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11  
12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14  
15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 DENNY LAKE, et al.,

19 Defendants.

Case No. SACV15-00585 CJC (JPRx)

**PRELIMINARY REPORT OF  
TEMPORARY RECEIVER**

JUDGE: Hon. Cormac J. Carney  
CTRM: 9B

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1 and the failure to make required disclosures as prohibited by the MARS Rule;  
2 engaging in, or assisting and facilitating others to engage in, deceptive practices  
3 prohibited by the Telemarketing Sales Rule (“TSR”); and other deceptive practices  
4 prohibited by Section 5(a) of the FTC Act.

5 (2)-(3) **Receivership Defendants’ assets and liabilities.** We have secured  
6 and deposited into a receivership bank account, \$10,100 related to the HOPE  
7 Defendants and \$3,000 related to the Lake Defendants. We have also identified  
8 liquid assets in bank accounts which are now frozen with balances of \$46,324 as to  
9 the HOPE Defendants and \$16,116 as to the Lake Defendants. We do not yet have  
10 a calculation for overall liabilities, but estimate that liabilities are not substantial.  
11 At this early stage, it does appear that these Receivership Defendants were thinly  
12 capitalized and have limited assets.

13 (4) **Receiver’s future steps to protect assets of Receivership**  
14 **Defendants, pursue assets from third parties, and adjust liabilities.**

15 Implementation of the asset freeze is the primary immediate vehicle to protect  
16 assets. Whether or not third parties have assets which can be claimed by the  
17 receivership, or Defendants’ liabilities can be adjusted, are matters which will  
18 require further investigation.

19 (5) **Any other matters which the Temporary Receiver believes should**  
20 **be brought to the Court’s attention.** Pursuant to Section XII(M) of the TRO, I  
21 have determined that, going forward, Receivership Defendants cannot be operated  
22 lawfully and profitably. *See* further discussion at Section III(D).

## 23 II.

### 24 Receivership Activities

#### 25 A. Receivership Defendants’ Sites

26 As directed and authorized by Section XVI, pages 28-29, of the TRO, in the  
27 afternoon of April 16, 2015, I commenced the process of accessing and securing  
28 the two Orange County business premises identified in the TRO. We coordinated

1 our initial efforts with uniformed police from the Newport Beach Police  
2 Department and the Orange County Sheriff’s Office.

3 1. HOPE Defendants – 23161 Mill Creek Drive, Suite 230, Laguna  
4 Hills, California 92653

5 My team entered this site, which operates behind an unmarked door, at  
6 approximately 2:30 p.m. The overall space is approximately 2,000 square feet  
7 with five external offices and internal workstations for six telemarketers. The  
8 space is leased to Defendant D.N. Marketing at a monthly rental of \$3,300 with a  
9 one year term that expires October 31, 2015. At our arrival, Defendant Derek  
10 Nelson (“Nelson”) was the only Individual Defendant present, but Defendant Chad  
11 Caldaronello (“Caldaronello”) arrived within 15 minutes. Only two other  
12 employees were on-site, although we saw some evidence (car keys left behind) that  
13 other employees had been there, but chose not to return.

14 The following businesses were operating, or have operated, from this site –  
15 C.C. Enterprises, Inc. (also d/b/a HOPE Services, Trust Payment Center, and  
16 Retention Divisions) and D.N. Marketing, Inc. (also d/b/a HAMP Services and  
17 Trial Payment Processing).

18 My team secured the premises and had the locks changed on the entry door.  
19 A schematic of the space and an inventory of furniture and equipment at the site is  
20 at Appendix, Exhibit 1.

21 We also took steps, through our retained private investigator, to prevent any  
22 unauthorized access to the safe in the garage of Caldaronello’s home referenced in  
23 the TRO.

24 2. Lake Defendants – 2280 University Drive, Suite 101, Newport Beach,  
25 California 92660

26 Members of my team also entered this site commencing at 2:30 pm. A  
27 nondescript sign by the entry wall reads “Advocacy Department.” The space is  
28 approximately 2,000 square feet with three offices and workstations for eight staff

1 personnel. Two of the offices and two workstations were in use by a sub-tenant  
 2 operating an unrelated business with four employees. The space is leased to JD  
 3 United.

