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18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 FEDERAL TRADE COMMISSION,

21 Plaintiff,

22 v.

23 AMERICAN HOME SERVICING
24 CENTER, LLC,

25 CAPITAL HOME ADVOCACY
26 CENTER,

27 NATIONAL ADVOCACY CENTER,
28 LLC,

JAIME ABURTO, a/k/a James Aburto,
and Jamie Aburto, individually, as an
officer of American Home Servicing
Center, LLC and National Advocacy

Case No. SACV 18-00597-JLS-KESx

**PLAINTIFF FTC'S
SUPPLEMENTAL BRIEF IN
SUPPORT OF A PRELIMINARY
INJUNCTION**

1 Center, LLC, and d/b/a A.H.S.C.,
2 American Home Servicing Center, Local
3 Page, NAC, National Servicing Center,
NSC Processing, and Secured Processing,

4 MARCUS FIERRO, JR., individually, as
5 a member of American Home Servicing
6 Center, LLC and National Advocacy
7 Center, LLC, and d/b/a A.H.S.C. and
American Home Servicing Center,

8 EVE CHRISTINE RODRIGUEZ, a/k/a
9 Elizabeth Davis, Elizabeth Powers,
10 Christina Rodriguez, Christine Rodriguez,
11 and Elizabeth Rodriguez, individually, as
12 a manager of American Home Servicing
13 Center, LLC, a member of Capital Home
Advocacy Center, and d/b/a National
Advocacy Group,

14 and SERGIO LORENZO RODRIGUEZ,
15 a/k/a Sergio Lawrence, individually, as a
16 manager of American Home Servicing
17 Center, LLC, a member of Capital Home
Advocacy Center, and d/b/a National
Advocacy Group,

18 Defendants.
19

20
21 On April 12, 2018, this Court found that the FTC was likely to prevail in
22 proving that the defendants in this matter used deceptive representations about
23 their likelihood of obtaining mortgage loan modifications in order to charge their
24 victims of thousands of dollars in fees. The Court therefore granted the FTC's
25 requested TRO.

26 In its initial filing (the "TRO Motion"), the FTC presented overwhelming
27 evidence that Defendants' representations were deceptive, that all of the entity
28

1 defendants operated as a common enterprise under the individual Defendants'
2 control, and that preliminary relief was necessary to prevent Defendants from
3 destroying evidence and destroying assets. *See* TRO Mot. (DE 2). This brief
4 presents new evidence, obtained from Defendants' business premises and records
5 pursuant to the TRO, that further corroborates these facts

6 **I. Defendants Misrepresent Their Likelihood of Success.**

7 Defendants falsely and misleadingly represent that they are likely to obtain
8 mortgage loan modifications for homeowners, and that they had confirmed such
9 modifications. In its TRO application, the FTC presented consumer testimony
10 stating that Defendants claim a 99% success rate getting modifications from its
11 clients.¹ The FTC also presented testimony from a former employee, stating that
12 Defendants claim a 98% success rate, and that they ““don't take everyone,”” but
13 that Defendants in fact sell their services to anyone willing to pay and that they
14 tell homeowners that they have contacted lenders when they have not.² It also
15 presented testimony from Professor Patricia McCoy, an expert on mortgage
16 modification programs, who explained that the success rate for the government-
17 sponsored HAMP program between 2014 and 2017 was 22.3%, and that there
18 were discretionary elements that precluded the success rates that Defendants
19 claimed.³

20 Newly obtained evidence further confirms that Defendants continued to
21 make these representations until the Receiver shut them down, and that these
22 representations are false.⁴ Defendants' own data shows the falsity of their

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24 ¹ *See, e.g.*, Gummo Decl. ¶ 10 (PX 22, App. at 323); Morris Decl. ¶ 10 (PX 24, App. at 383).

25 ² Stevens Decl. ¶¶ 16, 20, 25, 31 (PX 16, App. at 61-64).

26 ³ McCoy Decl. ¶¶ 50, 58 (PX 17, App. at 83, 85).

27 ⁴ *See, e.g.*, Kaufman Supp. Decl. ¶ 17, Att. J (PX 33, Supp. App. at 1393) (email from Sergio Rodriguez providing
28 guidance on how to respond to customers who reference Capital Home's F rating on the BBB); *id.* at ¶ 19, Att. L
(PX 33, Supp. App. at 1422) (Capital Home mailer advertising home loan restructuring); .

