

I. Introduction

The Federal Trade Commission asks this Court to halt a nationwide mortgage loan modification scam that defrauded financially distressed Spanish-speaking homeowners of more than two million dollars. For the past three years, Defendants have exploited homeowners who are struggling to pay their mortgages by guaranteeing that, in exchange for a hefty up-front fee, Defendants will obtain loan modifications that will dramatically lower consumers' mortgage payments. Federal law flatly prohibits these advance fees, yet Defendants collect hundreds or thousands of dollars from each of their victims. More outrageously, most consumers do not receive anything of value from Defendants, let alone the promised loan modification.

Defendants claim to be located in Chicago, but actually operate from a boiler room in the Dominican Republic. Defendants place calls to Spanish-speaking consumers throughout the United States, most of whom speak little or no English. Defendants' telemarketers lure consumers by speaking solely in Spanish, assuring consumers that Defendants are an established U.S. company with loan modification expertise. They further bolster their credibility by falsely claiming that they are affiliated with the federal government. Defendants promise consumers results that will save consumers thousands of dollars over the terms of their mortgages for a purported one-time fee of \$995. In reality, over the course of weeks or months, Defendants continue to collect additional fees from unsuspecting consumers but fail to obtain the promised loan modifications. Worse, Defendants frequently instruct consumers to stop paying their mortgages while Defendants "work" on consumers' files, failing to advise consumers of the disastrous consequences that could follow from doing so.

The FTC asks this Court to enter a temporary restraining order immediately halting Defendants' illegal operation and freezing their assets, thereby preserving the opportunity to

provide relief to Defendants' victims. With this motion, the FTC files ten sworn consumer declarations, two sworn law enforcement declarations, transcripts of multiple undercover telephone calls, and Defendants' extensive business and bank records, all of which support the entry of the proposed order. *Ex parte* relief is necessary because Defendants' widespread fraud and their attempts to conceal their overseas location suggest that they would hide or dissipate assets if they received notice of this action.

II. Defendants

Defendants are six corporations that operate as a common enterprise and one individual, David Preiner, who owns and directs the enterprise. The six corporate defendants (collectively, "Freedom Companies") market the same loan modification services, use the same addresses and office spaces, and share the same ownership and management. Several corporate defendants routinely commingle funds and have wired several hundred thousand dollars to a Dominican account to pay the expenses of their boiler room.¹

Three corporate defendants, **Freedom Companies Marketing, Inc.**, **Freedom Companies Lending, Inc.**, and **Freedom Companies, Inc.**, are, along with two operating names, Freedom Financial Mortgage and Advantage Solutions Group, used interchangeably as part of this scam. These companies have used the same virtual office address in Chicago,² which Defendants advertise as their primary location.³ Consumers have mailed checks to this virtual office, where Defendants' illegal proceeds are then forwarded to domestic and overseas bank

¹ See Plaintiff's Exhibit ("PX") 1, Declaration of Roberto C. Menjivar ("Menjivar Dec.") ¶¶ 14-16, 19-21, 24-26 & Atts. G-I (showing bank records in which Defendants commingle funds); *id.* ¶ 17(b) & Att. G at 16-17 (showing wires to Dominican bank account).

² See *id.* ¶¶ 10-12 & Att. F, at 5 (showing Chicago address of virtual office); see also, e.g., PX 7, Declaration of Jose Escobedo ("J. Escobedo Dec.") ¶ 3 (same), PX 11, Declaration of Maria Moreno ("Moreno Dec.") ¶ 8. These defendants also share the same registered address in Centerville, Minnesota. PX 1, Menjivar Dec. ¶¶ 5-7 & Atts. A-C.

³ *Id.* ¶ 34 & Att. Q at 9.

accounts. In February 2012, after drawing the attention of law enforcement, Preiner created two new corporations, **Freedom Information Services, Inc.**, and **Haiti Management, Inc.**, of which he is the sole principal, to further his scam.⁴ The sixth corporate defendant, **Grupo Marketing Dominicana** has handled operations for this enterprise, including the boiler room.⁵ Individual defendant **David Preiner** owns, directs, and manages all of these corporations.⁶ Preiner is a resident of Minnesota but often travels to the Dominican Republic, where he operates this scam.

III. Defendants' Deceptive Business Practices

Defendants have been selling their bogus loan modification services to homeowners since as early as 2009 and have bilked consumers out of more than two million dollars.

A. Deceptive Telemarketing Sales Pitch

Defendants' scheme begins with unsolicited telemarketing calls to Spanish-speaking homeowners offering them mortgage loan modification services through Freedom Companies. Defendants' telemarketers speak solely in Spanish to homeowners and, during lengthy sales calls, use one lie after another to create a false sense of confidence and trust.⁷ Defendants' telemarketers further gain consumers' trust by falsely claiming Freedom Companies is affiliated

⁴ *Id.* ¶¶ 8-9 & Atts. D-E. Freedom Companies also uses the same address as Freedom Information Services. *Compare id.* ¶ 8(c) & Att. D at 1, 3 *with id.* ¶ 40 & Att. W at 10.

