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CENTRAL DIST. OF CALIF.  
SANTA ANA

BY \_\_\_\_\_

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11 FEDERAL TRADE COMMISSION

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14 FEDERAL TRADE COMMISSION,  
15 Plaintiff,

16 v.

17 CD CAPITAL INVESTMENTS, LLC, a  
18 California Limited Liability Company; CD  
19 CAPITAL, LLC, a California Limited  
20 Liability Company; GDS INFORMATION  
21 SERVICES, INC., a California Corporation;  
22 CHRISTIAN D. QUEZADA, individually  
23 and as an officer of CD CAPITAL  
24 INVESTMENTS, LLC, and CD CAPITAL,  
25 LLC; MIREYA DUENAS, individually and  
26 as an officer of CD CAPITAL, LLC; and  
27 GABRIEL DREWS STEWART,  
28 individually and as an officer of GDS  
INFORMATION SERVICES, INC.,  
Defendants.

Case no. SACV14-01033 JLS (RNBx)

COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF

BY FAX COPY

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

2 1. The FTC brings this action under Sections 13(b) and 19 of the Federal  
3 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the 2009  
4 Omnibus Appropriations Act, Public Law 111-8, Section 626, 123 Stat. 524, 678  
5 (Mar. 11, 2009) (“Omnibus Act”), as clarified by the Credit Card Accountability  
6 Responsibility and Disclosure Act of 2009, Public Law 111-24, Section 511, 123  
7 Stat. 1734, 1763-64 (May 22, 2009) (“Credit Card Act”), and amended by the  
8 Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-  
9 203, Section 1097, 124 Stat. 1376, 2102-03 (July 21, 2010) (“Dodd-Frank Act”),  
10 12 U.S.C. § 5538, to obtain temporary, preliminary, and permanent injunctive  
11 relief, rescission or reformation of contracts, restitution, the refund of monies paid,  
12 disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts  
13 or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the  
14 Mortgage Assistance Relief Services Rule (“MARS Rule”), 16 C.F.R. Part 322, re-  
15 codified as Mortgage Assistance Relief Services (“Regulation O”), 12 C.F.R. Part  
16 1015, in connection with the marketing and sale of mortgage assistance relief  
17 services.  
18

### 19 JURISDICTION AND VENUE

20 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§  
21 1331, 1337(a), and 1345; 15 U.S.C. §§ 45(a), 53(b), and 57b, and Section 626 of  
22 the Omnibus Act, as clarified by Section 511 of the Credit Card Act, and amended  
23 by Section 1097 of the Dodd-Frank Act, 12 U.S.C. § 5538.

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

### 26 PLAINTIFF

27 4. Plaintiff FTC is an independent agency of the United States  
28 Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section

1 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or  
2 practices in or affecting commerce. In addition, pursuant to 12 U.S.C. § 5538, the  
3 FTC also enforces the MARS Rule, which requires mortgage assistance relief  
4 services (“MARS”) providers to make certain disclosures, prohibits certain  
5 representations, and generally prohibits the collection of an advance fee.

6 5. The FTC is authorized to initiate federal district court proceedings, by  
7 its own attorneys, to enjoin violations of the FTC Act; the MARS Rule; and  
8 Regulation O; and to secure such equitable relief as may be appropriate in each  
9 case, including rescission or reformation of contracts, restitution, the refund of  
10 monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b),  
11 56(a)(2)(A)-(B), and 57b; § 626, 123 Stat. at 678, as clarified by § 511, 123 Stat. at  
12 1763-64, and amended by § 1097, 124 Stat. at 2102-03, 12 U.S.C. § 5538.