4 The following businesses, all dbas of Defendant Denny Lake, operate from  
 5 this site: JD United and the Advocacy Department. We did see some use of other  
 6 variants of the Advocacy name (Program, Division, Agency), but “Advocacy  
 7 Department” appears to be predominant.

8 At our arrival, Mr. Lake and five employees were present. We secured the  
 9 premises and changed the locks. After confirming that he operated an unrelated  
 10 business, the sub-tenant and his employees were permitted to vacate with their  
 11 possessions. A schematic of the space and an inventory of furniture and equipment  
 12 at the site is attached at Appendix, Exhibit 2.

13 **B. Financial Accounts of Receivership Defendants.**

14 Beginning April 16, 2015, my team and the FTC served the TRO on banks  
 15 where Receivership Defendants were known to have accounts. The following  
 16 accounts with positive balances have been frozen:

Account Holder	Financial Institution	Account Ending	Balance Frozen
C.C. Enterprises, Inc. dba Trust Payment Center	Bank of America	6164	\$89.73
D.N. Marketing, Inc., Trial Payment Processing	Wells Fargo	4484	\$9,245.88
D.N. Marketing, Inc. dba Trial Payment Processing	Bank of America	3352	\$26,886.05
Denny E. Lake dba JD United	Union Bank	3272	\$15,848.11
Denny E. Lake dba U.S. Crush	Union Bank	2632	\$268.30

<b>Account Holder</b>	<b>Financial Institution</b>	<b>Account Ending</b>	<b>Balance Frozen</b>
JAM Enterprises, Inc.	Wells Fargo	5319	\$8,823.58
JAM Enterprises, Inc.	Wells Fargo	4322	\$1,278.82
<b>Total</b>			<b>\$62,440.47</b>

Other than the money in these accounts, and \$13,100 cash funds now in the Receivership account, Receivership Defendants do not appear to have substantial other liquid assets, but our investigation as to assets is still in its preliminary stages.

### **C. Cooperation and Interviews**

#### **1. HOPE Defendants**

Defendants Caldaronello and Nelson made themselves available as we requested. Both were cooperative and candid and seemed to genuinely lament their participation in this business. The two employees present upon our arrival were also cooperative.

Defendant Brian Pacios (“Pacios”) has provided no cooperation of any kind. He was not present at the site upon our arrival. We were told upon entry by Caldaronello that Pacios knew we were on site, but would not be coming to the office. We have had no communication with Pacios, except that on April 29, 2015, the Receiver spoke with him briefly after we learned that the HOPE offices had been broken into and assorted property had been removed. Pacios was told that if the property was not returned within 24 hours, a contempt of court motion and police report would be filed. Pacios and other HOPE employees thereafter coordinated the delivery of the stolen property to our offices on April 29 and April 30, 2015.

///

1 Defendant Justin Moreira (“Moreira”) was not present and we have had no  
2 communications with him.

3 2. Lake Defendants

4 At the Advocacy Department site, Defendant Denny Lake cooperated,  
5 responded to our questions, and provided requested documents. He returned the  
6 next day for a further interview. With one exception, the employees on-site were  
7 also cooperative and provided requested information. The one exception was a  
8 just-hired telemarketer who quickly departed.

9 **D. Documents/Information/Electronic Data**

10 Upon taking possession, my team confirmed that all hard copy documents  
11 were secure at both sites. I retained a forensic computer firm to monitor the FTC  
12 team which made images of certain desktop computers and smartphones at the two  
13 sites.

14 **E. Forensic Accountants**

15 I retained Thad Meyer, Principal of Alliance Turnaround Management, Inc.,  
16 a CPA and experienced CFO, to review the financial activity of Receivership  
17 Defendants. Since my team found no accounting system and only limited bank  
18 and other financial records on-site, we are not yet able to confirm the revenues of  
19 these ventures.

20 **F. Compliance with TRO**

21 Once we secured the premises and completed a basic review of the  
22 businesses, I took immediate steps to ensure compliance with the TRO as follows:

- 23 1. I determined that the practices prohibited by the TRO were so  
24 pervasive that an immediate suspension of operations at both sites was required.
- 25 2. In an effort to minimize prejudice and confusion to consumers with  
26 “active” files at the Advocacy Department, we retained one staffer to assist in  
27 updating the status of any modification files and identify consumers with sale dates  
28 scheduled through May 30, 2015. We then sent letters to the consumers and their





1 to send three, and sometimes four, such payments), the consumer's file, along with  
2 an \$800 fee, was forwarded to the Advocacy Department, operated by the Lake  
3 Defendants. Advocacy did perform some actual services, but also accepted  
4 prohibited advance fees and assisted and facilitated the HOPE Defendants in their  
5 violations of the MARS Rule and the TSR, including advance fees.