⁵ PX 1, Menjivar Dec. ¶ 32(c) & Att. O at 4 (describing Grupo Marketing Dominicana's "Call Center Outsourcing Services"); *id.* ¶ 17(a) & Att. G at 6 ("[W]e relocated our primary operations center from Minnesota to the Dominican Republic"); *id.* ¶ 31 & Att. N at 11 (showing Dominican boiler room where Preiner works).

⁶ Preiner is the principal of Freedom Companies, Inc. (*Id.* ¶ 5(a)-(c) & Att. A at 2-3, 5-6), Freedom Companies Marketing, Inc. (*id.* ¶ 6(c) & Att. B at 3-5), Freedom Companies Lending, Inc. (*id.* ¶ 7(g) & Att. C at 16), Freedom Information Services, Inc. (*id.* ¶ 8(b)-(c) & Att. D at 1, 3, 4), Haiti Management, Inc. (*id.* ¶ 9(b)-(c) & Att. E at 1-3), and Grupo Marketing Dominicana (*id.* ¶ 32(e) & Att. O at 39).

⁷ PX 4, Declaration of Guillermo Alicea ("Alicea Dec.") ¶ 3; PX 5, Declaration of Nasario Ayala ("Ayala Dec.") ¶ 3; PX 6, Declaration of Franklin F. Cabreja ("Cabreja Dec.") ¶¶ 5, 7-8; PX 7, J. Escobedo Dec. ¶¶ 3, 4; PX 8, Declaration of Manuel Escobedo ("M. Escobedo Dec.") ¶ 3; PX 11, Moreno Dec. ¶¶ 5-8; PX 12, Declaration of Alejandro Navarrete ("Navarrete Dec.") ¶ 3; PX 1, Menjivar Dec. ¶ 28 & Att. K at 3; *id.* ¶ 30 & Att. M at 2.

with or approved by the government or the governmental homeowner assistance program, making sure to mention President Obama or the Making Home Affordable Program by name.⁸

Skeptical consumers are assured that Freedom Companies is a large, legitimate company located in the United States.⁹ Consumers are provided with Freedom Companies' virtual office address in Chicago,¹⁰ which Defendants use for nothing more than receiving and forwarding mail and victims' payments. Telemarketers are persistent, sometimes calling consumers multiple times before consumers agree.¹¹ As part of their deceptive pitch, Defendants' telemarketers ask consumers basic questions about their mortgages and monthly income. Regardless of the responses, telemarketers conclude that the consumers qualify for loan modifications.¹² Defendants guarantee, or virtually guarantee, that they can get modifications for consumers,

⁸ PX 4, Alicea Dec. ¶ 3 (“working with President Obama”); PX 5, Ayala Dec. ¶ 6 (“approved by President Obama”); PX 6, Cabreja Dec. ¶ 7 (“qualified . . . under President Obama’s government program called ‘Making Home Affordable,’” “the only company authorized by government”); PX 7, J. Escobedo Dec. ¶ 4 (“approved by the U.S. government to modify mortgages under the government’s program”); PX 9, Declaration of Javier Gomez (“Gomez Dec.”) ¶ 3 (expertise in “Federal program created by the Obama administration”); PX 12, Navarrete Dec. ¶ 3 (“approved by the U.S. government and President Obama”); PX 1, Menjivar Dec. ¶ 28 & Att. K at 18, 50; *id.* ¶ 30 & Att. M at 21-22.

⁹ PX 4, Alicea Dec. ¶ 3 (“big, legitimate company located in Chicago”); PX 6, Cabreja Dec. ¶ 8 (“physical offices in Chicago and Minneapolis”); PX 7, J. Escobedo Dec. ¶ 3 (U.S. company located in Chicago); PX 8, M. Escobedo Dec. ¶ 3 (same); PX 9, Gomez Dec. ¶ 3 (same); PX 11, Moreno Dec. ¶ 8 (“second largest mortgage loan modification company in the world;” U.S. company located in Chicago); PX 12, Navarrete Dec. ¶ 3 (“American company”); PX 13, Declaration of Moises Ortolaza (“Ortolaza Dec.”) ¶ 3 (“one of the best loan modification companies in the country”).

¹⁰ PX 6, Cabreja Dec. ¶ 8; PX 7, J. Escobedo Dec. ¶ 3 (consumer referred to Freedom Companies’ website, which lists Chicago virtual office address); PX 11, Moreno Dec. ¶ 8.

¹¹ PX 4, Alicea Dec. ¶¶ 3, 6 (multiple calls); PX 5, Ayala Dec. ¶ 3 (same); PX 7, J. Escobedo Dec. ¶ 4 (same); PX 11, Moreno Dec. ¶¶ 7-9 (same); PX 9, Gomez Dec. ¶ 7 (after consumer signed and returned documents, representatives called daily until consumer sent payment); PX 2, Declaration of Billie Kay (“Kay Dec.”) ¶ 7 & Att. A at 26 (multiple calls); *id.* ¶ 10 & Att. C at 2, 8-9 (same).