13 **DEFENDANTS**

14 6. Defendant CD Capital Investments, LLC, also doing business as UW  
15 Solutions, also formerly known as The Processing Department (“Capital  
16 Investments”), is a California limited liability company with its most recent  
17 principal place of business (through May 2014) located at a virtual office at 65  
18 Enterprise, Aliso Viejo, California 92656. Capital Investments also maintains  
19 virtual office locations at 500 North State College Boulevard, Suite 1100, Orange,  
20 California 92868, and 17470 North Pacesetter Way, Scottsdale, Arizona 85255. At  
21 all times material to this Complaint, acting alone or as part of the common  
22 enterprise described in paragraph 13, Capital Investments has advertised,  
23 marketed, provided, offered to provide, or arranged for others to provide MARS,  
24 as defined in 16 C.F.R. § 322.2, recodified as 12 C.F.R. § 1015.2. Capital  
25 Investments transacts or has transacted business in this district and throughout the  
26 United States.  
27  
28

1           7. Defendant CD Capital, LLC, also doing business as UW Solutions,  
2 also formerly known as The Processing Department (“CD Capital,” together with  
3 Capital Investments, collectively referred to as “UW Solutions”), is a California  
4 limited liability company with its principal place of business at a virtual office  
5 located at 500 North State College Boulevard, Suite 1100, Orange, California  
6 92868. CD Capital also maintained virtual office and/or mailbox services at 65  
7 Enterprise, Aliso Viejo, California 92656, and 17470 North Pacesetter Way,  
8 Scottsdale, Arizona 85255. At all times material to this Complaint, acting alone or  
9 as part of the common enterprise described in paragraph 13, CD Capital has  
10 advertised, marketed, provided, offered to provide, or arranged for others to  
11 provide MARS, as defined in 16 C.F.R. § 322.2, recodified as 12 C.F.R. § 1015.2.  
12 CD Capital transacts or has transacted business in this district and throughout the  
13 United States.

14  
15           8. Defendant GDS Information Services, Inc., also doing business as  
16 2Apply, also formerly known as NPV Report, NPV Test, NPVTest.org, and  
17 National Mortgage Help Center (“2Apply”), is a California Corporation with its  
18 principal place of business at a private mailbox located at 360 East 1st Street #825,  
19 Tustin, California 92780. 2Apply also maintains offices at a private residence in  
20 Orange, California. In 2011, the Alabama State Banking Department obtained a  
21 Cease & Desist Order against 2Apply. At all times material to this Complaint,  
22 acting alone or in concert with others, 2Apply has advertised, marketed, provided,  
23 offered to provide, or arranged for others to provide MARS, as defined in 16  
24 C.F.R. § 322.2, recodified as 12 C.F.R. § 1015.2. 2Apply transacts or has  
25 transacted business in this district and throughout the United States.

26           9. Defendant Christian D. Quezada (“Quezada”) holds himself out as  
27 CEO, managing member, manager, owner, and corporate secretary of Capital  
28 Investments and CD Capital in official corporate filings and bank documents.

1 Quezada is the only signatory on the bank accounts for Capital Investments and  
2 CD Capital. Quezada is also listed as the point of contact on payment receipts that  
3 consumers receive from payment processors for Capital Investments and CD  
4 Capital. In addition, Quezada pays the bills and serves as a contact for UW  
5 Solutions' internet and telephone services. Quezada previously worked at Noah  
6 Savings Mortgage, a company that the Oregon Attorney General's office sued for  
7 performing illegal foreclosure consulting and loan modification services. At all  
8 times material to this Complaint, acting alone or in concert with others, Defendant  
9 Quezada has formulated, directed, controlled, had the authority to control, or  
10 participated in the acts and practices of Capital Investments and CD Capital,  
11 including the acts and practices set forth in this Complaint. Defendant Quezada  
12 resides in this district and, in connection with the matters alleged herein, transacts  
13 or has transacted business in this district and throughout the United States.

14  
15 10. Defendant Mireya Duenas ("Duenas") is a managing member and  
16 officer of CD Capital. In company payment processing account documents,  
17 Duenas is listed as a principal and 50% owner of CD Capital. At times material to  
18 this Complaint, acting alone or in concert with others, she has formulated, directed,  
19 controlled, had the authority to control, or participated in the acts and practices of  
20 CD Capital, including the acts and practices set forth in this Complaint. Defendant  
21 Duenas resides in this district and, in connection with the matters alleged herein,  
22 transacts or has transacted business in this district and throughout the United  
23 States.