1 representations. Capital Home Advocacy Center (“Capital Home”) uses a
 2 software tool called “Leadtrac” to keep track of its sales. Leadtrac provided a
 3 report of current active client files in Capital Home’s system.⁵

4 The possible file statuses included only two that could even arguably be
 5 considered a success: “Filed Closed: Approved” and “Pending Approval Letters.”⁶
 6 Of course, “File Close: Approved” does not necessarily mean that homeowners
 7 received the modifications promised by the Defendants. For example, some
 8 homeowners were approved for modifications that resulted in higher monthly
 9 payments, or payments that were only a few dollars less than what they had
 10 previously been paying.⁷ Therefore, Defendants’ data represents at best an
 11 optimistic assessment of Defendants’ success rate. Even under this optimistic
 12 assessment, Defendants do not accomplish the success rate they represent to their
 13 victims. The Leadtrac data revealed that as of April 16, 2018, the following
 14 number of files were categorized as “File Closed: Approved”:

- 15 • 104 of 433 (**24.0%**) files more than 90 days old;
- 16 • 91 of 399 (**22.8%**) files more than 120 days old;
- 17 • 86 of 377 (**22.8%**) files more than 150 days old;
- 18 • 85 of 360 (**23.6%**) files more than 180 days old;
- 19 • 73 of 238 (**30.7%**) files more than 270 days old; and

21
 22 ⁵ Freitag Decl. ¶ 5 (PX 34, Supp. App. at 1508).

23 ⁶ Kaufman Supp. Decl. ¶ 31 (PX 33, Supp. App. at 1355). The other possible file statuses are: “Closed - Other”;
 24 “Closed - Non Compliant”; “Closed - Non Payment”; “ED – CLOSED”; “ED - New Eviction Defense File”; “P -
 25 Denied - to be resubmitted”; “P - File Closed: Denied”; “P - File W/Agent”; “P - File with Managment” [sic]; “P -
 26 Hold for Non Payment”; “P - Negotiation File”; “P - Non-Compliant”; “P - Pending Denial Letters”; “P - Pending
 Document Preparation”; “P - PKG Completed for Submission”; “P - PKG Submitted/In Underwriting”; “P - PKG
 Submitted/Missing Documents”; “P - PKG Submitted/To Lender”; “P - PKG Submitted/Under Review by
 Underwriter”; “P - Refund Request”; “P- Processor to follow up with lender”; and “P-WELCOME INTRO CALL
 NEEDED.” *Id.*

27 ⁷ *Id.* at ¶ 33 (Supp. App. at 1355).

- 24 of 95 (**25.3%**) files more than 365 days old.⁸

Defendants represent that their process takes “from **30 to 90 days.**”⁹ But far from achieving a 99% success rate during that time, or even any longer timeframe, Defendants achieve roughly the same success rate as the 22.3% average approval rate for HAMP, as determined by Professor McCoy.¹⁰ The status “Pending Approval Letters” is arguably a success, although this argument is questionable given that some files appear to remain in this condition indefinitely—the oldest being 417 days old as of April 16, 2018.¹¹ Even so, adding files with the status “Pending Approval Letters” did not produce a likelihood of success, let alone a 99% chance. The following numbers of files were categorized as “Filed Closed: Approved” or “Pending Approval Letters”:

- 182 of 433 (**42.0%**) files more than 90 days old.
- 165 of 399 (**41.4%**) files more than 120 days old;
- 155 of 377 (**41.1%**) files more than 150 days old;
- 149 of 360 (**41.4%**) files more than 180 days old;
- 106 of 238 (**44.5%**) files more than 270 days old; and
- 30 of 95 (**31.6%**) files more than 365 days old.¹²

II. Defendants Operated as a Common Enterprise.

Defendants operated as a common enterprise. The FTC previously presented evidence of a common enterprise in the form of similar consumer experiences,¹³ consumers who interacted with the enterprise under multiple

⁸ *Id.* at ¶ 32 (Supp. App. at 1354-1355).

⁹ Morris Decl. ¶ 10, Att. A (PX 24, App. at 387) (emphasis in original).

¹⁰ *See supra* at n3.

¹¹ Kaufman Supp. Decl. ¶ 34 (PX 33, Supp. App. at 1355); of the 78 files more than 90 days old that were categorized “Pending Approval Letters,” 64 were more than 180 days old. *Id.* at ¶ 32 (Supp. App. at 1355).

¹² *Id.* at ¶ 32 (Supp. App. at 1354-1355).

¹³ *See* Coleman Decl. ¶ 25 (PX 21, 297) (American Home); Gummo Decl. ¶ 43 (PX 22, App. at 330) (Capital Home); Skilling Decl. ¶ 19 (PX 29, App. at 1258) (National Advocacy).

1 names,¹⁴ common documents,¹⁵ and common communications.¹⁶ The FTC also
2 presented evidence of shared funds, offices, and employees.¹⁷

3 Newly obtained evidence further confirms that Defendants' operated a
4 common enterprise, at least through September 2016. The Capital Home business
5 premises included a number of American Home consumer files, business cards,
6 and correspondence related to legal proceedings.¹⁸ Moreover, the premises
7 contained a draft agreement among all the individual defendants in this case that
8 stated that American Home and National Advocacy had conducted business at
9 1809 E. Dyer Road, the location of Capital Home.¹⁹

10 The newly obtained evidence reveals that while Defendants operated a
11 common enterprise, they may have separated into two distinct scams. Christina
12 Rodriguez's told the Receiver that she and Sergio Rodriguez have operated
13 independently of Jaime Aburto and Marcus Fierro since September 2016. The
14 draft agreement identified above supports this assertion.²⁰ Even if they no longer
15 operate as a common enterprise, however, it is beyond dispute based on her own
16 admissions that they operated as a common enterprise in the past, and that both
17
18

19 ¹⁴ For example, Tracey Gummo testifies that Capital Home also went by "National Advocacy Center" and
20 "National Advocacy Group. Gummo Decl. ¶ 8, Att. A, B (PX 22, 323, 332, 334).