6 1. Individual HOPE Defendants

7 Our investigation indicates that these businesses were owned and operated  
8 principally by Defendants Pacios and Caldaronello with Defendants Nelson and  
9 Moreira playing supporting roles.

10 Defendant Brian Pacios is well-versed in the world of illegal loan  
11 modification. He stipulated in February, 2013 to a Final Order and Permanent  
12 Injunction which permanently banned him from marketing or selling or assisting  
13 others in marketing or selling mortgage assistance or debt relief products or  
14 services.<sup>2</sup> Although Pacios has made no effort to cooperate, we have been able to  
15 confirm that he and Caldaronello were the primary drivers of the HOPE  
16 Defendants' businesses and that Pacios was the primary contact with Denny Lake  
17 at Advocacy.

18 Defendant Caldaronello has a background in the mortgage business. He met  
19 Pacios at the gym and they formed C.C. Enterprises in August, 2013 with actual  
20 operations of its dba HOPE Services beginning in January, 2014. He was aware  
21 that Pacios had some prior "trouble," but did not know the specifics. Operating as  
22 Chad Carlson, he and Pacios, operating as Brian Barry, jointly ran the business.  
23 He identified Pacios as the robocall expert and suggested that Pacios, not he, had  
24 the background necessary to build such an operation. He reported his belief that

25

26

27 <sup>2</sup> Final Order for Permanent Injunction and Settlement of Claims as to  
28 Defendants Brian Pacios and National Legal Network, Inc. (ECF No. 152) entered  
February 28, 2013, *FTC v. Lakhany, et al.*, U.S. District Court (C.D. Cal.), Case  
No. SACV12-00337-CJC (JPRx).

1 some homeowners did secure some relief, but nonetheless acknowledged that trial  
2 payments did not go to lenders, but to accounts controlled by him and Pacios.

3 HOPE Services operated until the end of 2014 when it shut down and  
4 operations were simultaneously changed to the name HAMP Services. As a  
5 prelude to the name change, in August or September, 2014, Caldaronello and  
6 Pacios met with Nelson, a surfing friend of Caldaronello, and presented him a  
7 business proposition – let us use your name on a new corporation to run our  
8 business and we will pay you \$1,500 a month. They explained that they open and  
9 close a new business nearly once a year and use other people’s names to “keep the  
10 heat off” and stay “under the radar.” From this conversation, D.N. Marketing was  
11 formed as a California corporation, bank accounts were opened, and new dbas  
12 were deployed for the provider (HAMP Services) and the phony trust company  
13 (Trial Payment Processing).

14 Although he was the titular principal of the entity and signatory on bank  
15 accounts, Nelson was not directly involved in management of the HAMP business  
16 and had no control over its operations. By December, however, Nelson did come  
17 on as an employee. He answered incoming calls using a fraudulent script, and  
18 sought to convince consumers to send in paperwork. He earned \$3,500 per month  
19 and hoped to be promoted to a more lucrative “senior counselor” – closer position  
20 at HAMP.

21 Defendant Moreira has not cooperated. We do not have evidence that he  
22 was directly involved in management. However, Moreira worked with Pacios at  
23 the time of the last FTC action and two emails he sent to Pacios regarding call  
24 scripts do suggest at least some involvement in the substance of the business  
25 (Appendix, Exhibit 3).

## 26 2. HOPE and HAMP Operations

27 The HOPE Defendants changed the names of the players with alacrity.  
28 HOPE Services, a dba of C.C. Enterprises, morphed into HAMP Services, a dba of

1 D.N. Marketing, and Trust Payment Center morphed into Trial Payment  
2 Processing. Brian Pacios was “Brian Barry” at HOPE, but “Brian Kelly” at  
3 HAMP. Chad Caldaronello was “Chad Carlson” at HOPE and “Chad Johnson” at  
4 HAMP. Derek Nelson was “Dereck Wilson” at HAMP. Justin Moreira was  
5 variously “Justin Mason,” “Justin King,” and “Justin Smith.”