24 11. Defendant Gabriel D. Stewart ("Stewart") is an owner and officer of  
25 2Apply. Stewart holds himself out as President, CEO, Secretary, CFO, and sole  
26 director of 2Apply in corporate filings. Stewart is the only signatory on the bank  
27 accounts for 2Apply. Stewart also pays the bills and serves as a contact for  
28 2Apply's internet and telephone services. At all times material to this Complaint,

1 acting alone or in concert with others, he has formulated, directed, controlled, had  
2 the authority to control, or participated in the acts and practices of 2Apply,  
3 including the acts and practices set forth in this Complaint. Defendant Stewart  
4 resides in this district and, in connection with the matters alleged herein, transacts  
5 or has transacted business in this district and throughout the United States.

### 6 COMMON ENTERPRISE

7 12. Capital Investments and CD Capital are commonly controlled by  
8 proposed defendant Quezada, who, in addition to being an owner and officer of  
9 both companies, has sole control of their bank accounts. Capital Investments and  
10 CD Capital shared virtual office and/or mailbox services at 65 Enterprise, Aliso  
11 Viejo, California 92656, 500 North State College Boulevard, Suite 1100, Orange,  
12 California 92868, and 17470 North Pacesetter Way, Scottsdale, Arizona 85255.  
13 Capital Investments and CD Capital also share the fictitious business name “UW  
14 Solutions,” which they both registered with the County of Orange in California.  
15 No real distinction exists between Capital Investments and CD Capital with respect  
16 to their operation of the loan modification scheme perpetrated using the fictitious  
17 name UW Solutions.  
18

19 13. Defendants Capital Investments and CD Capital have operated as a  
20 common enterprise while engaging in the deceptive acts and practices and other  
21 violations of law alleged below. Capital Investments and CD Capital have  
22 conducted the business practices described below through interrelated companies  
23 that have common control, shared office space and officers, unified advertising,  
24 and that have failed to maintain separation of companies. Evidence reveals that no  
25 real distinction exists between Capital Investments and CD Capital. Because  
26 Capital Investments and CD Capital have operated as a common enterprise, each of  
27 them is jointly and severally liable for the acts and practices alleged below.  
28 Defendants Quezada and Duenas have formulated, directed, controlled, had the

1 authority to control, or participated in the acts and practices of Capital Investments  
2 and CD Capital that constitute the common enterprise.

3 **COMMERCE**

4 14. At all times material to this Complaint, Defendants have maintained a  
5 substantial course of trade in or affecting commerce, as “commerce” is defined in  
6 Section 4 of the FTC Act, 15 U.S.C. § 44.

7 **DEFENDANTS’ BUSINESS PRACTICES**

8 15. Since at least mid-2011 to present, Defendants Capital Investments  
9 and CD Capital, through operation of the common enterprise, and Defendants  
10 Apply, Quezada, Duenas, and Stewart, have engaged in a course of conduct to  
11 advertise, market, sell, provide, offer to provide, or arrange for others to provide  
12 MARS, including mortgage loan forbearance, loan modification, and loan  
13 restructuring services.

14 16. Defendants market their services primarily via outbound  
15 telemarketing calls from 2Apply to consumers. Defendants also market their  
16 services on the Internet, including through the use of websites such as:  
17 www.2apply.net and www.uw-solutions.com.

18 17. Many of Defendants’ customers are financially distressed  
19 homeowners, including elderly consumers. Defendants promise consumers that  
20 they will lower the consumer’s mortgage interest rate or obtain a loan forbearance,  
21 a loan modification, or other loan restructuring.

22 18. In many instances, Defendants charge an initial up-front fee of \$395-  
23 \$695 to process the consumer’s “application.”

24 19. In many instances, Defendants also charge consumers monthly “post-  
25 application monitoring fees” of \$299-\$499.

26 20. Defendants, in many instances, promise consumers that they will  
27 receive the promised MARS within two to four months.  
28

1 21. In numerous instances, Defendants have failed to obtain any relief for  
2 their customers.

