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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,)

Plaintiff(s),)

v.)

**KAHRAM ZAMANI; INFINITY
GROUP SERVICES, INC.,**)

Defendant(s).)

**CASE NO. SACV 09-0977-
DOC(MLGx)**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This action was tried to the Court between September 14, 2010 and October 4, 2010. Pursuant to the Rule 52 of the Federal Rules of Civil Procedure, the Court hereby issues its findings of fact and conclusions of law.

I. EVIDENTIARY DISPUTES

1. The Federal Trade Commission (“FTC”) seeks the admission of consumer declarations that were prepared and submitted in accordance with 28 U.S.C. § 1746 (unsworn declarations under penalty of perjury). These declarations are, as the FTC concedes, hearsay. See Pl.’s Mtn. In Limine (Docket 98), at 4:3-7. The

1 declarations are nonetheless admissible because they have “circumstantial
2 guarantees of trustworthiness” and it would be unduly consumptive of time and
3 burdensome for the FTC to call each aggrieved consumer into Court to testify in
4 person. See Fed. R. Evid. 807. The consumer declarations identify the declarants
5 with specificity and recite similar factual accounts about the consumer-declarants’
6 experiences with Infinity Group Services (“IGS”) during the time period at issue in
7 this lawsuit. The Ninth Circuit has recognized, in identical circumstances, that the
8 consumer complaints are admissible under Rule 807 because “[t]he fact that they
9 all reported roughly similar experiences suggests their truthfulness.” FTC v.
10 Figgie Int’l, Inc., 994 F.2d 595, 608-09 (9th Cir. 1993). The consumer
11 declarations (Exs. 98-100, 102-112) are accordingly received into evidence.

- 12 2. The FTC also seeks the admission of a number of consumer letters filed on the
13 FTC’s website. In those letters, consumers complain about IGS’ failure to timely
14 obtain loan modifications and/or loan refinancing on behalf of its clients. The vast
15 majority of the consumer complaints describe IGS’ business operation – its fees,
16 services, and performance – in nearly identical terms. Such “report[s] [of] roughly
17 similar experiences suggests the[] truthfulness” of the letters on the FTC’s website.
18 See id.; see also FTC v. Magazine Solutions, LLC, No. 7-692, 2009 WL 690613,
19 at *1 (W.D. Pa. Mar. 16, 2009) (admitting consumer complaints to Better Business
20 Bureau in part because “[t]he consistency of the representations [described in the
21 consumers’ letters] reinforces the trustworthiness of the complaints”). During
22 trial, the Court identified the factual parallels between the consumer complaints
23 admitted in Figgie and those the FTC seeks to admit here. However, the FTC was
24 cautioned to make clear, through electronic identifying information, that the
25 consumer complaints were submitted by different individuals, instead of a single
26 disenchanted IGS customer committed to flooding the internet with his complaints.
27 The FTC made that showing, and the consumer complaints are therefore admitted.

28 **II. PROCEDURAL HISTORY**

- 1 1. On September 9, 2010, the Court granted in part and denied in part the FTC’s
2 motion for summary judgment on its claims against Kahram Zamani (“Zamani”)
3 and his California corporation Infinity Group Services, Inc. d/b/a IGS, Hope to
4 Homeowners, ASKIGS, and ASKIGS, Inc. (“IGS”), for violations of Section 5(a)
5 of the FTC Act, 15 U.S.C. § 45(a). The FTC’s August 26, 2009 Complaint
6 separately alleges three “counts” or violations of Section 5(a).
- 7 2. The Complaint’s first count alleges that Zamani and IGS (collectively
8 “Defendants”) falsely represented to consumers that they would “obtain a loan
9 modification in all, or virtually all, instances.” Compl. ¶ 33. The FTC alleged that
10 misrepresentations were made in the course of advertising, marketing, promoting,
11 offering for sale, or actually selling mortgage loan modification services to
12 customers in the United States and, more specifically, the state of California. Id.
- 13 3. The Complaint’s second count alleges that, in connection with the sale of these
14 loan modifications services, Defendants falsely promised consumers “full refunds .
15 . . if Defendants fail[ed] to obtain modifications of their loans.” Id. ¶ 36. These
16 misrepresentations were likewise made in advertising, marketing, promotional, and
17 other materials that offered for sale, or actually consummated the sale, of mortgage
18 loan modification services. Id.
- 19 4. The Complaint’s third count alleges that Defendants falsely represented to
20 consumers that they would “obtain refinancing for consumers’ mortgage loans for
21 an up-front flat fee of [nine-hundred and ninety five dollars].” Id. ¶ 39. These
22 misrepresentations, like the first two categories of alleged misrepresentations, were
23 made in Defendants’ advertising, marketing, promotional, and other materials that
24 offered for sale, or actually consummated the sale of, mortgage loan refinancing
25 services. Id.
- 26 5. The Court’s order on the motions for summary judgment concluded that the
27 undisputed facts established liability as to IGS on all three counts. See Docket 105
28 at 9:27-12:10. The Order also concluded that the undisputed facts established

1 Zamani's liability on the third claim for misrepresentations made in connection
2 with the sale, or offering for sale, or mortgage loan refinancing services. Id. at
3 12:11-13:3. The remaining disputed issues to be resolved at trial were
4 (1) Zamani's liability on the Complaint's first two counts; (2) the remedies,
5 including injunctive, restitutionary, and equitable relief that should flow from
6 Defendants' conduct. See id. at 13:15-15:14.