¹² PX 4, Alicea Dec. ¶ 3; PX 5, Ayala Dec. ¶ 3; PX 6, Cabreja Dec. ¶ 7; PX 8, M. Escobedo Dec. ¶ 3; PX 9, Gomez Dec. ¶¶ 4-5; PX 10, Declaration of Manuel Montes (“Montes Dec.”) ¶¶ 4-5; PX 11, Moreno Dec. ¶¶ 5-6, 8; PX 12, Navarrete Dec. ¶ 3; PX 13, Ortolaza Dec. ¶¶ 3-4; PX 1, Menjivar Dec. ¶ 28 & Att. K at 4, 17; *id.* ¶ 30 & Att. M at 11-12; PX 2, Kay Dec. ¶ 7 & Att. A at 26; *id.* ¶ 10 & Att. C at 2, 8-9.

including consumers whose previous applications were denied.¹³ They also guarantee that Freedom Companies can complete the entire loan modification process in just 30 to 90 days.¹⁴

Defendants' telemarketers seal the deal by providing consumers with a fabricated quote of their modified, reduced monthly mortgage payment or interest rate. The quoted monthly payment is always significantly lower than consumers' current payment, sometimes barely half.¹⁵ The reduced interest rate Defendants promise is usually much lower than consumers' current rate, and as low as 2%.¹⁶ Regardless of the specific figures concocted by telemarketers, the purported total savings to consumers over the course of their loan are always remarkable – usually hundreds of thousands of dollars.¹⁷

¹³ PX 1, Menjivar Dec. ¶ 30 & Att. M at 39-40 (telemarketer states during undercover call that “no matter what” the situation, even if the bank states homeowner does not qualify, Defendants will “always look for [a] way” to get modification, “99% confidence”); PX 2, Kay Dec. ¶ 7 & Att. A at 26 (consumer guaranteed or promised modification); *Id.* ¶ 10 & Att. C at 2, 8-9 (same); PX 4, Alicea Dec. ¶¶ 3-4 (consumer whose previous modification application was denied was guaranteed modification); PX 5, Ayala Dec. ¶ 3 (same); PX 7, J. Escobedo Dec. ¶¶ 3-4 (same); PX 9, Gomez Dec. ¶¶ 4-5 (same); PX 11, Moreno Dec. ¶¶ 6, 8 (same); PX 6, Cabreja Dec. ¶ 7 (same); PX 8, M. Escobedo Dec. ¶ 3 (consumer told he would receive modification); PX 13, Ortolaza Dec. ¶ 3 (same); PX 10, Montes Dec. ¶¶ 3-5 (consumer whose previous application denied told that she would receive a modification); PX 12, Navarrete Dec. ¶¶ 3-4 (consumer whose previous application denied told he “could likely” get modification).

¹⁴ PX 1, Menjivar Dec. ¶ 28 & Att. K at 8-9, 43 (30 to 90 days); *id.* ¶ 30 & Att. M at 18 (same); PX 6, Cabreja Dec. ¶ 7 (“just a few months”); PX 7, J. Escobedo Dec. ¶ 4 (three months); PX 9, Gomez Dec. ¶ 5 (one month); PX 13, Ortolaza Dec. ¶ 3 (60 to 90 days).

¹⁵ PX 4, Alicea Dec. ¶ 3 (\$1,082 to \$782); PX 5, Ayala Dec. ¶ 3 (\$565 to \$300, principal cut in half from \$53,000 to \$25,000); PX 7, J. Escobedo Dec. ¶ 5 (\$970 to \$640); PX 8, M. Escobedo Dec. ¶ 3 (\$655 plus \$3800 in taxes and insurance to \$500 per month including taxes and insurance); PX 11, Moreno Dec. ¶¶ 5-6 (\$4326 to \$2600); PX 1, Menjivar Dec. ¶ 30 & Att. M at 15-16 (\$2,350 to \$1,736); PX 2, Kay Dec. ¶ 7 & Att. A at 26 (payment reduced to \$700 per month including taxes and insurance).

¹⁶ PX 5, Ayala Dec. ¶ 3 (2-3%); PX 6, Cabreja Dec. ¶ 7 (2.5-3%); PX 9, Gomez Dec. ¶ 4 (5.8% to 3%); PX 10, Montes Dec. ¶¶ 4-5 (7.74% adjustable to 4.5% fixed rate on 30-year loan); PX 11, Moreno Dec. ¶¶ 5-6 (8.75% and 6.75% interest rates on two loans to 2-3%); PX 13, Ortolaza Dec. ¶ 3-4 (5.5% to 2.1%); PX 1, Menjivar Dec. ¶ 28 & Att. K at 6, 9 (9% to 4%); *id.* ¶ 30 & Att. M at 7, 9, 21 (7% to 2-4%). The telemarketers' monthly payment and interest rate “calculations” bear no rational relation to each other or to consumers' current mortgage terms. *See, e.g.*, PX 12, Navarrete Dec. ¶ 3 (could lower interest rate by 1%, but monthly payment would drop from \$1,283.89 to \$700 or less); PX 7, J. Escobedo Dec. ¶ 5 (could lower interest rate from 5.125% to 4.99%, but monthly payments would drop from \$970 to \$640).

¹⁷ For example, during an undercover call, Defendants' telemarketer told an FTC investigator that he would save approximately \$10,000 to \$11,000 each year for the remainder of the term of his 30-year mortgage. PX 1, Menjivar Dec. ¶ 28 & Att. K at 15, 35.