3 The Sales Pitch

4 22. Defendants initiate contact with consumers via outbound  
5 telemarketing calls. Defendants also market their services to consumers via the  
6 Internet, including through the use of websites such as: www.uw-solutions.com  
7 and www.2apply.net.

8 23. In numerous instances, Defendants have told consumers expressly or  
9 by implication that if they pay an initial, up-front fee, consumers are likely to  
10 obtain loan modifications or other concessions from their lenders and that the  
11 process will be complete within as little as two to four months.

12 24. In numerous instances, Defendants have told consumers that they  
13 have already been “pre-qualified” for a loan modification with their lender or  
14 servicer.  
15

16 25. In some instances, Defendants represent to consumers that they are  
17 affiliated with the “Making Home Affordable Program,” sponsored by “President  
18 Obama” or “the government.”

19 26. In some instances, Defendants represent to consumers that they are  
20 affiliated with the consumer’s lender or servicer.

21 27. Defendants further represent to consumers that their lender or servicer  
22 will not foreclose on their home if they are in the process of obtaining a loan  
23 modification.

24 28. In numerous instances, Defendants have told consumers that, in order  
25 to obtain the promised MARS, consumers should cease making mortgage  
26 payments to their lenders.

27 29. In numerous instances, Defendants also have told consumers that they  
28 should cease communications with their lenders. In some instances, Defendants



1 have told consumers that communicating with their lenders could negatively  
2 impact Defendants' ability to obtain MARS for them.

3 Payment Structure and Enrollment

4 30. Defendants request payment information and authorization from  
5 consumers before providing any services. Defendants have collected payments  
6 from consumers in numerous ways, including but not limited to: personal checks,  
7 cashier's check or money order, automatic bank withdrawal or ACH payment,  
8 direct wire transfer, and in-person deposits by consumers into Defendants' bank  
9 accounts.

10 31. Defendants' fee structure is comprised of several advance fees, each  
11 of which is collected prior to the execution of a written agreement between the  
12 consumer and the loan holder or servicer that incorporates an offer obtained by  
13 Defendants. Defendants first collect from consumers, on average, an up-front  
14 payment of \$495 for "processing" consumer applications. Next, Defendants  
15 collect from consumers, on average, \$399 per month for "post-application  
16 monitoring" services.

17 32. Once consumers agree to pay, Defendants send the consumers a  
18 packet of documents to sign and return. The packet that Defendants send to  
19 consumers typically includes: (1) an invoice authorizing UW Solutions to charge  
20 the consumer's account; (2) a recurring payment authorization form allowing UW  
21 Solutions to automatically withdraw recurring payments from the consumer's bank  
22 account; (3) a borrower signature authorization form allowing UW Solutions to  
23 "discuss my request for payments assistance and/or a loan modification" with the  
24 consumer's lender or mortgage servicing company; (4) a checklist of documents  
25 the consumer must send to UW Solutions; (5) sample hardship letters or a hardship  
26 letter guide; and (5) a Uniform Residential Loan Application, Making Home  
27 Affordable Application, or other loan modification application. The invoice and  
28

1 recurring payment authorization form both contain a statement saying, "I (we)  
2 agree not to chargeback the processed [sic] by the Party for services rendered  
3 under the Agreement and I (we) understand that these charges are NON-  
4 Refundable."

5 Post-Enrollment

6 33. When consumers call to check on the status of their loan modification,  
7 Defendants tell consumers that they need to submit additional documents for  
8 Defendants to process their application. In numerous instances, consumers are  
9 forced to submit the same requested documents to Defendants on several  
10 occasions. Defendants tell consumers who submit the requested documents, in  
11 many instances, that that their loan modification is "with the underwriter," "being  
12 processed," "almost ready to close," or otherwise near completion.

13 34. In numerous instances, consumers who have paid advance fees to  
14 Defendants have been left to negotiate with their own lenders. In some instances,  
15 consumers who reach out to their lenders learn that Defendants never contacted  
16 their lenders at all. In other instances, consumers who reach out to their lenders  
17 learn that Defendants were unsuccessful in obtaining MARS.

