ¶¶ 63, 83–84.

1 modified.⁵⁵ As with Dinamica, however, Soluciones rarely lived up to the promises it made to
2 its clients, and many of them lost their homes in foreclosure.⁵⁶ Both Esquer and Benitez were well
3 aware of continuing complaints from their clients.⁵⁷

4 **C. Oficinas Legales de Eric Douglas Johnson, Inc.**

5 The FTC continued to investigate defendants' business practices throughout 2008, and
6 personally served Esquer with court orders enforcing the CID.⁵⁸ Believing that he needed a
7 lawyer or a real estate license to continue Soluciones's loan modification business, Benitez began
8 negotiating with attorney Eric Douglas Johnson in March 2009 to transfer all operations to
9 Johnson's newly formed law practice.⁵⁹ In April 2009, Soluciones paid Johnson \$5,000 to assume
10 responsibility for its operations, including all of its clients.⁶⁰ Johnson ended an association with
11 a different loan modification business, and incorporated Oficinas Legales de Eric Douglas
12 Johnson, Inc., on April 15, 2009, to take over Soluciones' operations.⁶¹ On April 18, 2009,
13 Johnson moved into the Soluciones office, which was renamed Oficinas Legales de Eric Douglas
14 Johnson, Inc. ("Oficinas"). Johnson advised the employees that he was in charge and that they
15 now worked for Oficinas.⁶²

16 Nearly all of the Soluciones employees, including the sales agents, remained with
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19 ⁵⁵*Id.*, ¶¶ 179–96. For example, Soluciones' agent Argelia Zambrano guaranteed Wendy
20 and Carlos Romo that Soluciones would obtain a substantially reduced mortgage payment for
21 them. (*Id.*, ¶ 196).

22 ⁵⁶*Id.*, ¶¶ 213–42.

23 ⁵⁷*Id.*, ¶¶ 64–68, 85–87.

24 ⁵⁸*Id.*, ¶¶ 285–96.

25 ⁵⁹*Id.*, ¶¶ 18, 90, 113.

26 ⁶⁰*Id.*, ¶¶ 14–15, 116, 119.

27 ⁶¹*Id.*, ¶ 13.

28 ⁶²*Id.*, ¶¶ 120–21.

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⁶³*Id.*, ¶ 17. Benitez testified that Manuel Pozo and Argelia Sambrano were the primary sales agents from Soluciones who continued to work for Oficinas. (Deposition of Valentin Benitez at 74:21–75:5). Pozo was also a sales agent at Dinamica. (SUF, ¶ 185).

⁶⁴The FTC thus alleges that Esquer should be held jointly and severally liable for misrepresentations made by Dinamica and Soluciones, but not for misrepresentations made by Oficinas. (SUF at 54). While the FTC allege that Esquer was actively involved in running Oficinas, he testified that he worked at that company until October 27, 2009. (Deposition of Jose Mario Esquer at 12:14–19).

⁶⁵SUF, ¶¶ 91–103.

⁶⁶*Id.*, ¶ 92.

⁶⁷*Id.*, ¶¶ 93–103.

⁶⁸*Id.*, ¶ 70.

1 and sole officer of Oficinas.⁷² He functioned as an on-site attorney for the loan modification
2 operation, working with prior clients of Soluciones as well new clients attracted by Benitez’s
3 advertising.⁷³ Johnson supervised the sales staff and negotiators at Oficinas, and conducted staff
4 meetings.⁷⁴ He also issued and approved refunds to clients and was a signatory on each of
5 Oficinas’s bank accounts.⁷⁵

6 Oficinas offered the same loan deferral and modification services as Dinamica and
7 Soluciones had.⁷⁶ While Johnson made some cosmetic changes to the way the business operated,⁷⁷
8 Oficinas continued to make misrepresent to consumers that their homes would be saved from
9 foreclosure through loan modifications or payment deferrals.⁷⁸ As Benitez stated, “we kept on
10 working, basically, the same way, with the difference that supposed[ly] it was now legal because

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12 ⁷²*Id.* ¶¶ 107–108.

13 ⁷³*Id.*, ¶¶ 116–18, 129.

14 ⁷⁴*Id.*, ¶¶ 131–33.

15 ⁷⁵*Id.*, ¶¶ 134–35.