Defendants juxtapose these significant savings with their purported one-time fee, typically \$995 to \$1,500. Consumers are assured that this fee will cover all costs associated with the loan modification, though some consumers are also told they will have to pay one more fee, typically \$1,000, to cover closing costs.¹⁸ Consumers are told that this fee must be paid upfront before Defendants can begin work on consumers' modification.¹⁹

Defendants routinely take their scam a step further by telling consumers to stop making the monthly payments on their mortgage while the modification process is pending.²⁰ Struggling consumers who cannot afford to pay both Defendants' fee and their mortgages are instructed to pay Defendants instead of their lenders.²¹ Defendants' telemarketers do not mention the serious consequences to consumers for failing to make mortgage payments, including potentially losing their home and ruining their credit rating. To the contrary, consumers are told that the delinquency will benefit their modification application because it will demonstrate their inability

¹⁸ PX 4, Alicea Dec. ¶ 3 (\$900 plus \$1,000 in closing costs); PX 5, Ayala Dec. ¶ 5 (\$995); PX 6, Cabreja Dec. ¶ 9 (\$1,490); PX 7, J. Escobedo Dec. ¶ 5 (\$1,500); PX 8, M. Escobedo Dec. ¶ 4 (\$995 plus \$1,000 in closing costs); PX 9, Gomez Dec. ¶ 5 (\$995); PX 10, Montes Dec. ¶ 4 (\$995); PX 11, Moreno Dec. ¶ 6 (\$2,500); PX 12, Navarrete Dec. ¶ 3 (\$995); PX 13, Ortolaza Dec. ¶ 3 (\$995); PX 1, Menjivar Dec. ¶ 28 & Att. K at 56 (\$1,490); *id.* ¶ 30 & Att. M at 23 (\$995); PX 3, Declaration of Travis Cardwell ("Cardwell Dec.") ¶¶ 7-8 (two consumer complaints, mentioning fees of \$995 and \$1,995); PX 2, Kay Dec. ¶ 7 & Att. A at 6, 34, 40, 43 (\$995 or \$1,995); *id.* ¶¶ 8, 10 & Att. C at 2, 8-9 (\$995).

¹⁹ PX 6, Cabreja Dec. ¶ 9 (Defendants need "money in hand" when requesting modification); PX 7, J. Escobedo Dec. ¶ 5 (need payment before Defendants can begin work); PX 8, M. Escobedo Dec. ¶ 4 ("up-front" fee); PX 10, Montes Dec. ¶¶ 4, 8 (overnight the check "right away"); PX 13, Ortolaza Dec. ¶ 4 ("send the money in right away"); PX 3, Cardwell Dec. ¶¶ 7-8 (consumer complaints about up-front fees); PX 2, Kay Dec. ¶ 8 (same). Telemarketers characterize the fee sometimes as a legal or processing fee, and other times as a tax. PX 4, Ayala Dec. ¶ 5 (application and processing fee), PX 6, Cabreja Dec. ¶ 9 (processing fee and to show money to lawyer); PX 7, J. Escobedo Dec. ¶ 5 (legal fees); PX 1, Menjivar Dec. ¶ 28 & Att. K at 55, 57 (taxes); *id.* ¶ 30 & Att. M at 23-24 (legal cost and application fee).

²⁰ PX 5, Ayala Dec. ¶¶ 5, 7 (can cease monthly payments for three months and should not contact lender); PX 7, J. Escobedo Dec. ¶ 7 (stop sending payments to mortgage company); PX 8, M. Escobedo Dec. ¶ 5 (same); PX 9, Gomez Dec. ¶ 5 (stop paying because Defendants will arrange to put mortgage on hold); PX 10, Montes Dec. ¶ 5 (no need to pay mortgage while modification pending); PX 11, Moreno Dec. ¶ 10 (same); PX 13, Ortolaza Dec. ¶ 3 (same); PX 1, Menjivar Dec. ¶ 28 & Att. K at 24-26 (same); *id.* ¶ 30 & Att. M at 18-19 (same); PX 12, Navarrete Dec. ¶ 11 (same).

²¹ PX 7, J. Escobedo Dec. ¶¶ 7, 11; PX 9, Gomez Dec. ¶ 5; PX 1, Menjivar Dec. ¶ 30, Att. M at 20.

to make their current payments, or even that ceasing regular mortgage payments is required to obtain a loan modification.²²

After the initial telemarketing call, consumers receive a “Welcome Package” that contains a cover letter, a series of forms for them to complete, a list of documents they must provide to Defendants, and a return FedEx envelope for consumers to mail the completed forms and advance payment to Defendants’ virtual office in Chicago. In contrast to the Spanish-language sales calls, these forms and documents are typically in English and contain dense text and fine print; many consumers simply do not understand what the documents say. Just as in the deceptive sales pitch, Defendants claim in the documents they send to consumers that they provide a mortgage modification service.²³ The package cover letter states:

We can help you save your home. Enclosed please find necessary documents required for Freedom Companies to process your modification. We will review your request for assistance and begin the modification process upon receipt of all of you [sic] documentation.²⁴