7 **III. FINDINGS OF FACT**

- 8 1. Zamani is the founder and Chief Executive Officer of IGS, a California
9 corporation. Like IGS, Zamani is a resident of California. See Stipulated Fact
10 Nos. 1-7, Proposed Pre-Trial Conference Order (Docket 96-1), at 3-4.
- 11 2. Between 2008 and 2009 IGS advertised its services to mortgagees whose loans
12 were subject to high interest rates. Between November 1, 2008 and early February
13 2009, IGS offered a service named "Hope to Homeowners" pursuant to the
14 Economic Stabilization Act of 2008 (the "Act"). The Act authorized the Federal
15 Housing Authority (FHA) to guarantee certain classes of home loans that lenders
16 refinanced in order to relieve borrowers burdened by high interest rates. The
17 government program was called "Hope for Homeowners"; it insured refinanced
18 loans that satisfied the following conditions among others: (a) the principal
19 balance could not exceed ninety percent of the home's value; (b) the refinanced
20 loan amount could not exceed \$550,440; (c) the Federal Housing Authority would
21 be entitled to a share of any equity eventually realized in the subject property. See
22 Bush Administration Launches "Hope for Homeowners" Program to Help More
23 Struggling Families Keep Their Homes (Exhibit A to Trial Ex. 444).
- 24 3. IGS marketed the Hope to Homeowners service as an off-shoot of the program
25 sponsored by the federal government. It paid a prominent Southern California
26 radio station to advertise Hope to Homeowners as "the only program available that
27 can reduce your principal balance, and for some, up to 50 percent." Trial Ex.
28 162A; see also Trial Ex. 163A (similar advertisements). The advertisements for

1 the Hope to Homeowners program were created on November 4, 2008, December
2 11, 2008, and December 12, 2008, and aired thereafter. Id. Early advertisements
3 aired in November 2008 purported to describe the government program and
4 instructed interested consumers to call IGS' toll free number. See, e.g., id. at 3.
5 Radio station employees reminded each other that, at least one version of the
6 advertisement, “[Zamani] would like to leave his company name out and just focus
7 on the program.” Id. at 7. Given the near identity between the name of the
8 government program (“Hope for Homeowners”) and the product marketed by IGS
9 (“Hope to Homeowners”), the Court finds that IGS was intentionally trying to
10 confuse consumers into believing that the radio advertisements were sponsored by
11 the federal government when, in fact, they were not. See id.

12 4. In December 2008, IGS altered the text of its radio advertisements slightly. Each
13 advertisement now included a statement that “no mortgage modification company
14 or law firm can guarantee a reduction in your principal loan balance, period!” Id.
15 at 1. That statement immediately followed the claim that “this is the only program
16 available that can reduce your principal balance.” See id.

17 5. Potential customers called an IGS hotline monitored by sales representatives.
18 These sales representatives generally gathered identifying financial information
19 and purported to express an opinion about the customers' eligibility for the
20 government-sponsored Hope for Homeowners program. See, e.g., Andrew
21 Carlson Decl. (Trial Ex. 102) ¶ 3. In a pre-printed form, IGS represented to
22 potential customers that IGS would contact each customer's lender and negotiate a
23 loan modification. See, e.g., Hope to Homeowners Fee Acknowledgment, Ex. B to
24 Robert Millspaugh Decl. (Trial Ex. 108).

25 6. In addition to generally providing each potential customer with a preliminary
26 opinion about her eligibility for a government-insured refinanced loan under the
27 Hope for Homeowners program, IGS' sales representatives also solicited an initial
28 payment of \$995.00 from customers interested in engaging IGS' services:

1 representing customers in “negotiations” with their lenders. IGS presented its
2 customers with paperwork making clear that the \$995 fee was a non-refundable
3 amount charged “in consideration for an evaluation by [IGS] of the borrowers’
4 [sic] financial condition. The evaluation is to determine the suitability of the
5 borrower for the selection of one or more of the actions identified above and is
6 completed prior to a presentation of any request(s).” Id. The form further clarified
7 that “[IGS] will use its best efforts in making the presentations, but there are no
8 express or implied guarantees.” Id. Of course, IGS could make no guarantees
9 because (as its pre-printed forms made clear) “[t]he decision to modify any term of
10 the borrower(s) existing mortgage can only be approved by their
11 Lender/Service/Investor.” Id. IGS, in short, charged customers \$995 to compile
12 their financial information and solicit a loan modification from their lenders.