16 ⁷⁶*Id.*, ¶¶ 180–99. While working for Oficinas, Benitez told client Ana Carrillo “not to
17 worry about the late payments. He said that my bank would put the money that I owed at the back
18 of my loan.” Carrillo subsequently had to pay more than \$25,000 in back payments and penalties
to prevent foreclosure. (*Id.*, ¶ 191).

19 ⁷⁷*Id.*, ¶ 125. Benitez testified that “[Johnson] made several recommendations, several
20 recommendations. He changed the forms. He changed some forms. He said things had to be
21 done in this way. And yes, he made some small changes, but generally, it was practically – he
gave continuity to everything that we were doing before.” (Benitez Deposition at 79:16–24).
22 Johnson testified that he gradually assumed control of Soluciones’ operations. (Deposition of Eric
23 Douglas Johnson at 88:22–89:18 (“I guess you’d call it gradulaism, so to speak”).)

24 ⁷⁸SUF, ¶¶ 180–99. For example, agent Manuel Pozo assured client Silvia Benavidez that
25 “Oficinas . . . could help me.” Benavidez stated that Pozo “made it sound like getting a reduced
26 mortgage payment was a certainty, and not once did he say that there was a probability that it
27 wouldn’t happen. The only question was how much our mortgage payment would be reduced.”
Although Benavidez had previously paid approximately \$1,680 per month, “Mr. Pozo estimated
28 [a new payment] between \$900 and \$800.” (SUF, ¶ 199). Similarly, Benitez convinced Oficinas
client Cipriano Ayala that his lender would reduce the loans on two properties to the current
market value of the properties. (SUF, ¶ 198).

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⁷⁹Benitez deposition at 75:2-5.

⁸⁰SUF, ¶¶ 213-42.

⁸¹*Id.*, ¶¶ 243-49.

⁸²*Id.* Of the \$90,000 of “deposits” collected from clients, Oficinas made a total of three payments of \$3,212.76 to clients’ lenders. (*Id.*, ¶¶ 243, 248).

⁸³*Id.*, ¶ 136.

⁸⁴Esquer Deposition at 121:3-123:3.

⁸⁵SUF, ¶ 137.

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⁸⁷SUF, ¶ 19.

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1 Here, defendants failed to file opposition. A court may not enter summary judgment solely
2 because the non-movant fails to oppose the motion, however. Instead, the court must review the
3 sufficiency of plaintiffs' motion under the summary judgment standard. See *Martinez v. Stanford*,
4 323 F.3d 1178, 1182-83 (9th Cir. 2003) (holding that a local rule cannot mandate automatic entry
5 of judgment for a moving party without considering whether the motion satisfies Rule 56); *Henry*
6 *v. Gill Indus.*, 983 F.2d 943, 950 (9th Cir. 1993) (same).

7 **B. The FTC's Motion for Summary Judgment Against the Corporate Defendants**

8 Citing uncontroverted evidence that defendants made misrepresentations to their clients,
9 the FTC asserts that there are no triable issues regarding the fact that Dinamica, Soluciones, and
10 Oficinas violated of Section 5(a) of the Federal Trade Commission Act ("FTCA"). Section 5(a)
11 provides, in relevant part:

12 "(1) Unfair methods of competition in or affecting commerce, and unfair or
13 deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

14 (2) The Commission is hereby empowered and directed to prevent persons,
15 partnerships, or corporations, . . . from using unfair methods of competition in or
16 affecting commerce and unfair or deceptive acts or practices in or affecting
17 commerce.

18 . . .

19 (4)(A) For purposes of . . . this section, the term 'unfair or deceptive acts or
20 practices' includes such acts or practices involving foreign commerce that –

21 (i) cause or are likely to cause reasonably foreseeable injury within the
22 United States; or

23 (ii) involve material conduct occurring within the United States." 15 U.S.C.

24 § 45(a).

25 "Under Section 5, the Court will find an act or practice deceptive or misleading if there
26 is a representation that is likely to mislead consumers acting reasonably under the circumstances,
27 and the representation is material." *F.T.C. v. Gill*, 71 F.Supp.2d 1030, 1037 (C.D. Cal. 1999)
28 (citing *F.T.C. v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994)); see also *F.T.C. v. World*

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1 arrange payment deferrals for borrowers who “need[ed] some time to continue making [their]
2 payments” or negotiate “new,” “reduced,” or “smaller” monthly mortgage payments so that
3 consumers would not lose their homes.⁹⁸ The FTC has proffered
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13 ⁹⁸*Id.*, ¶¶ 139, 152.