B. Failure to Provide Promised Service

Consumers send payment to Defendants, but the vast majority receive nothing of value in return. Often, consumers who complete and send in the documents with their advance payment

²² PX 7, J. Escobedo Dec. ¶ 7 (being late or failing to pay mortgage will help consumer get modification); PX 11, Moreno Dec. ¶ 10 (“could not” pay mortgage while Defendants work on modification); PX 12, Navarrete Dec. ¶ 11 (“need[] to demonstrate” that cannot afford monthly payments); PX 1, Menjivar Dec. ¶ 30 & Att. M at 20 (someone who is already behind in mortgage payments does not have to continue paying since his credit is already affected). Consumers also are often told that when the loan modification is finalized, consumers’ lenders will forgive all past-due payments and late fees associated with the consumers’ accounts. PX 8, M. Escobedo Dec. ¶ 5 (unpaid payments would be forgiven or added to modified loan); PX 10, Montes Dec. ¶ 5 (all past due payments would be waived with a modification).

²³ PX 4, Alicea Dec. ¶¶ 5, 7 & Att. A; PX 5, Ayala Dec. ¶ 9 & Att. A; PX 7, J. Escobedo Dec. ¶ 6; PX 8, M. Escobedo Dec. ¶ 7 & Att. A; PX 9, Gomez Dec. ¶ 6 & Att. A; PX 10, Montes Dec. ¶¶ 9-10 & Att. B; PX 11, Moreno Dec. ¶ 9 & Att. B; PX 12, Navarrete Dec. ¶ 6 & Att. A; PX 13, Ortolaza Dec. ¶ 6 & Att. C; PX 3, Cardwell Dec. ¶¶ 6, 8 & Atts. A-B; PX 2, Kay Dec. ¶ 7 & Att. A at 9-19, 47-57.

²⁴ See, e.g., PX 4, Alicea Dec. ¶ 7 & Att. A at 1. An enclosed Service Agreement also states that the consumer “hereby requests the services of Freedom Companies, Inc. . . . for the purpose of negotiating a mortgage modification of the Homeowner’s mortgage” See, e.g., *id.* ¶ 7 & Att. A at 3.

do not hear from Freedom Companies for weeks on end.²⁵ Consumers who do speak to Defendants again typically hear the same story: their modifications are going well but consumers need to pay significant additional advance fees or they will lose their modifications.²⁶ Defendants repeatedly approach the same consumers to request such additional payments, using whatever deceptive techniques necessary to trick consumers into paying more.²⁷

Most consumers receive no product or service of value from Defendants. Weeks or months after paying one or more advance fees to Defendants, some consumers who contact their lenders to check on the status of their modifications are shocked to learn that their lenders have never been contacted by Defendants.²⁸ Others find out that Defendants contacted their lenders, or perhaps even submitted a modification on their behalf, but that the modifications were either denied or fell short of the results originally guaranteed.²⁹ Despite failing to deliver on their

²⁵ PX 4, Alicea Dec. ¶ 11 (three months); PX 6, Cabreja Dec. ¶¶ 12, 14 (several weeks); PX 7, J. Escobedo Dec. ¶ 7 (several weeks); PX 9, Gomez Dec. ¶ 8 (one month); PX 12, Navarrete Dec. ¶¶ 8, 13 (one month; called numerous times, left several messages); PX 13, Ortolaza Dec. ¶ 8 (two months).

²⁶ PX 4, Alicea Dec. ¶¶ 9, 11 (two additional payments of \$1000 required to receive modification); PX 5, Ayala Dec. ¶ 13 (additional \$1000 required to close deal); PX 2, Kay Dec. ¶ 10 & Att. C at 8-9 (same); PX 9, Gomez Dec. ¶ 9 (same); PX 6, Cabreja Dec. ¶¶ 13-14, 18 (additional \$995 for closing costs, \$995 for legal fees, \$2,350 for final closing fee); PX 7, J. Escobedo Dec. ¶¶ 8, 9, 11 (additional \$495 for processing fees, \$938 for processing fees, \$1,200 for processing and closing fees); PX 10, Montes Dec. ¶¶ 16, 23 (additional \$1,000 for closing fees, \$1,500 to show bank that consumer is “serious about wanting to keep [his] home”); PX 12, Navarrete Dec. ¶ 10 (additional \$990 for a debt negotiator, \$990 to accelerate the closing); PX 13, Ortolaza Dec. ¶¶ 9-10, 12, 14 (additional \$4,000 in fees).

²⁷ See n.28 *supra*; see also PX 8, M. Escobedo Dec. ¶¶ 9, 12 (instructing consumer to make mortgage and property tax payments to lender through Defendants); PX 3, Cardwell Dec. ¶¶ 7-8 & Att. B at 12, 14 (claiming false affiliation with bank by letter and over the telephone); PX 11, Moreno Dec. ¶ 10 (consumer told to pay over \$25,000 to Defendants to cover “interest payments”); PX 12, Navarrete Dec. ¶ 13 (assuring consumer it is normal for lender to call frequently about late mortgage payments); PX 7, J. Escobedo Dec. ¶¶ 7, 11 (promising consumer progressively lower rates); PX 10, Montes Dec. ¶¶ 14, 26 (sending consumer multiple revised “fee agreements” listing higher fees).