18 35. Consumers who paid Defendants advance fees for the promised  
19 MARS, in many instances, have suffered significant economic injury, including:  
20 paying hundreds or thousands of dollars to Defendants and receiving little or no  
21 services in return; falling further behind on mortgage payments; going into  
22 foreclosure; and even losing their homes.

23 36. After consumers have agreed to work with Defendants and paid the  
24 requested advance fees, in numerous instances, Defendants have failed to obtain a  
25 loan modification, principal reduction, or other relief to stop foreclosure or make  
26 consumers' mortgage payments more affordable.  
27  
28

1 **VIOLATIONS OF THE FTC ACT**

2 37. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or  
3 deceptive acts or practices in or affecting commerce.”

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

6 **COUNT I**

7  
8 **(Deceptive Representations Regarding Substantially More Affordable Loan  
9 Payments, Substantially Lower Interest Rates, or Foreclosure Avoidance)**

10 39. In numerous instances, in connection with the advertising, marketing,  
11 promotion, offering for sale, sale, or performance of mortgage assistance relief  
12 services, Defendants have represented, directly or indirectly, expressly or by  
13 implication, that Defendants typically will obtain mortgage loan modifications for  
14 consumers that will make their payments substantially more affordable, will  
15 substantially lower their interest rates, or will help them avoid foreclosure.

16 40. In truth and in fact, Defendants typically do not obtain mortgage loan  
17 modifications for consumers that will make their payments substantially more  
18 affordable, will substantially lower their interest rates, or help them avoid  
19 foreclosure.

20 41. Therefore, Defendants’ representations as set forth in Paragraph 39  
21 are false and misleading and constitute a deceptive act or practice in violation of  
22 Section 5(a) of the FTC Act, 15 U.S. C. § 45(a).

23 **COUNT II**

24 **(Deceptive Representations Regarding Loan Modification Services)**

25 42. In numerous instances, in connection with the advertising, marketing,  
26 promotion, offering for sale or sale or performance of mortgage assistance relief  
27 services, Defendants have represented, directly or indirectly, expressly or by  
28

1 implication:

- 2 (a) that Defendants typically will deliver the promised result from the  
3 mortgage assistance relief service within two to four months;
- 4 (b) that Defendants are affiliated with, endorsed or approved by, or  
5 otherwise associated with:  
6 (i) The United States government,  
7 (ii) Any governmental homeowner assistance plan,  
8 (iii) Any Federal, State, or local governmental agency, unit, or  
9 department,  
10 (iv) Any nonprofit housing counselor agency or program, or  
11 (v) The maker, holder, or servicer of the consumer's dwelling loan;  
12 and
- 13 (c) that the consumer is not obligated to, or should not, make scheduled  
14 periodic payments or any other payments pursuant to the terms of the  
15 consumer's dwelling loan.  
16

17 43. In truth and in fact:

- 18 (a) Defendants typically do not deliver the promised result from mortgage  
19 assistance relief service within two to four months;
- 20 (b) Defendants are not affiliated with, endorsed or approved by, or  
21 otherwise associated with:  
22 (i) The United States government,  
23 (ii) Any governmental homeowner assistance plan,  
24 (iii) Any Federal, State, or local governmental agency, unit, or  
25 department,  
26 (iv) Any nonprofit housing counselor agency or program, or  
27 (v) The maker, holder, or servicer of the consumer's dwelling loan,  
28 and

1 (c) the consumer is obligated to make scheduled periodic payments or  
2 any other payments pursuant to the terms of the consumer's dwelling  
3 loan.

4 44. Therefore, Defendants' representations as set forth in paragraph 42 are  
5 false and misleading and constitute deceptive acts or practices in violation of  
6 Section 5(a) of the FTC Act, 15 U.S. C. § 45(a)

7 **VIOLATIONS OF THE MARS RULE**

8 45. In 2009, Congress directed the FTC to prescribe rules prohibiting  
9 unfair or deceptive acts or practices with respect to mortgage loans. Omnibus Act,  
10 § 626, 123 Stat. at 678, as clarified by Credit Card Act, § 511, 123 Stat. at 1763-  
11 64. Pursuant to that direction, the FTC promulgated the MARS Rule, 16 C.F.R.  
12 Part 322, all but one of the provisions of which became effective on December 29,  
13 2010. The remaining provision, Section 322.5, became effective on January 31,  
14 2011.