14 ⁹⁹*Id.*, ¶¶ 153–56.

15 ¹⁰⁰*Id.*, ¶¶ 180–89. For example, former Dinamica client, Javier Benitez, states that
16 Dinamica agent “Arreola explained that Dinamica would make an arrangement with [Benitez’s
17 lender] to grant me a suspension of my mortgage payments for seven months. He said this
18 suspension would give me time to save money for when I would resume making my monthly
19 mortgage payments in March 2008. . . . Mr. Arreola explained that the seven monthly mortgage
20 payments missed would be added at the end of my loan, which I understood as extending the term
21 of my loan by seven months.” (TRO App., Exh. 2 (Declaration of Javier Benitez), ¶¶ 6–7).
22 While working for Oficinas, Benitez told client Ana Carrillo “not to worry about the late payments.
He said that my bank would put the money that I owed at the back of my loan.” Carrillo
subsequently had to pay more than \$25,000 in late payments and penalties to prevent foreclosure.
(*Id.*, ¶ 191).

23 ¹⁰¹SUF, ¶¶ 192–97. For example, Soluciones’ agent, Argelia Zambrano, guaranteed
24 Wendy and Carlos Romo that Soluciones would secure a substantially reduced mortgage payment
25 for them. (*Id.*, ¶ 196). Oficinas Agent Manuel Pozo assured client Silvia Benavidez that
26 “Oficinas . . . could help me.” Benavidez testified that Pozo “made it sound like getting a
27 reduced mortgage payment was a certainty, and not once did he say that there was a probability
28 that it wouldn’t happen. The only question was how much our mortgage payment would be
reduced. Although Benavidez had previously paid approximately \$1,680 per month, “Mr. Pozo
estimated [a new payment] between \$900 and \$800.” (SUF, ¶ 199). Similarly, Benitez convinced
Oficinas client Cirpiano Ayala that his lender would reduce the loan amount for his two properties

1 numerous declarations from clients who typically paid defendants the equivalent of one-month's
2 mortgage payment based on these assurances.¹⁰²

3 The "net effect" of defendants' advertisements
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24 to the properties' current market value. (SUF, ¶ 198).
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26 ¹⁰²*Id.*, ¶¶ 180, 186, 188–99.

27 ¹⁰³*Id.*, ¶ 237.

28 ¹⁰⁴SUF, ¶¶ 215, 236.

1 continued to make the same statements to prospective clients.¹⁰⁵ The FTC has proffered
2 declarations from multiple clients who were misled by defendants' assurances and relied on
3 defendants' advice to their detriment after paying defendants significant sums.¹⁰⁶ The FTC does
4 not need to establish that every client was misled; it need only show that the statements made had
5 the tendency or capacity to deceive. See *Trans World Accounts, Inc.*, 594 F.2d at 214 ("Proof
6 of actual deception is unnecessary to establish a violation of Section 5. Misrepresentations are
7 condemned if they possess a tendency to deceive"). Based on the undisputed evidence proffered
8 by the FTC, the court finds that defendants' representations were misleading and in violation of
9 Section 5 of the FTCA.

10 **2. Whether the Corporate Defendants' Misrepresentations Were Material**

11 "A representation or omission is material if it is of the kind usually relied on by a
12 reasonably prudent person." *F.T.C. v. Transnet Wireless Corp.*, 506 F.Supp.2d 1247, 1267 (S.D.
13 Fla. 2007) (citing *In re Thompson Medical Co.*, 104 F.T.C. 648, 816 (1984), *aff'd*, 791 F.2d 189
14 (D.C. Cir. 1986)). "Express claims or deliberately-made implied claims used to induce the
15 purchase of a particular product or service are presumed to be material." *Id.* (citing *Pantron I*,
16 33 F.3d at 1096); see also *F.T.C. v. Natural Solution, Inc.*, No. CV 06-6112 JFW (JTLx), 2007
17 U.S. Dist. LEXIS 60783, *7-8 (C.D. Cal. Aug. 7, 2007). "A presumption of actual reliance
18 arises once the Commission has proved that the defendant made material misrepresentations, that
19 they were widely disseminated, and that consumers purchased the defendant's product." *Figgie*
20 *Int'l, Inc.*, 994 F.2d at 605.