²⁸ PX 4, Alicea Dec. ¶ 12 (lender never contacted by Defendants); PX 5, Ayala Dec. ¶ 15 (same); PX 9, Gomez Dec. ¶ 13 (same); PX 11, Moreno Dec. ¶ 12 (same); PX 12, Navarrete Dec. ¶ 12 (same); PX 7, J. Escobedo Dec. ¶¶ 10, 13 (lender was not contacted for months after consumer paid multiple fees).

²⁹ PX 7, J. Escobedo Dec. ¶ 13 (when Defendants finally contacted lender, modification was denied and Defendants did nothing further); PX 8, M. Escobedo Dec. ¶ 11 (one year after first contact by Freedom Companies, consumer received notice from bank that he did not qualify for modification); PX 10, Montes Dec. ¶¶ 17, 29 & Att. M (consumer who paid \$3,495 to Freedom Companies twice denied loan modification); PX 11, Moreno Dec. ¶ 13 (consumer notified that she did not qualify for modification).

promises, Defendants continue to call to ask for additional payments.³⁰ While the resulting loss to all consumer victims is substantial, some consumers lose thousands or even tens of thousands of dollars.³¹ Defendants do nothing that consumers cannot do on their own; tellingly, some consumers who do not receive a loan modification through Defendants later are able to obtain one directly from their lenders for free.³²

IV. Argument

The FTC seeks an *ex parte* temporary restraining order and a preliminary injunction prohibiting Defendants' ongoing fraud. The FTC also asks that the Court freeze corporate and personal assets to preserve them for restitution to victims, and have the mail addressed to Defendants' virtual offices, including checks from consumers, redirected to the FTC.³³ The Court has full authority to enter the requested relief, which the evidence of Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), overwhelmingly supports.

A. This Court has the Authority to Grant the Requested Relief.

The FTC Act provides that "in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction." 15 U.S.C. § 53(b); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1025, 1028 (7th Cir. 1988). Once the Commission invokes the federal court's equitable powers, the full breadth of the court's authority is available, including the power to grant such ancillary final relief as rescission of contracts and restitution. *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564,

³⁰ See, e.g., PX 8, M. Escobedo Dec. ¶ 15 (consumer who paid \$7,555 to Freedom Companies but did not receive modification continued to receive calls).

³¹ PX 4, Alicea Dec. ¶ 22 (consumer lost \$1,900); PX 6, Cabreja Dec. ¶ 25 (\$3,480); PX 7, J. Escobedo Dec. ¶ 21 (\$4,233); PX 8, M. Escobedo Dec. ¶ 17 (\$7,555); PX 10, Montes Dec. ¶ 37 (nearly \$3,500); PX 11 Moreno Dec. ¶ 10 (over \$17,000); PX 12, Navarrete Dec. ¶¶ 7, 8, 10 (\$3,965); PX 13, Ortolaza Dec. ¶ 21 (\$2,995); PX 3, Cardwell Dec. ¶¶ 6, 8 (two consumers, who paid \$2,500 and \$3,495).

³² PX 7, J. Escobedo Dec. ¶ 20; PX 13, Ortolaza Dec. ¶ 20.

³³ The FTC has submitted a Proposed Temporary Restraining Order with its papers.

571-72 (7th Cir. 1989). The court also may enter a temporary restraining order, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief. *World Travel*, 861 F.2d at 1026; *see also Amy Travel*, 875 F.2d at 571. Such ancillary relief may include an asset freeze to preserve assets for eventual restitution to victimized consumers. *World Travel*, 861 F.2d at 1031.

B. The Commission Satisfies the Applicable Legal Standard for Issuance of a Temporary Restraining Order and Preliminary Injunction

To grant preliminary injunctive relief in an FTC Act case, the district court must “(1) determine the likelihood that the Commission will ultimately succeed on the merits and (2) balance the equities.” *World Travel*, 861 F.2d at 1029 (quoting *FTC v. Warner Commc 'ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)). Under this “public interest” test, “it is not necessary for the FTC to demonstrate irreparable injury,” and the FTC does not need to show a substantial likelihood of success on the merits, but must only make the statutory showing of a likelihood of ultimate success. *Id.* at 1028-29. When the court balances the equities, the public interest “must receive far greater weight” than any private concerns. *Id.* at 1029. Temporary and preliminary injunctive relief is therefore appropriate if the FTC shows a likelihood of success on the merits and that a balancing of the equities, giving greater weight to the public interest, favors such relief.

1. Defendants Have Violated Section 5(a) of the FTC Act.

There is no doubt that Defendants’ activities qualify as deceptive acts or practices under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances. *FTC v. Bay Area Bus. Council*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. World Media Brokers*, 415 F.3d 758, 763 (7th Cir. 2005). A misrepresentation or omission is

material if it involves information that is likely to affect a consumer's choice of, or conduct regarding, a product or service. *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992).