- 13 7. IGS received hundreds of phone calls from potential customers about its Hope to
14 Homeowners service. See, e.g., Trial Ex. 432 (listing 219 phone calls on January
15 12, 2009 alone); see also Testimony of Kahram Zamani, dated September 14,
16 2010, at 10:5-22 (“I would estimate that on average IGS received anywhere
17 between 150 to 200 calls . . . [p]er day.”).
- 18 8. Many customers claimed that oral representations made by IGS’ customer service
19 representatives contradicted the disclaimers in its forms. Several customers
20 complained to the Better Business Bureau (BBB) that IGS “first ask[s] you for an
21 upfront fee of \$995 and indicate[s] that it is 100% refundable if they can’t get the
22 job done.” See Better Business Bureau Complaint Details, Kevin Millspaugh
23 (Trial Ex. 122); see also Better Business Bureau Complaint Details, Jennifer
24 Aggers (“Infinity Group took \$995 with the promise to modify my mortgage.”);
25 Better Business Bureau Complaint Details, Irene Marcellus (“I agreed to send
26 them all my personal information and a check for \$995 [w]ith a promise that if the
27 loan could not get modified the money would be refunded back to me.”); Better
28 Business Bureau Complaint Details, Yolanda Farriola-Delahanty (“After many

1 conversations including promises that they would refund the \$995 my husband and
2 I signed up.”).¹ Other customers complained that IGS represented that their loan
3 modification was a “done deal,” even before contacting the lender to seek
4 approval. See, e.g., Better Business Bureau Complaint Details, Henry Kimari;
5 Trial Tr., dated September 14, 2010, Vol. II, at 60:15-19. Both sets of customers
6 purportedly expected that the \$995 up-front fee guaranteed a successful loan
7 modification, and that, if IGS failed to persuade a customer’s lender to change loan
8 terms, it would refund the customer the \$995 fee. Zamani, and other senior
9 members of IGS’ management team, were aware that the company’s sales
10 representatives misrepresented to consumers the terms of IGS’ services, including
11 the Hope to Homeowners program. See, e.g., Trial Ex. 159 (discussing “classic . .
12 . bait and switch” tactic employed by IGS employee). These sales representatives
13 were not promptly disciplined and, in many cases, were not disciplined at all.
14 However, in certain circumstances, IGS submitted documentation to lenders in
15 connection with a requested loan modification but failed to receive a timely
16 response (if any) from these lenders. See Trial Tr., dated September 14, 2010,
17 Vol. II, at 34:17-35:5; 35:21-25-36:3.

18 9. IGS points to its written disclaimers as evidence that it never promised either
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21 ¹ One IGS customer testified at trial that IGS’ radio advertisement “says that [the
22 cost of the program] was 995, and they would give you your money back if they couldn’t
23 get a loan modification. And I felt confident that they could do it because I probably
24 trusted KFI station because I listen to it so much.” Testimony of Irene Marcellus, dated
25 September 15, 2010 (Docket 120), at 56:11-15. This testimony does not square with the
26 actual text of IGS’ Hope to Homeowners advertisements, none of which promised a
27 refund of the \$995 up-front fee in the event IGS failed to successfully obtain a loan
28 modification from the customer’s lender. See Trial Ex. 161. The same customer further
testified that, in its radio advertisements, IGS proclaimed that it “ha[d] done so many
[modifications] and that they pay the money back if they don’t — if they can’t get it
done,” see Trial Tr., dated September 15, 2010, Vol. I, at 73:24-74:2, but this
representation is also contradicted by the undisputed text of the radio advertisements.
The Court disregards the customer’s testimony as not credible.