6 While these names changed, the basic operations which we found at the  
7 Laguna Hills site were consistent for HOPE and HAMP:

- 8 • Consumers were driven to call in by mailers (approximately 5,000  
9 mailed per month) or robocalls. Appendix, Exhibit 4 is a sample  
10 mailer – it was deceptively designed to appear as an official  
11 government communication (complete with presidential seal) and  
12 offered encouraging news about the potential availability of the  
13 HAMP program.
- 14 • A team of five phone operatives (identified internally as “leads”)  
15 received incoming calls – they operated from scripts replete with  
16 misrepresentations, including: “non-profit”, “authorized by  
17 government,” “work directly with HUD, NACA, and MHA,” and  
18 “payments go to the Trust/Escrow not to the bank.” A summary of  
19 the “Basic Sales Flow” walks the lead through the progression of five  
20 calls (Appendix, Exhibit 5). Scripts (variously headed “HOPE  
21 Services,” “HAMP Services,” and “Retention Divisions”) highlight  
22 the key sales points. (Appendix, Exhibit 6.) Some leads created their  
23 own handwritten scripts – one promoted the benefits of Lake’s  
24 Advocacy Program (Appendix, Exhibit 7).
- 25 • Some leads also had scripts at their workstations describing and  
26 touting the consumer advocacy program implemented by Lake’s  
27 Advocacy Department – “we know what it takes and we get escalated  
28

1 to the office of the CEO/Executive 100% of the time, you will be  
2 blown away....” (Appendix, Exhibit 8).

- 3 • Leads were incentivized to sell with commissions based on closings  
4 (Appendix, Exhibit 9).
- 5 • Intake forms were completed for callers, and those who followed  
6 through by supplying requested documents, were directed to the  
7 “senior counselors.” Senior counselors received bonuses equal to  
8 20% of the consumer’s first “trial payment.” For their part, Pacios  
9 and Caldaronello shared the business profits derived from the stolen  
10 trial payments. On files that were deemed “qualified” by the  
11 counselors, consumer data was input to the LoanPost database which  
12 then generated a “MHA Eligibility Overview” package to be sent to  
13 the consumer. The overview letter portrayed the new loan terms as a  
14 done deal and gave express instructions to send by FedEx “trial  
15 payments” (cashier’s check or money order only) payable to Trial  
16 Payment Processing. Appendix, Exhibit 10 is a sample - this  
17 particular letter directed the consumer to make four payments of  
18 \$2,759 (total of \$11,036) to Trial Payment Processing.
- 19 • If the package came back with the first trial payment, it was put in a  
20 bin for review by Pacios and the file was hand-delivered to Lake’s  
21 Advocacy Department for processing along with the payment of  
22 Advocacy’s \$800 fee.
- 23 • The initial trial payment, and the two or three others that followed,  
24 were quickly confiscated by Defendants Pacios and Caldaronello.  
25 Upon our arrival, we found a veritable stack of cashier’s checks and  
26 money orders from multiple consumers payable to Trial Payment  
27 Processing (Appendix, Exhibit 11), four of which (ranging in amounts  
28

1 from \$752 to \$4,516) were teed up for deposit to D.N. Marketing's  
2 account at Wells Fargo. (Appendix, Exhibit 12.)

3 Based on the LoanPost data, we estimate that approximately 629 consumers  
4 received the MHA eligibility letter from HOPE and 542 from HAMP.

5 This was a high margin business for these Hope Defendants. Against the  
6 trial payments received from consumers, their only direct expenses were the \$800  
7 to Advocacy and salaries and bonuses to the sales staff. There was no accounting  
8 system. Payments were tracked by Caldaronello in handwritten notes on a yellow  
9 pad.

### 10 **B. Lake Defendants**

11 Defendant Denny Lake is a veteran loan modification operator. He managed  
12 the "ADR" operations at Mesa Law and the Kassas law firm before those firms  
13 were shut down in August, 2011 in a case brought by the California Attorney  
14 General.<sup>3</sup> He thereafter operated as a subcontractor or consultant providing loan  
15 modification and/or debt relief services to law firms or other sellers.

16 By the Fall of 2012, he had enough files from two loan modification shops—  
17 National Advocacy Program ("NAP") and Colleagues in Law ("CIL")—to open  
18 the current office and build a staff. By early 2013, however, the NAP source  
19 expired and he took on a subtenant to occupy nearly 25% of the space. By early  
20 2014, the CIL business expanded and he began processing for HOPE Services and  
21 which evolved to HAMP Services.