Here, Defendants violate the FTC Act by making a series of deceptive claims that lure consumers to purchase bogus mortgage modification services. Defendants represent that they will obtain mortgage loan modifications that will save consumers tens of thousands of dollars. To bolster their credibility they falsely claim to be affiliated with or approved by the government or consumers' lenders. The sworn consumer declarations demonstrate that these misrepresentations trick consumers into paying hundreds or thousands of dollars for mortgage loan modifications. Of course, Defendants fail to deliver on their promises.

2. Defendants Have Violated the MARS Rule.

As in other FTC cases enforcing the MARS Rule,³⁴ Defendants contravene virtually every provision of that regulation, collecting advance fees, misrepresenting their purported service in myriad ways, and failing to make required disclosures. Section 322.5(a) of the MARS Rule specifically states that mortgage assistance relief service providers (like the Defendants) may not “[r]equest or receive payment of any fee or other consideration until the consumer has executed a written agreement” with a lender offering new loan terms. 16 C.F.R. § 322.5(a). Defendants immediately violate this prohibition, requesting as part of their telemarketing pitch a fee of hundreds or even thousands of dollars, while falsely promising mortgage loan modifications consumers never receive.³⁵ As they continue to defraud consumers, Defendants

³⁴ *FTC v. Consumer Advocates Group Experts, LLC*, No. CV 12-04736 DDP (C.D. Cal.) (*ex parte* temporary restraining order entered May 30, 2012); *FTC v. Lakhany*, No. SACV 12-00337-CJC(JPR) (C.D. Cal. *ex parte* temporary restraining order entered Mar. 7, 2012). The MARS Rule went into effect on December 29, 2010, except for the advance-fee ban, which went into effect January 31, 2011. Mortgage Assistance Relief Services; Final Rule, 75 Fed. Reg. 75092, 75092, 75135 (Dec. 1, 2010).

³⁵ Defendants misrepresent several aspects of their purported service, falsely telling consumers that: they will obtain mortgage loan modifications for consumers; modifications will take ninety days or less; Defendants' service is affiliated with or approved by the government or consumers' lender; and their

coax as many additional illegal payments from consumers as they can obtain.³⁶ In many cases Defendants dangerously counsel consumers not to make their regular mortgage payments — often instructing them to pay Defendants instead. This violates the MARS Rule, which specifically requires disclosure to consumers that, “If you stop paying your mortgage, you could lose your home and damage your credit rating.” *Id.* § 322.4(c).³⁷ The FTC’s extensive evidence, including documents that consumers receive from Defendants and complete transcripts of undercover telephone calls, contains no record of the Defendants ever making any disclosures required by the MARS Rule.

3. The Equities Tip Decidedly in the Commission’s Favor.

Once the Commission has shown a likelihood of success on the merits, the Court must balance the equities, giving greater weight to the public interest than to any of the defendants’ private concerns. *World Travel*, 861 F.2d at 1029. The public equities here are compelling, as the public has a strong interest in halting the deceptive scheme, and in preserving the assets necessary to provide effective final relief to victims. *See FTC v. Sabal*, 32 F. Supp. 2d 1004, 1009 (N.D. Ill. 1998). By contrast, defendants have no legitimate interest in continuing to deceive consumers in violation of federal law. *See id.*; *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (upholding district court finding of “no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation

service requires just one or two payments, usually of \$ 995. Each of these misrepresentations violates a specific MARS Rule prohibition on misrepresentations. *See* 16 C.F.R. § 322.3(b)(1), (2), (3), & (11).

³⁶ In no case do Defendants secure a signed modification agreement between consumers and their banks, which the MARS Rule requires as a prerequisite to the request or receipt of any payment.

³⁷ Defendants also fail to make several additional disclosures required by the MARS Rule, including that consumers may stop doing business with Defendants without obligation, that Defendants are not associated with or approved by the government or the consumer’s lender, and that the consumer’s lender might not agree to change the loan. *Id.* § 322.4(b).

or preserve their assets from dissipation or concealment.”). An injunction is required to ensure that Defendants’ scam does not continue while the case is pending.

4. David Preiner is Individually Liable Under the FTC Act.

Preiner is responsible for the deceptive practices of the corporations he controls, and he therefore should be subject to injunctive relief and an asset freeze. An individual defendant is liable under the FTC Act when he (1) participated directly in, or had some control over, a corporation’s deceptive practices, and (2) had actual or constructive knowledge³⁸ of the practices. *World Media Brokers*, 415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636. The FTC does not need to show intent to defraud. *Amy Travel*, 875 F.2d at 573-74.

Preiner controlled, participated in, and was aware of the corporate Defendants’ practices. He is the officer or director listed on the corporate Defendants’ corporate filings and thus is in a position to control the corporate Defendants. *See, e.g., World Media Brokers*, 415 F.3d at 764 (corporate officer “hard-pressed to establish that he lacked authority or control over” corporate entities); *Amy Travel*, 875 F.2d at 574. Preiner also directly participated in the deceptive acts and practices, opening the virtual office in Chicago that accepts consumers’ payments, making himself the sole signatory on the bank accounts Defendants use to process the proceeds of their scam, and corresponding with their banks.³⁹ He also is, or should be aware of the deceptive practices: he appeared in an investigative report into Defendants’ fraud and responded to consumer complaints and to the Cease and Desist Order by the State of Idaho.⁴⁰

³⁸ The knowledge requirement is satisfied by a showing that the defendant (1) had actual knowledge of the deceptive acts or practices, (2) was recklessly indifferent to the truth or falsity of the representations, or (3) had an awareness of a high probability of fraud coupled with an intentional avoidance of the truth. *World Media Brokers*, 415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 574.