1 successful loan modifications or a refund of the \$995 up-front fee in the event of
2 failure. But IGS does not dispute that the \$995 fee minimally secured a thorough
3 evaluation of the customer's eligibility for the government-sponsored Hope for
4 Homeowners program as well as a committed representation of the customer in
5 discussions with the lender. Several customers complained that IGS failed to
6 perform even these tasks. See, e.g., Better Business Bureau Complaint Details,
7 Yolanda Farriola-Delahanty ("I called my bank last week and they have not heard
8 from [IGS] until yesterday."); Better Business Bureau Complaint Details, Antonia
9 Rogers ("[N]o one from IGS contacted my bank to make sure that they had
10 everything" after the bank initially requested additional documentary information);
11 Better Business Bureau Complaint Details, Chris & Crystal Allen ("[IGS service
12 representative] said he would contact [] our lender on our behalf to work with them
13 and re-negotiate our loan. To this day, he has never contacted [the lender] on our
14 behalf."); see also E-mail from Kenji Taylor to Gary D. Kennedy, dated June 3,
15 2009 (Trial Ex. 123) ("In a phone call to Bank of America Home Loans on May
16 14, I was told they had had no contact from IGS on our behalf. Other than a letter
17 signed by us authorizing them to talk to IGS about our loans on the Morrison
18 house, B of A has not received any other documentation from IGS."); Testimony
19 of Irene Marcellus, dated September 15, 2010 (Docket 120), at 68:14-16 ("I called
20 my bank, and they never heard of these people. They never received a letter from
21 these people. They never received anything from these people."). Zamani was
22 aware of the complaints in February of 2009. See Trial Exs. 155-158 (internal IGS
23 email communications between Zamani, et al. discussing consumer complaints
24 arising out of Hope to Homeowners); see also Trial Tr., dated September 14, 2010,
25 Vol. I at 66:17-19. The task of reviewing consumer complaints was delegated to
26 IGS Chief Financial Officer Brian Goshert, who, along with Zamani and the
27 company's vice president, decided whether to refund complaining customers'
28 initial \$995 payment. See id. at 46:14-17; id. at 68:22-23.

- 1 10. IGS failed to promptly respond to its customers' phone calls and e-mail
2 correspondence and ultimately failed to obtain a single loan modification on behalf
3 of any of its customers. See, e.g., E-mail from Kenji Taylor, dated April 8, 2009
4 (Trial Ex. 123) ("Still waiting for a response from someone. PLEASE. Thanks").
5 Instead, some IGS processors and sales representatives falsely represented that
6 IGS had succeeded in convincing lenders to modify loan terms. Trial Tr., dated
7 September 14, 2010, Vol. II, at 109:1-7.
- 8 11. However, Zamani did not direct his representatives to refund, or even promise to
9 refund, the \$995. Zamani instead informed customers that, while IGS could not
10 refund the up-front fee, it would "continue to work on [their] file[s] and work
11 diligently to seek a resolution from [their] lender[s]." See, e.g., E-mail from
12 Kahram Zamani to Irene Marcellus, et al., dated April 18, 2009 (Trial Ex. 438).
- 13 12. Disgruntled IGS customers lodged complaints with the BBB and the Consumer
14 Sentinel Network in droves. See Trial Exs. 121-122. IGS was faulted for making
15 false promises of success in order to induce customers to purchase its product, only
16 to undertake lackadaisical efforts (if any) to successfully negotiate loan
17 modifications. See id. IGS formally responded to at least one of the complaints by
18 noting that "[the customer] was aware that there were not guarantees that IGS
19 could save her home or modify her loan." See Trial Ex. 122 at 4. In another
20 instance, IGS and the customer disputed to the BBB whether IGS had undertaken
21 to seek a Hope for Homeowners loan modification from the customer's lender
22 without first investigating and discovering the fact that the customer's lender did
23 not participate in the government program. See id. at 26 ("If IGS would have
24 contacted [the lender] when they originally received my package they would
25 already know this. Instead they waited until I became the squeaky wheel and
26 pushed for resolution."). In response to another complaint, IGS stated that it
27 would continue making efforts to "get the modification" from the complaining
28 customer's lender. Id. at 28.

- 1 13. In response to frequent customer complaints between December 2008 and January
2 2009, IGS ceased the “Hope to Homeowners” service in early February 2009. As
3 a result of the termination, IGS no longer communicated (or purported to
4 communicate) with lenders on behalf of borrowers seeking a modification of loan
5 terms. See Testimony of Kahram Zamani, dated September 14, 2010, at 19:1-8.
6 The program was also terminated because IGS was “having a hard time getting the
7 lenders to” respond to requests to modify the terms of borrowers’ mortgage loans.
8 See Trial Tr., dated September 14, 2010, Vol. II, at 37:14-17.
- 9 14. Approximately 1500 customers signed up for the Hope to Homeowners program
10 and paid the \$995 up-front fee. See id. at 47:4-11. None of the 1500 customers
11 successfully obtained a Hope to Homeowners modified loan. Id. IGS refunded
12 approximately 700 of these 1500 customers with their \$995 up-front fee. Id. at
13 47:12-15. The remaining customers were not refunded their up-front fee because
14 “at the time of [IGS’] bankruptcy,” there were hundreds of “files that were still
15 active as loan modifications” and remaining files “ultimately got denied” by the
16 customers’ lenders. See id. at 47:18-24.
- 17 15. IGS began offering a mortgage refinance service in the wake of the Hope to
18 Homeowners program. Trial Tr., dated September 14, 2010, Vol. I, at 21:20-22.
19 The service built upon a product already being offered by IGS. See Trial Tr.,
20 dated September 14, 2010, Vol. II, at 43:13-18; 45:5-7. Unlike the Hope to
21 Homeowners program, which depended upon lenders’ willingness to modify the
22 terms of borrowers’ loans, IGS’ mortgage refinance product required minimal
23 participation by third parties. IGS paid a prominent Southern California radio
24 station to advertise the refinance service in the following manner:
25 JOHN KOBEL: Hi, John Kobel here with the deal of a lifetime for
26 all homeowners with equity. My friends over at IGS, mortgage
27 bankers, are writing loans at ridiculous rates. Today, you can lock in
28 a 30-year fixed rate at 4.625 percent. 4.625 percent. You pay IGS a