22 Advocacy is compensated on a per file basis paid in advance – \$800 from  
23 HOPE/HAMP and \$650 from CIL with a second phase fee of \$225. Although  
24 Lake's accounting records are very informal, the advance fee element of the  
25 business is indisputable. (Appendix, Exhibit 13). Lake readily acknowledged his

26 \_\_\_\_\_  
27 <sup>3</sup> *People of the State of California v. the Law Offices of Kramer and*  
28 *Kaslow, et al.*, Los Angeles County Superior Court, Case No. LC094571. The  
Attorney General alleged that defendants' "mass joinder" loan modification  
strategy was illegal on multiple fronts, including illegal advance fees.

1 awareness that advance fees were prohibited,<sup>4</sup> but proffered his view that his  
2 operations are insulated because he does not take money directly from consumers,  
3 but is just a third party operator paid by “affiliates” who provide him files.

4 Lake described his advocacy strategy, which HOPE/HAMP and CIL were  
5 essentially selling, as a vehicle to get a file “escalated” within the lender on a faster  
6 track with higher-up personnel. This escalation was to be triggered by multiple  
7 complaints (letter, email, or on-line) to the lender, regulators, and/or political  
8 representatives. The strategy is described in various documents we found on site or  
9 were provided by Lake, including flow chart, 14-point advocacy process (which  
10 boasts that “100% of the time file will be escalated into the bank executive  
11 office”), and email template (Appendix, Exhibit 14.) Whether or not this complaint  
12 strategy was effective, it was still just a component of a process aimed at loan  
13 modification.

14 At the University Drive site, Lake has established a small, but coherent  
15 infrastructure and staff which does provide some services and has secured some  
16 level of assistance for some consumers. Those services indisputably relate to loan  
17 modifications covered by the MARS Rule. The office is replete with the standard  
18 accoutrements of a loan modification shop. Individual files include a JD United  
19 Submission Sheet and Third Party Authorizations designating Advocacy  
20 Department which are faxed to the respective lenders – the Appendix includes  
21 samples from a CIL file (Exhibit 15) and a HAMP file (Exhibit 16). Contact lists  
22 and directories for internal personnel, affiliates, and loss mitigation departments at  
23 major lenders are posted throughout (Appendix, Exhibit 17). A LeadTrac CRM  
24 system tracks file activity - representatives of HAMP and CIL are included as  
25 authorized users so they too can track status (Appendix, Exhibit 18).

26 Communications and document submissions to lenders are on-going (Appendix,

27 \_\_\_\_\_  
28 <sup>4</sup> A complete copy of the MARS Rule, 16 C.F.R. Part 322, was located  
in Advocacy’s office.

1 Exhibit 19). The core document in each file at Advocacy is an application for  
2 mortgage assistance. A sample of such an application in a HAMP file is at  
3 Appendix, Exhibit 10.

4 By labeling the service “advocacy” and manipulating the payment dynamics  
5 so the actual payment comes from CIL or HOPE/HAMP, Mr. Lake cannot  
6 camouflage this advance fee loan modification business or exempt the Advocacy  
7 Department from the MARS Rule or the prohibitions of the TRO.

8 1. Colleagues in Law

9 At our arrival, we identified approximately 326 active CIL files at the  
10 Advocacy Department. By November, 2013, Lake was receiving approximately  
11 20-30 files per month, but volume picked up in early 2014 and by March, 2015, it  
12 was 60-70 files per month. Just before our arrival, however, CIL had stopped  
13 sending files due to concerns that Lake was doing business with the HOPE  
14 Defendants.

15 Advocacy appears to have operated as a *de facto* off-site processing  
16 department with on-going interactions with CIL staff. CIL’s website promoted  
17 Lake’s consumer advocacy program as its “Think Outside the Bank” strategy  
18 (Appendix, Exhibit 20). When CIL stopped sending files to Advocacy, Lake  
19 complained that CIL should no longer use his “content to bring in business.”  
20 (Appendix, Exhibit 21.) CIL personnel had ongoing access to Advocacy’s  
21 LeadTrac database (Appendix, Exhibit 18).