21 The FTC has proffered evidence from multiple former clients of Dinamica, Soluciones, and
22 Oficinas that they paid defendants significant sums based on express and implied assurances that
23 their mortgage payments would either ~~UDTS~~

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26 ¹⁰⁵*Id.*, ¶¶ 51, 58, 225, 250-51, 261-66.

27 ¹⁰⁶*Id.*, ¶¶ 268-268-73.

28 ¹⁰⁷*Id.*, ¶¶ 180, 193, 269, 272-73.

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¹⁰⁸*Id.*

1 the court to issue a permanent injunction for a violation of the Act. 15 U.S.C. § 53(b); see also
2 *F.T.C. v. H.N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982). Further, “[t]he district court
3 has broad authority under the FTC Act to ‘grant any ancillary relief necessary to accomplish
4 complete justice,’ including the power to order restitution.” *F.T.C. v. Stefanchik*, 559 F.3d 924,
5 931 (9th Cir. 2009) (quoting *Pantron I*, 33 F.3d at 1102). “A corporation is liable for monetary
6 relief under section 13(b) if the F.T.C. shows that the corporation engaged in misrepresentations
7 or omissions of a kind usually relied on by reasonably prudent persons and that consumer injury
8 resulted.” *Pantron I Corp.*, 33 F.3d at 1102 (citing *Amy Travel Serv., Inc.*, 875 F.2d at 571).

9 Because the undisputed evidence shows that Dinamica, Soluciones, and Oficinas each
10 violated Section 5(a) of the FT

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1 of a recurrent violation).

2 **D. Liability of Individual Defendants**

3 Based on their positions in one or more of the companies, and the actions they took on
4 behalf of the companies, however, the FTC asserts that the individual defendants – Valentin
5 Benitez, Jose Mario Esquer, and Eric Douglas Johnson – should be enjoined from engaging in
6 further deceptive practices and should be held jointly and severally liable for consumer redress.

7 “Individual defendants may be held liable for injunctive relief for the corporate defendants’
8 violations of the FTC Act if the FTC demonstrates that the individual defendants participated
9 directly in the wrongful acts or practices, or had authority to control the corporations.” *F.T.C.*
10 *v. Neovi, Inc.*, 598 F.Supp.2d 1104, 1117 (S.D. Cal. 2008) (citing *F.T.C. v. J.K. Publ’ns, Inc.*,
11 99 F.Supp.2d 1176, 1203 (C.D. Cal. 2000)). “Authority to control [a] company can be evidenced
12 by active involvement in business affairs and the making of corporate policy.” *F.T.C. v.*
13 *American Standard Credit Sys.*, 874 F.Supp. 1080, 1089 (C.D. Cal. 1994) (citing *Amy Travel*
14 *Service, Inc.*, 875 F.2d at 573–74).

15 An individual’s status as a corporate officer and/or the authority of that individual to sign
16 documents on behalf of a corporate defendant is sufficient to show the requisite control. See
17 *F.T.C. v. Publishers Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997) (“Martin’s
18 assumption of the role of president of PCH and her authority to sign documents on behalf of the
19 corporation demonstrate that she had the requisite control over the corporation”).

20 To hold individual defendants liable for restitution, the FTC must additionally show that
21 they “had knowledge that the corporation or one of its agents engaged in the wrongful acts or
22 practices.” *Neovi, Inc.*, 598 F.Supp.2d at 1117 (citing *Publishers Clearing House, Inc.*, 104 F.3d
23 at 1171). To show knowledge, the FTC must demonstrate that the individual defendant “had
24 actual knowledge of material misrepresentations, [was] recklessly indifferent to the truth or falsity
25 of a misrepresentation, or had an awareness of a high probability of fraud along with an
26 intentional avoidance of the truth.” *Publishers Clearing House, Inc.*, 104 F.3d at 1171 (citing
27 *F.T.C. v. American Standard Credit Sys.*, 874 F.Supp. 1080, 1089 (C.D. Cal. 1994)). The FTC
28 does not need to show that an individual defendant intended to defraud consumers to hold that

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¹¹¹For example, former Dinamica client Celia Ar

1 business from Soluciones to Oficinas with Johnson, and was responsible for making sure that
2 operations were not disrupted.¹¹⁷ Once at Oficinas, he continued to manage the sales staff and
3 authorize the payment of commissions.¹¹⁸ As Benitez himself testified, after Oficinas assumed
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22 ¹¹⁷*Id.*, ¶¶ 90–91.

23 ¹¹⁸*Id.*, ¶¶ 93–95.