1 flat fee of \$995. No title, no escrow fee, no appraisal fee, no junk
2 fees. Pursuant to Cal Finance Lenders License. 4.721 percent APR.
3 Restrictions apply. Call 888-827-5447, 888-827-5447.

4 See Trial Ex. 163A at 15.

- 5 16. Between February 2009 and March 2009, radio advertisements for IGS' mortgage
6 refinance service made similar promises about the certainty of a low-interest
7 mortgage loan upon payment of an up-front \$995 fee. See, e.g., id. at 16
8 (promising 4.375 percent loan for \$995 flat fee); id. at 17 (promising 4.5 percent
9 loan for \$995 flat fee); id. at 18 (promising 4.25 percent loan for \$995 flat fee); id.
10 at 19 (promising 4.25 percent loan for \$995 flat fee); id. at 20 (promising 4.375
11 loan for \$995 flat fee). Prospective customers were directed to call a toll-free
12 number, which would "route the call to [IGS'] sales department and [eventually] to
13 an [IGS] agent." Trial Tr., dated September 14, 2010, Vol. II, at 22:2-5.
14 Prospective customers listened to, and relied upon, these advertisements. See Trial
15 Tr., dated September 14, 2010, Vol. II, at 14-21.
- 16 17. IGS, at the direction of Zamani, trained sales representatives and processors in
17 connection with the new loan refinance service. See id. at 20:18-20. This training
18 enabled the sales representatives to solicit applicable financial information from
19 customers interested in a mortgage refinance, inputting that information into a loan
20 prospector computer program called "Freddie Mac LP" and receiving the
21 software's determination of whether the prospective customer was "eligible" for a
22 refinanced loan. See id. at 22:22-23. Following this initial determination of the
23 customer's eligibility for a refinanced mortgage at specified loan terms, IGS would
24 "advise the customer how the process would work." Id. at 25:5-6. "For example,
25 the loan would be assigned to a team leader/manager for quality control review"
26 and later "submitted to [IGS'] setup department" in order to finalize the transaction
27 by sending the customer required disclosures, including a good faith estimate,
28 Truth in Lending Act Disclosure Statement, and other disclosures required by the

1 Real Estate Settlement Procedures Act. Id. at 25:7-17.

- 2 18. IGS had been extended a line of credit by First Tennessee Bank, National
3 Association with a credit limit of approximately \$15 million. See Trial Tr., dated
4 September 14, 2010, Vol. I, at 113:6-9. IGS expected to, and did, draw down on
5 that line of credit in order to lend money to refinance customers. See id. at 112:18-
6 25. But because the line of credit was insufficient to finance loans for the
7 thousands of prospective customers who sought refinanced loans from IGS, IGS
8 “flipped” or sold loans that it funded to larger lenders, predominantly Citibank.
9 See id. at 112:16-17; see also id. at 114:1-3, 13-25; 116-15-19.
- 10 19. IGS ordinarily sold loans to Citibank within three to five days. See id. at 48:17-18.
11 But the company was not so prompt in processing the loans prior to funding.
12 Between February 2009 and May 2009, IGS’ processors were delinquent in
13 processing loan applications. See, e.g., id. at 118:12-17. Processors avoided
14 consumers’ phone calls and made false representations in response to persistent
15 consumers. See id. at 118-120. IGS’ dilatory conduct ultimately interfered with
16 its ability to provide loans to customers at promised rates, and the company was
17 unapologetic about its failures. See id. at 120:4-11. IGS failed to refund most
18 customers with their \$995 up front fees or even the variety of additional “surprise”
19 fees that IGS charged as incident to the loan origination process. See id. at 131:2-
20 19, 135:2-6.
- 21 20. In June 2009, Citibank instituted a program called the “Quality First Initiative”
22 that prescribed a longer examination of loans prior to their purchase and, therefore,
23 delayed IGS’ ability to sell a fully funded loan to Citibank by approximately 29
24 days. See id. at 50:1-3. The delay in time interfered with IGS’ ability to deliver
25 promised loan terms, including interest rates, to its customers. See id. at 50:7-9.
26 Zamani and another IGS executive pled with Citibank to purchase loans at a faster
27 rate, but to no avail. See id. at 51:8-25-52:7. As a result, IGS was “unable to fund
28 loans to customers that” it had “issued loan doc[uments] to.” Id. at 10-12.