¹⁵ Kaufman Decl. ¶ 50 (PX 27, App. at 450).

¹⁶ *Id.* at ¶ 20, Att. L (App. at 560-561) (email from Capital Home); ¶28, Att. T (App. at 493-594) (email from
21 National Advocacy).

¹⁷ *Id.* at ¶ 36, Att. HH (App. at 947-949) (Rent checks for Capital Home office space from Defendant American
22 Home Servicing Center, LLC ("American Home"), Defendant National Advocacy Center, LLC ("National
23 Advocacy"), and Defendant Capital Home); *id.* at ¶ 60 (App. at 452) (at least twenty individuals were employed by
two or more of the Corporate Defendants, and at least eight were employed by all three).

¹⁸ *See, e.g.*, Kaufman Supp. Decl. ¶ 13, Att. F (homeowner communication from American Home); ¶ 12, Att. E
24 (American Home business card identifying Elizabeth Davis, i.e., Defendant Eve Christine Rodriguez ("Christina
25 Rodriguez"), as Chief Operating Officer); ¶14, Att. G (correspondence related to Minnesota bankruptcy
proceedings) (PX 33, Supp. App. at 1362-1364).

¹⁹ *Id.* at ¶ 28, Att. U (Supp. App. at 1476).

²⁰ *See supra* at n.18.

1 Capital Home and National Advocacy are continuations of this previous
2 enterprise.²¹

3 **III. A Preliminary Injunction Is Necessary to Prevent Dissipation of Assets**
4 **and Destruction of Evidence.**

5 Finally, Defendants' conduct following notice of the TRO illustrates the
6 need for a preliminary injunction. Defendant Christina Rodriguez took a
7 consumer check that arrived after the Receiver took control of Capital Home.²²
8 Likewise, Defendant Sergio Rodriguez withdrew a large amount of money from
9 Capital Home's bank account before he was served but likely after he received
10 notice of the FTC action from Christina Rodriguez.²³

11 Likewise, a preliminary injunction is necessary against Jaime Aburto,
12 Marcus Fierro, and National Advocacy. Marcus Fierro was served on April 16
13 both individually and as an officer of American Home and National Advocacy.
14 Nevertheless, he denied any possession of records and refused to address provide
15 information for Jaime Aburto.²⁴ On April 20, the Receiver made contact with a
16 National Advocacy employee, and subsequently identified their physical
17 location.²⁵ On arrival, she found that the office was empty, and that it appeared to
18 have been suddenly abandoned.²⁶

21 ²¹ To the extent that Capital Home and National Advocacy now operate independently of each other, the FTC will
22 not seek joint and several liability as to consumer harm following the date on which the companies began to
23 operate independently. However, both companies, as well as all individual defendants, are jointly and severally
24 liable for all consumer harm from the common enterprise that operated before this date.

25 ²² Freitag Decl. ¶ 8 (PX 34, Supp. App. 1509). Christina Rodriguez was present at Capital Home's office, and was
26 served both individually and as an officer. Sergio Rodriguez was not present at that location, although he received
27 notice of the Complaint from Christina Rodriguez during the course of the day.

28 ²³ *Id.* at ¶ 9 (Supp. App. 1509).

²⁴ *Id.* at ¶ 10 (Supp. App. 1509).

²⁵ *Id.* at ¶ 11 (Supp. App. 1510).

²⁶ *Id.*

1 As of this filing, none of the Defendants that have been served have
2 provided the financial disclosures required by Section V of the TRO. The FTC
3 continues to attempt service on Jaime Aburto and Sergio Rodriguez. In the event
4 that the FTC effects service on either of these individuals, it will present before
5 the court a new proposed preliminary injunction. In the alternative, the FTC will
6 seek an extension of the TRO as to Jaime Aburto and Sergio Rodriguez.

7 **IV. Conclusion**

8 Based on the evidence presented in its Application for a TRO, and the
9 supplemental evidence presented above, the FTC requests that the Court grant the
10 proposed Preliminary Injunction.

11 Dated: April 23, 2018

Respectfully submitted,

12
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Supplemental Brief in Support of a Preliminary Injunction, and accompanying Supplemental Appendix and Proposed Preliminary Injunction by the following means and on the dates listed:

**Via Fedex overnight delivery on
April 21, 2018:**

Via Email:

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