22 2. HOPE Defendants

23 We identified 50 active files for HOPE and 162 active files for HAMP at  
24 Advocacy. Lake identified his first contact with the HOPE Defendants as a phone  
25 call in early 2014 from Brian Barry (aka Pacios and later Kelly) who had heard  
26 Lake had a good backend process. This led to an Affiliate Agreement dated March  
27 7, 2014 between C.C. Enterprises and Advocacy Department (Appendix, Exhibit  
28 22) – HOPE files began arriving at Advocacy shortly thereafter.



1 In Fall of 2014, Pacios and Caldaronello advised Lake that HOPE was  
2 closing down, but they wanted Lake to finish out the pipeline. By December,  
3 however, they returned to Lake with news of the re-launch, reporting that they had  
4 a “friend” who wanted to run a shop which they would call HAMP Services. Lake  
5 never actually talked to the friend. HAMP files began to be delivered in  
6 December, 2014, then got busier in early 2015. The basic process was the same as  
7 HOPE.

8 Advocacy did not operate in a vacuum, but interacted extensively with  
9 HOPE/HAMP. Lake’s consumer advocacy program was part of what the HOPE  
10 Defendants were selling – see script at Appendix, Exhibit 8. Like CIL,  
11 HOPE/HAMP personnel were provided on-going access to Advocacy’s LeadTrac  
12 database so they could track progress on files (Appendix, Exhibit 18).  
13 HOPE/HAMP’s contact information was prominently displayed at Lake’s desk and  
14 at each workstation (Appendix, Exhibit 17). The initial materials in each  
15 HOPE/HAMP “file” at Advocacy originated with HOPE/HAMP and were hand-  
16 delivered to Advocacy.

17 In our interviews, Mr. Lake often cited his belief that Advocacy was helping  
18 people. But, he also acknowledged his awareness of the regulatory environment in  
19 general and specific concerns about HOPE/HAMP’s practices.

- 20 • He expressed frustration, in general, about how difficult it was to  
21 provide homeowners help because of the regulations. He reiterated  
22 that he does not violate any rules because he does not take the money,  
23 and that he knows the rules and stays clear of money and marketing  
24 because of it. He had concluded that there really isn’t a way to do the  
25 business legally, except for a new business plan he was developing  
26 which would involve a network of attorneys licensed in various states.
- 27 • He told us that things were better at HAMP versus HOPE because  
28 there are “less misrepresentations” and noted that he has been in the

1 business a long time and that salespeople make misrepresentations no  
2 matter where you go.

- 3 • When asked if he thought HOPE/HAMP was breaking the law, he  
4 responded “more likely than not” and that he had informed them of  
5 that.
- 6 • He reported that CIL’s CEO, Devin Benten told him he had heard a  
7 lot of complaints about HOPE/HAMP and that he had basically  
8 stopped sending files to Advocacy because of those concerns. Lake  
9 recalled responding to Benten that he would not work for a company  
10 like HOPE/HAMP again, that he had not known what he was getting  
11 into, but could not just cancel the files in the pipeline.
- 12 • In comparing CIL to HOPE/HAMP, Lake told us that CIL does more  
13 direct mail and is “more ethical and legitimate.”
- 14 • Lake conceded he was not sure if HOPE/HAMP was complying with  
15 MARS, but that he was just a third party paid to do a job. He was not  
16 getting any advance fees from consumers.
- 17 • He confirmed that some HOPE/HAMP customers have told him they  
18 thought they had already been approved for a loan modification. He  
19 told them “no, not yet,” that’s what Advocacy Department was going  
20 to try to get for them.

21 We identified materials on site that confirmed an awareness within  
22 Advocacy in general and Lake specifically that HOPE/HAMP was instructing  
23 consumers to submit “trial payments” to their office and that these payments were  
24 not remitted to lenders:

- 25 • In multiple email exchanges, Lake reported to Pacios (aka “Brian  
26 Barry” in emails through October 15, 2014 and “Brian Kelly”  
27 thereafter) that consumers had complained that their trial payments  
28 had not been delivered to their lenders. (Appendix, Exhibit 23).