1 Customers who had invested not only the \$995 up-front fee but hundreds of
2 additional dollars in appraisal fees and other fees associated with documenting the
3 loan transaction were left dissatisfied. See, e.g., id. at 82:2-12. Some were
4 eventually informed that IGS could not longer honor the promised loan terms,
5 including the critical terms associated with the applicable interest rates. See id. at
6 82:24-83:7.

7 21. Instead of candidly explaining the situation to customers or taking responsibility
8 for IGS' failure to fund loans at promised rates, some IGS sales representatives
9 and processors responded to customers' complaints with indignance. See id. at
10 83:16-24 ("And he basically said, well, just because you signed loan documents
11 doesn't mean that that's a guarantee that you are going to be funded."). This
12 behavior was not directed by IGS executives, who attempted to accommodate
13 disgruntled customers even if that meant that IGS would suffer a loss on the
14 transaction. See, e.g., id. at 86:9-87:23 (describing transaction in which IGS
15 agreed to fund customer's refinanced loan at lower-than-market rate by using \$995
16 up front fee to purchase "points" and lower interest rate with promise that IGS
17 would refinance loan at no charge if prevailing interest rates continued to
18 decrease).

19 22. IGS' vice president, Tyrone De Wale, was aware of the consumer complaints IGS
20 received in connection with both the Hope to Homeowners program and the
21 mortgage refinance service. Though Mr. De Wale testified that he did not learn
22 about consumer complaints until at least April 2009, that testimony is not credible
23 for two reasons. First, e-mail communications demonstrate Mr. De Wale's
24 knowledge about consumer complaints in February 2009. See, e.g., Trial Ex. 157.
25 Second, Mr. De Wale was well aware of the poor performance of the Hope to
26 Homeowners program in December 2008, January 2009, February 2009, and
27 March 2009, and even prepared a chart detailing the customer complaints received
28 by IGS. See Trial Tr., dated September 14, 2010, Vol. II, at 145:2-146:5; see also

1 Trial Ex. 101.

2 23. Zamani was likewise aware of the growing customer complaints as early as
3 February 2009 because Mr. De Wale was aware of the complaints and it was
4 common practice for Zamani and De Wale to correspond about such issues,
5 including customer complaints in particular. See id. at 154:18-155:2 (claiming that
6 he did not “recall” speaking with Zamani about customer complaints but
7 acknowledging that he would have ordinarily discussed the subject with Zamani);
8 see also Trial Ex. 156 (e-mail communication with carbon copy to De Wale noting
9 that IGS “need[s] to come to some sort of plan so we do not have 100 complaint
10 calls a day.”). Moreover, senior employees at IGS, including individuals who had
11 close professional and personal relationships with Zamani, were apprised of
12 consumer complaints in January 2009. See Trial Tr., dated September 15, 2010,
13 Vol. II, at 27:15-28:7; see also Trial Ex. 74.

14 24. However, even Zamani’s fellow IGS executives admit that no attempt was ever
15 made to be completely forthright with complaining customers about IGS’
16 complicated relationship with larger lenders; instead, IGS planned to present
17 clients with two choices: (1) “fund[ing] at the prevailing rate” with a promise to
18 refinance upon a decrease in rates; or (2) “wait, and if the rates come down . . .
19 refund [] at that rate.” Trial Tr., dated September 15, 2010, Vol. I, at 12:15-24.
20 Indeed, IGS continued to ward off customer complaints by promising that loans
21 would be funded, even when all objective indicators suggested otherwise. Id. at 8-
22 15. Between February 2009 and May 2009, IGS held regular meetings at which
23 executives of the company, including Zamani, discussed consumer complaints and
24 chargeback requests. Id. at 41; see also Trial Tr., dated September 15, 2010, Vol.
25 II, at 20:17-21:10.

26 25. Nor did IGS rein in its marketing between April 2009 and May 2009, despite the
27 knowledge that it lacked the ability to fund the refinanced mortgages it promised
28 prospective customers. See Trial Ex. 23 (“It is no secret that our lines are at

1 capacity.”); see also Trial Tr., dated September 15, 2010, Vol. I, at 32:14-21; 33:2-
2 10. Though it is “common” for lines of credit to be at capacity for some period of
3 time, id. at 47:17-22, IGS was aware that its lines of credit were at capacity
4 because of a fundamental change in Citibank’s policy concerning the purchase of
5 mortgage loans. Given its awareness of that policy, it should not have continued to
6 promise customers refinanced loans at low interest rates.