24 ¹¹⁹*Id.*, ¶¶ 104–105.

25 ¹²⁰*Id.*, ¶¶ 85–86.

26 ¹²¹*Id.*, ¶¶ 21–26.

27 ¹²²*Id.*, ¶¶ 27–32.

1 supervisor and continued to sign documents on the new entity's behalf, including lease agreements
2 and financial statements.¹²³ While Esquer was not as involved in the sales operation of the
3 companies as Benitez, he spoke with clients on a regular basis at both Dinamica and Soluciones,
4 tracked sales and reviewed new contracts.¹²⁴ Esquer's supervision of employees at Dinamica and
5 Soluciones, together with his execution of key corporate documents, establishes he had sufficient
6 control over the companies to be enjoined from engaging in further deceptive practices. See
7 *Publishers Clearing House, Inc.*, 104 F.3d at 1170.

8 Esquer knew of the misrepresentations being made to clients at both Soluciones and
9 Dinamica. He knew of the radio advertisements, spoke with the sales agents about what was being
10 offered to clients, and spoke with clients about the status of their mortgages.¹²⁵ Esquer knew that
11 the homes of many of the companies' clients went into foreclosure, he heard the clients'
12 complaints and processed their refund requests, and read the complaints forwarded by the Better
13 Business Bureau and Los Angeles Department of Consumer Affairs.¹²⁶ Because these facts
14 demonstrate that he had actual knowledge of the misrepresentations being made, Esquer is liable
15 for the restitution owed clients of Dinamica and Soluciones.¹²⁷ See *Neovi, Inc.*, 598 F.Supp.2d
16 at 1117; see also *Publishers Clearing House, Inc.*, 104 F.3d at 1171 (holding that an individual
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23 ¹²³*Id.*, ¶¶ 35–45.

24 ¹²⁴*Id.*, ¶¶ 43–49.

25 ¹²⁵*Id.*, ¶¶ 54–61.

26 ¹²⁶*Id.*, ¶¶ 64–68.

27 ¹²⁷The FTC does not seek to recover restitution from Esquer for injury suffered by
28 consumers who dealt with Oficinas.

1 operations, and was the president and only officer of Oficinas.¹²⁸ He functioned as an on-site
2 attorney for the loan modification operation, working with Soluciones' clients as well new clients
3 attracted through Benitez's advertising.¹²⁹ Johnson supervised the sales staff and negotiators at
4 Oficinas, and conducted staff meetings.¹³⁰ He also issued and approved refunds to clients and was
5 a signatory on each of Oficinas's bank accounts.¹³¹ Johnson thus exercised sufficient control over
6 Oficinas' operations to be enjoined from engaging in further deceptive practices. See *Publishers*
7 *Clearing House, Inc.*, 104 F.3d at 1170.

8 If not already aware of the misrepresentations being made by agents under his supervision,
9 Johnson was served with the temporary restraining order and preliminary injunction issued against
10 the other defendants in this case in May 2009.¹³² Despite this clear notification of the FTC's
11 claims and the court's preliminary view of them, Johnson continued to allow Benitez and Esquer
12 to run Oficinas under his name without significant changes.¹³³ The court therefore concludes it
13 is appropriate to hold Johnson liable for restitution because he knew or should have known that
14 there was a high probability that sales agents in his office were making mate

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20 ¹²⁸*Id.* ¶¶ 107–108.

21 ¹²⁹*Id.*, ¶¶ 116–18, 129.

22 ¹³⁰*Id.*, ¶¶ 131–33.

23 ¹³¹*Id.*, ¶¶ 134–35.

24 ¹³²*Id.*, ¶¶ 122–24.

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26 ¹³³Esquer Deposition at 121:3–123:3. Benitez testified that although Johnson “made several
27 recommendations, several recommendations,” “changed the forms,” and “said things had to be
28 done in this way,” he “generally, . . . practically – gave continuity (sic) to everything that we
were doing before.” (Benitez Deposition at 79:16–24).

1 avoidance of the truth”).

2 **D. Scope of Relief Sought**

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26 ¹³⁴*Id.*, ¶¶ 274–81.

27 ¹³⁵*Id.*, ¶¶ 282–83.

28 ¹³⁶*Id.*, ¶ 284.

1 Dinamica, Benitz, and Esquer are jointly and severally liable for restitution in the amount of
2 \$3,746,555.70, which equals all amounts paid to Dinamica by its

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Miriam Hernandez