- 1           •       Exhibit 23, pages 88-89 is an email dated February 27, 2014, in which  
2                    Lake submitted a proposal to Brian and Chad regarding payments to  
3                    Trust Payment Center, “Here is something similar to what you are  
4                    doing that is more honest and compliant.”
- 5           •       At Exhibit 23, page 90, Lake reports to Barry that the consumer  
6                    “thought they were already approved and making modification  
7                    payments to the bank.” Barry responds, “I’m sure the process of your  
8                    guys [sic] division wasn’t explained properly.”
- 9           •       At Exhibit 23, pages 91-105, Lake alerts Barry and Chad that these 15  
10                   different consumers have complained about where their payments  
11                   went.
- 12           •       ”Exhibit 23, pages 106-107 is a recent email from April 6, 2015, in  
13                   which Lake invokes the “I know nothing” defense to a consumer  
14                   complaining that nearly \$6,000 in trial payments had not gone to her  
15                   lender, telling her: “We are a third party with no knowledge or  
16                   involvement in fees or application of funds.”
- 17           •       In an internal “Processing Notes” document, Lake expressly  
18                   referenced “HOPE files when they ask about payments”, directing  
19                   staff to tell consumers “We have nothing to do with that,” “we are a  
20                   separate entity....” (Appendix, Exhibit 24, paragraph 8.)

21           3.       Other Direct Consumers

22           The Advocacy pipeline report for active files contains a limited number of  
23           files (less than 20) with either no affiliate designation or an affiliate designation  
24           other than CIL or HOPE/HAMP. Lake told us he does take on a limited number of  
25           cases from “friends or family” or from individual sources. Given the *de minimus*  
26           number of such files, we have not as yet confirmed all related details or completed  
27           our investigation as to whether there may be any other affiliate sources not  
28           identified in the pipeline.

1           **C.     Financial**

2           Our ability to evaluate the finances and profitability of Receivership  
3 Defendants has been compromised by the absence of any accounting systems on-  
4 site at HOPE/HAMP or Advocacy. HOPE had nothing more than handwritten  
5 notes on a yellow pad. Lake tracked finances with written schedules and limited  
6 use of Excel spreadsheets.

7           A definitive summary of financial activities may require a reconstruction of  
8 bank records from multiple accounts. Given that all current accounts are frozen,  
9 and Defendants are obligated to make detailed financial disclosures, we will defer  
10 a decision on such a costly reconstruction.

11           **D.     Operations Going Forward**

12           Section XII (M) of the TRO authorizes the Receiver to continue the business  
13 of Defendants, but only to the extent he determines they can operate “profitably  
14 using the Assets of the receivership estate, and lawfully, if at all.”

15           My determination is that these businesses cannot operate profitably and  
16 lawfully or in compliance with the TRO going forward.

17           As to the HOPE Defendants, this issue is not a close call. The operation  
18 being run by the HOPE Defendants is a straight theft from consumers, all made  
19 possible by a litany of falsehoods.

20           As to the Lake Defendants, compliance with the TRO would also terminate  
21 its viability. While it does appear that an infrastructure was in place and that some  
22 modifications or other assistance were secured, that infrastructure does not insulate  
23 Mr. Lake, regardless of “success” rates or his claimed best intentions. His business  
24 model is built on a fundamental illegality – the receipt of advance fees for loan  
25 modification services by a for-profit commercial business.

26           It is indisputable that the Lake Defendants are providing loan modification  
27 services and receive advance payment for those services from affiliate sources with  
28 which they work very closely. Section III of the TRO is not limited to fees paid

1 directly by a consumer – Defendants are “enjoined from, asking for, or receiving  
2 payment of any fee or consideration until a consumer has executed a written  
3 agreement...” As Receiver, I cannot conclude that continuation of the Advocacy  
4 business can comply with this provision even if the payment to Lake is not made  
5 directly by a consumer, but instead passes through other illegal operators.  
6 Moreover, our review further indicates that Advocacy operates in a coordinated  
7 manner with the HOPE Defendants which has enabled them to operate. Indeed,  
8 the consumer advocacy program is a component of HOPE’s sales pitch. Lake’s  
9 services are not delivered in vacuum, but with ongoing interconnections and  
10 interactions and direct knowledge or at minimum inquiry notice of HOPE’s MARS  
11 and TSR violations.

12 Dated: May 9, 2015

MCNAMARA BENJAMIN LLP

13  
14 By: /S/ Thomas W. McNamara  
15 Thomas W. McNamara  
16 Temporary Receiver  
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**CERTIFICATE OF SERVICE**

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I hereby certify that on May 9, 2015, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all participants in the case who are registered CM/ECF users.

I further certify that I have caused the foregoing to be emailed, with consent, to the following non-CM/ECF participants:

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