7 26. IGS served approximately 1641 customers in connection with the Hope to
8 Homeowners program and approximately 686 customers in connection with the
9 mortgage refinance service. See Trial Tr., dated September 14, 2010, Vol. II, at
10 173:17-22. It generated approximately \$2,733,022 in revenue from those
11 customers. See id. at 172:19-21. Chargebacks accounted for approximately
12 \$629,933, leaving IGS with net revenue of approximately \$2,103,099, not
13 accounting for voluntary refunds. See id. at 172:22-173:2.

14 27. Zamani was intimately involved in the operations of IGS. He spent approximately
15 16 hours a day at the office, held routine management level meetings, directed
16 fellow executives and admitted to having a “hands on” approach with employees.
17 See Trial Tr., dated September 14, 2010, Vol. I, at 94:2-5.

18 **IV. CONCLUSIONS OF LAW**

19 1. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), proscribes unfair business
20 practices or acts. See FTC v. Gill, 265 F.3d 944, 955 (9th Cir. 2001). In general
21 terms, “an unfair practice or act is one that ‘[1] causes or is likely to cause
22 substantial injury to consumers [2] which is not reasonably avoidable by
23 consumers themselves and [3] not outweighed by countervailing benefits to
24 consumers or to competition.’” FTC v. Neovi, Inc., 604 F.3d 1150, 1155 (9th Cir.
25 2010) (quoting 15 U.S.C. § 45(n)).²

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27 ² Section 12 of the Act defines unfair business practices or acts to include “[t]he
28 dissemination or the causing to be disseminated of any false advertisement.” 15 U.S.C.

1 2. Both “causation” and “substantial injury” go uncontested. “To establish
2 substantial injury under Section 5 of the FTC Act, the FTC must show that
3 ‘consumers were injured by a practice for which they did not bargain.’” FTC v.
4 Neovi, Inc., 598 F. Supp. 2d 1104, 1115 (S.D. Cal. 2008), aff’d 604 F.3d 1150 (9th
5 Cir. 2010) (quoting FTC v. J.K. Publ’ns. Inc., 99 F. Supp. 2d 1176, 1201 (C.D.
6 Cal. 2000)). IGS sales agents and processors misrepresented the (1) success rate
7 of the Hope to Homeowners program; (2) recoverability of the \$995 up-front fee
8 associated with the Hope to Homeowners program; and (3) rates and terms of
9 mortgage loans available under the IGS mortgage refinance service. These same
10 sales agents and processors perpetuated these claims when actual IGS clients
11 called to complain about the service, causing consumers to not only pay the up-
12 front fees and other processing fees, but also forego the opportunity to enter into
13 favorable loan agreements with other brokers and lenders in the market. The
14 burden suffered by IGS customers that called the company repeatedly for updates
15 about their accounts is substantial enough. See FTC v. Accusearch Inc., No.
16 6:CV105-D, 2007 WL 4356786, at * 18 (D. Wyo. Sept. 28, 2007). Substantial
17 injury was also felt by customers that paid the \$995 up-front fee with the
18 expectation that the payment would secure a loan modification or loan refinance at
19 specified terms. J.K. Publ’ns., 99 F. Supp. 2d at 1201. These substantial injuries
20 would likely have been avoided if IGS had been forthright with both prospective
21 customers and actual clients about the success of its Hope to Homeowners and
22 mortgage refinance services.

23 3. These injuries were not reasonably avoidable, not least because the company

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25 § 52(b). A “false advertisement” is “an advertisement, other than labeling, which is
26 misleading in a material respect; and in determining whether any advertisement is
27 misleading, there shall be taken into account (among other things) not only
28 representations made or suggested by statement, word, design, device, sound, or any
 combination thereof, but also the extent to which the advertisement fails to reveal facts
 material in light of such representations . . .” Id. § 55(a)(1).

1 refused to be forthright with its clients, thereby inducing them to continue riding a
2 sinking ship. The continued misrepresentations by both sales agents and loan
3 processors — some of which found their way into IGS’ advertisements —
4 deprived customers of a “free and informed choice that would have enabled them
5 to avoid the unfair practice.” Id. (citations omitted). As a result, the “injury was
6 not reasonably avoidable.” Id.; see also Neovi, 598 F. Supp. 2d at 1115.

7 4. Competition and the consuming public did not benefit, but in fact suffered, as a
8 result of the misrepresentations by IGS’ sales agents and processors. “This prong
9 of the test is easily satisfied ‘when a practice produces clear adverse consequences
10 for consumers that are not accompanied by an increase in services or benefits to
11 consumers or by benefits to competition.’” Id. at 1116 (quoting J.K. Publ’ns, 99 F.
12 Supp. 2d at 1201). The misrepresentations about IGS’ services benefitted the
13 company’s sales but produced little benefit to competition or consumers. Instead,
14 information disseminated by IGS sales agents and processors deterred consumers
15 from using other brokers and lenders that offered superior services at a lower cost.
16 The injury therefore extended beyond the consumers burdened with unnecessary
17 fees and deprived of superior mortgage transactions to other market participants.