15 46. The MARS Rule and Regulation O define "mortgage assistance relief  
16 service provider" as "any person that provides, offers to provide, or arranges for  
17 others to provide, any mortgage assistance relief service" other than the dwelling  
18 loan holder, the servicer of a dwelling loan, or any agent or contractor of such  
19 individual or entity. 16 C.F.R. § 322.2, recodified as 12 C.F.R. § 1015.2.

20 47. Since January 31, 2011, the MARS Rule and Regulation O prohibit  
21 any mortgage assistance relief service provider from requesting or receiving  
22 payment of any fee or other consideration until the consumer has executed a  
23 written agreement between the consumer and the consumer's loan holder or  
24 servicer that incorporates the offer that the provider obtained from the loan holder  
25 or servicer. 16 C.F.R. § 322.5(a), recodified as 12 C.F.R. § 1015.5(a).

26 48. The MARS Rule and Regulation O prohibit any mortgage assistance  
27 relief service provider from representing, expressly or by implication, in  
28

1 connection with the advertising, marketing, promotion, offering for sale, sale, or  
2 performance of any mortgage assistance relief service, that a consumer cannot or  
3 should not contact or communicate with his or her lender or servicer, 16 C.F.R. §  
4 322.3(a), recodified as 12 C.F.R. § 1015.3(a).

5 49. The MARS Rule and Regulation O prohibit any mortgage assistance  
6 relief service provider from misrepresenting, expressly or by implication, any  
7 material aspect of any mortgage assistance relief service, including but not limited  
8 to:

- 9 (a) the likelihood of negotiating, obtaining, or arranging any represented  
10 service or result. 16 C.F.R. § 322.3(b)(1), recodified as 12 C.F.R.  
11 § 1015.3(b)(1);
- 12 (b) the amount of time it will take the mortgage assistance relief service  
13 provider to accomplish any represented service or result. 16 C.F.R. §  
14 322.3(b)(2), recodified as 12 C.F.R. § 1015.3(b)(2);
- 15 (c) that a mortgage assistance relief service is affiliated with, endorsed or  
16 approved by, or otherwise associated with (i) the United States  
17 government, (ii) any governmental homeowner assistance plan,  
18 (iii) any Federal, State, or local government agency, unit, or  
19 department, (iv) any nonprofit housing counselor agency or program,  
20 (v) the maker, holder, or servicer of the consumer's dwelling loan, or  
21 (vi) any other individual, entity, or program. 16 C.F.R. §  
22 322.3(b)(3)(i)-(vi), recodified as 12 C.F.R. § 1015.3(b)(i)-(vi).
- 23 (d) the consumer's obligation to make scheduled periodic payments or  
24 any other payments pursuant to the terms of the consumer's dwelling  
25 loan. 16 C.F.R. § 322.3(b)(4), recodified as 12 C.F.R. § 1015.3(b)(4).

26  
27 50. The MARS Rule and Regulation O prohibit any mortgage assistance  
28 relief service provider from failing to place a statement in every general

1 commercial communication disclosing that (i) the provider is not associated with  
2 the government and its service is not approved by the government or any lender,  
3 and (ii) in certain cases, a statement disclosing that the lender may not agree to  
4 modify a loan, even if the consumer uses the provider's service. 16 C.F.R.  
5 §§ 322.4(a)(1)-(2), recodified as 12 C.F.R. §§ 1015.4(a)(1)-(2).