³⁹ PX 1, Menjivar Dec. ¶ 12 & Att. F at 8-12, 14; *id.* ¶¶ 14, 19, 24 & Atts. G-I.

⁴⁰ *Id.* ¶ 17(a) & Att. G at 5-7, 14-15, and 20 PX 2, Kay Dec. ¶¶ 13, 14, 18 & Atts. F, I; PX1, Menjivar Dec. ¶¶ 31, 39, 41, Att. N at 11 & Att. X at 14. In responding to the Idaho Department of Finance’s Cease

C. An Asset Freeze is Necessary and Appropriate.

The relief sought by the FTC includes restitution for the victims of Defendants' fraud. To preserve the possibility of such relief, the FTC seeks a freeze of Defendants' assets and an immediate accounting to prevent concealment or dissipation of assets. An asset freeze is appropriate once the Court determines that the FTC is likely to prevail on the merits and that restitution would be an appropriate final remedy; the district court at that juncture has "a duty to ensure that the assets of the corporate defendants [are] available to make restitution to the injured consumers." *World Travel*, 861 F.2d at 1031 & n.9. In a case such as this, where the Commission is likely to succeed in showing that a corporate officer is individually liable for the payment of restitution, the freeze should extend to individual assets as well. *Id.* (affirming freeze on individual assets).⁴¹

D. The Temporary Restraining Order Should Be Issued *Ex Parte*.

As explained in the Plaintiff's Declaration Pursuant to Fed. R. Civ. P. 65(b), to prevent Defendants from dissipating or concealing their assets, the requested TRO should be issued *ex parte*. An *ex parte* TRO is warranted where the facts show that immediate and irreparable injury, loss, or damage will occur before the defendants can be heard in opposition. *See* Fed. R. Civ. P. 65(b). The utterly fraudulent nature of Defendants' scheme, coupled with their efforts to conceal their true location, indicates that Defendants likely would conceal or dissipate assets if notified of the FTC's motion. Even prior to this lawsuit, Defendants have transferred transfer assets off-

and Desist Order, Preiner claimed that Freedom Companies did not offer to obtain mortgage loan modifications for Idaho consumers, but instead offered such services in other states and, in Idaho, only sold consumers a "self-help" guide. PX 2, Kay Dec. ¶¶ 18, 19. This "self-help" guide appears to be nothing more than a feeble cover for the Defendants' underlying fraud. The Idaho investigator had not seen such a guide in the consumer complaints she received, *id.* ¶ 18, and none of the consumers whose sworn declarations are presented with this motion include such a guide.

⁴¹ This Court's jurisdiction over foreign assets not located within its jurisdiction is well established. *United States v. First Nat'l City Bank*, 379 U.S. 378, 384 (1965) (once court has jurisdiction over party, it has authority to freeze property "whether the property be within or without the United States").

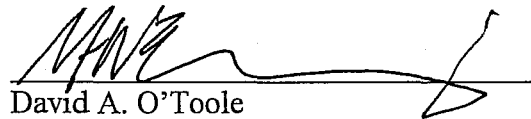
shore to Dominican bank accounts. In similar circumstances in past FTC cases, courts in this district have consistently granted restraining orders on an *ex parte* basis.⁴² Likewise, other courts have granted *ex parte* temporary restraining orders in cases based on MARS Rule violations.⁴³

V. Conclusion

For the foregoing reasons, Plaintiff Federal Trade Commission requests that this Court enter the proposed Temporary Restraining Order Ex Parte and issue an Order to Show Cause Why a Preliminary Injunction Should Not Issue.

DATED: July 23, 2012

Respectfully submitted,



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FEDERAL TRADE COMMISSION

⁴² See, e.g., *FTC v. Apogee One Enterprises LLC*, No. 12-cv-588 (N.D. Ill. Jan. 30, 2012) (Kennelly, J.); *FTC v. Yellow Page Marketing B.V.*, No. 11-cv-5035 (N.D. Ill. July 26, 2011) (Feinerman, J.); *FTC v. Nat'l Sales Group*, No. 11-cv-1230 (N.D. Ill. Feb. 22, 2011) (Guzman, J.); *FTC v. Am. Tax Relief*, No. 10-cv-6123 (N.D. Ill. Sept. 24, 2010) (Gottschall, J.); *FTC v. Central Coast Nutraceuticals, Inc.*, 10-cv-4931 (N.D. Ill. Aug. 5, 2010) (Norgle, J).

⁴³ *FTC v. Consumer Advocates Group Experts, LLC*, No. CV 12-04736 DDP (C.D. Cal.) (*ex parte* TRO entered May 30, 2012); *FTC v. Lakhany*, No. SACV 12-00337-CJC(JPR) (C.D. Cal. *ex parte* TRO entered Mar. 7, 2012).