6 51. The MARS Rule and Regulation O prohibit any mortgage assistance  
7 relief service provider from failing to place a statement in every consumer-specific  
8 commercial communication (i) confirming that the consumer may stop doing  
9 business with the provider or reject an offer of mortgage assistance without having  
10 to pay for the services, (ii) disclosing that the provider is not associated with the  
11 government and its service is not approved by the government or any lender, and  
12 (iii) in certain cases, a statement disclosing that the lender may not agree to modify  
13 a loan, even if the consumer uses the provider's service, and (iv) in certain cases, a  
14 statement disclosing that if they stop paying their mortgage, consumers may lose  
15 their home or damage their credit. 16 C.F.R. §§ 322.4(b)(1)-(3) and (c), recodified  
16 as 12 C.F.R. §§ 1015.4(b)(1)-(3) and (c).

17  
18 52. Pursuant to the Omnibus Act, § 626, 123 Stat. at 678, as clarified by  
19 the Credit Card Act, § 511, 123 Stat. at 1763-64 and amended by the Dodd-Frank  
20 Act, § 1097, 124 Stat. at 2102-03, 12 U.S.C. § 5538, and pursuant to Section  
21 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the MARS Rule or  
22 Regulation O constitutes an unfair or deceptive act or practice in or affecting  
23 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

24 **COUNT III**

25 **(Collection of Advance Payments)**

26 53. In numerous instances, in the course of providing, offering to provide,  
27 or arranging for others to provide mortgage assistance relief services, Defendants  
28 ask for or receive payment before consumers have executed a written agreement

1 between the consumer and the loan holder or servicer that incorporates the offer  
2 obtained by Defendants, in violation of the MARS Rule, 16 C.F.R. § 322.5(a) and  
3 Regulation O, 12 C.F.R. § 1015.5(a).

4 **COUNT IV**

5 **(Prohibited Representation)**

6 54. In numerous instances, in the course of providing, offering to provide,  
7 or arranging for others to provide mortgage assistance relief services, Defendants,  
8 in violation of the MARS Rule, 16 C.F.R. § 322.3(a), and Regulation O, 12 C.F.R.  
9 § 1015.3(a), have represented, expressly or by implication, that a consumer cannot  
10 or should not contact or communicate with his or her lender or servicer.

11 **COUNT V**

12 **(Material Misrepresentations)**

13 55. In numerous instances, in the course of providing, offering to provide,  
14 or arranging for others to provide mortgage assistance relief services, Defendants,  
15 in violation of the MARS Rule, 16 C.F.R. § 322.3(b)(1)-(4), and Regulation O, 12  
16 C.F.R. § 1015.3(b)(1)-(4), have misrepresented, expressly or by implication,  
17 material aspects of their services, including, but not limited to:

18 (a) Defendants' likelihood of obtaining mortgage loan modifications for  
19 consumers that will make their payments substantially more affordable;

20 (b) The amount of time it will take the mortgage assistance relief service  
21 provider to accomplish any represented service or result;

22 (c) Defendants are affiliated with, endorsed, or approved by, or otherwise  
23 associated with:

24 (i) The United States government,

25 (ii) Any governmental homeowner assistance plan,

26 (iii) Any Federal, State, or local governmental agency, unit, or  
27 department,  
28



- 1 (iv) Any nonprofit housing counselor agency or program, or
- 2 (v) The maker, holder, or servicer of the consumer's dwelling loan,
- 3 and

- 4 (d) The consumer's obligation to make scheduled periodic payments or
- 5 any other payments pursuant to the terms of the consumer's dwelling
- 6 loan.

7 **COUNT VI**

8 **(Failure to Disclose)**

9 56. In numerous instances, in the course of providing, offering to provide,

10 or arranging for others to provide mortgage assistance relief services, Defendants

11 have failed to make the following disclosures:

- 12 (a) in all general commercial communications –
- 13 (1) “[Name of company] is not associated with the government,
- 14 and our service is not approved by the government or your
- 15 lender,” in violation of the MARS Rule, 16 C.F.R.
- 16 § 322.4(a)(1), and Regulation O, 12 C.F.R. § 1015.4(a)(1); and
- 17 (2) Even if you accept this offer and use our service, your lender
- 18 may not agree to change your loan,” in violation of the MARS
- 19 Rule, 16 C.F.R. § 322.4(a)(2), and Regulation O, 12 C.F.R.
- 20 § 1015.4(a)(2);
- 21 (b) in all consumer-specific commercial communications –
- 22 (1) “You may stop doing business with us at any time. You may
- 23 accept or reject the offer of mortgage assistance we obtain from
- 24 your lender [or servicer]. If you reject the offer, you do not
- 25 have to pay us. If you accept the offer, you will have to pay us
- 26 [insert amount or method for calculating the amount] for our
- 27
- 28

1 services,” in violation of the MARS Rule, 16 C.F.R.

2 § 322.4(b)(1), and Regulation O, 12 C.F.R. § 1015.4(b)(1);

3 (2) “[Name of Company] is not associated with the government,  
4 and our service is not approved by the government or your  
5 lender,” in violation of the MARS Rule, 16 C.F.R.

6 § 322.4(b)(2), and Regulation O, 12 C.F.R. § 1015.4(b)(2);

7 (3) “Even if you accept this offer and use our service, your lender  
8 may not agree to change your loan,” in violation of the MARS  
9 Rule, 16 C.F.R. § 322.4(b)(3), and Regulation O, 12 C.F.R.  
10 § 1015.4(b)(3); and

11 (4) “If you stop paying your mortgage, you could lose your home  
12 and damage your credit,” in violation of the MARS Rule, 16  
13 C.F.R. § 322.4(c), and Regulation O, 12 C.F.R. § 1015.4(c);

14 **CONSUMER INJURY**

15  
16 57. Consumers have suffered and will continue to suffer substantial injury  
17 as a result of Defendants’ violations of the FTC Act, the MARS Rule, and  
18 Regulation O. In addition, Defendants have been unjustly enriched as a result of  
19 their unlawful acts or practices. Absent injunctive relief by this Court, Defendants  
20 are likely to continue to injure consumers, reap unjust enrichment, and harm the  
21 public interest.

22 **THIS COURT’S POWER TO GRANT RELIEF**

23 58. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court  
24 to grant injunctive and such other relief as the Court may deem appropriate to halt  
25 and redress violations of any provision of law enforced by the FTC. The Court, in  
26 the exercise of its equitable jurisdiction, may award ancillary relief, including  
27 rescission or reformation of contracts, restitution, the refund of monies paid, and  
28

1 the disgorgement of ill-gotten monies, to prevent and remedy any violation of any  
2 provision of law enforced by the FTC.

3 59. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 626 of the  
4 Omnibus Act authorize this Court to grant such relief as the Court finds necessary  
5 to redress injury to consumers resulting from Defendants' violations of the MARS  
6 Rule, including rescission and reformation of contracts and the refund of money.

7 **PRAYER FOR RELIEF**

8 Wherefore, Plaintiff Federal Trade Commission, pursuant to Sections 13(b)  
9 and 19 of the FTC Act, 15 U.S.C. § 53(b) and 57b, the Omnibus Act, and the  
10 Court's own equitable powers, requests that the Court:

11 A. Award Plaintiff such preliminary injunctive and ancillary relief as  
12 may be necessary to avert the likelihood of consumer injury during the  
13 pendency of this action, and to preserve the possibility of effective final  
14 relief, including but not limited to a temporary and preliminary injunction,  
15 an order freezing assets, and appointment of a receiver;

16 B. Enter a permanent injunction to prevent future violations of the FTC  
17 Act, the MARS Rule and Regulation O by Defendants;

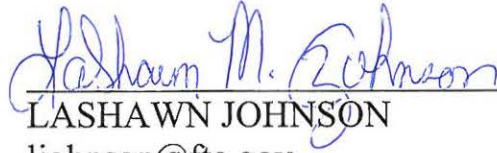
18 C. Award such relief as the Court finds necessary to redress injury to  
19 consumers resulting from Defendants' violations of the FTC Act and the  
20 MARS Rule and Regulation O, including but not limited to, rescission or  
21 reformation of contracts, restitution, the refund of monies paid, and the  
22 disgorgement of ill-gotten monies; and

23 D. Award Plaintiff the costs of bringing this action, as well as such other  
24 and additional relief as the Court may determine to be just and proper.  
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Respectfully submitted,  
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