18 5. The FTC seeks the imposition of injunctive relief against IGS and Zamani for the
19 unfair business practices and acts committed by IGS’ employees.³ The imposition
20 of injunctive relief is governed by Section 13(b) of the FTC Act, which provides
21 that “in proper cases, the Commission may seek, and after proper proof, the court
22 may issue, a permanent injunction.” 15 U.S.C. § 53(b); see also FTC v. H.N.

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24 ³ IGS filed for bankruptcy and the parties have briefed the issue of whether the
25 commencement of those bankruptcy proceedings operates as an automatic stay pursuant
26 to 11 U.S.C. § 362. The FTC has argued that this action cannot be stayed because section
27 362 excepts claims “by a governmental unit.” Id. § 362(b)(4). That argument is contrary
28 to law, and the Court has discretion to stay the entry of judgment even after reaching
appropriate findings of fact and conclusions of law. See In re First Alliance Mortg. Co.,
264 B.R. 634, 652 n. 18 (C.D. Cal. 2001).

1 Singer, Inc., 668 F.2d 1107, 1110-11 (9th Cir. 1982). To determine the scope of
2 any injunctive relief, the court is not bound by “the traditional equity standard”
3 that governs equitable remedies. See FTC v. Warner Communications, Inc., 742
4 F.2d 1156, 1159 (9th Cir. 1984). Section 13(b) deliberately permits the entry of
5 “broad” injunctions, including occupational bans, so that courts can “prevent
6 transgressors from violating the law in a new guise.” FTC v. Wolf, 1996 U.S.
7 Dist. LEXIS 1760, at *2 (S.D. Fla. 1996) (citing FTC v. Ruberoid Co., 343 U.S.
8 470, 473 (1952)). The Supreme Court has recognized that the FTC “is not limited
9 to prohibiting the illegal practice in the precise form in which it is found to have
10 existed in the past.” FTC v. Colgate-Palmolive Co., 380 U.S. 374, 395 (1965).
11 Two factors traditionally guide a court’s exercise of its discretion to enter
12 injunctive relief pursuant to Section 13(b): (1) “the deliberateness and seriousness
13 of the present violation,” and (2) “the violator’s past record.” Sears, Roebuck &
14 Co. v. FTC, 676 F.2d 385, 392 (9th Cir. 1982).

- 15 6. If both factors favor the entry of injunctive relief against a corporate entity, such
16 injunctive relief may apply with equal force against corporate officers if “the
17 individual defendants participated directly in the acts or practices or had authority
18 to control them.” FTC v. American Standard Credit Sys., Inc., 874 F. Supp. 1080,
19 1087 (C.D. Cal. 1994) (citing FTC v. Amy Travel Service, Inc., 875 F.2d 564, 573
20 (7th Cir. 1989), cert. denied, 493 U.S. 954, 110 S.Ct. 366 (1989)); see also Neovi,
21 598 F. Supp. 2d at 1117. “Authority to control the company can be evidenced by
22 active involvement in business affairs and the making of corporate policy.”
23 American Standard Credit Sys., 874 F. Supp. at 1089. “An individual’s status as a
24 corporate officer and authority to sign documents on behalf of the corporate
25 defendant can be sufficient to demonstrate the requisite control.” Neovi, 598 F.
26 Supp. 2d at 1117 (citing Publishing Clearing House, 104 F.3d at 1170). It is
27 undisputed, and the evidence clearly establishes, that Zamani, a Chief Executive
28 Officer who was intimately involved in the operation of his company, had

1 authority to control representations made by the sales agents and processors that he
2 failed to terminate or seriously discipline, even in the face of escalating consumer
3 complaints. Zamani also participated directly in the development of IGS' radio
4 advertisements for its mortgage refinance service. Thus, Zamani is liable for
5 injunctive relief to the same extent as IGS.

- 6 7. Neither of the factors identified in Sears, Roebuck & Co. favor enjoining IGS from
7 providing mortgage modifications services like the Hope to Homeowners program.
8 **First**, the misrepresentations concerning the Hope to Homeowners program were
9 not deliberate, especially because the virtues of the related government program
10 (“Hope for Homeowners”) were widely touted throughout the mortgage industry,
11 and by the government itself. IGS, like other brokers, expected lenders to modify
12 loan terms and eventually discovered that the opposite was true. Some IGS sales
13 agents may have also promised to refund unsuccessful customers their \$995 up-
14 front fees, but there is no evidence that this was a deliberate practice by the
15 company; to the contrary, the written contracts IGS used in connection with the
16 Hope to Homeowners program clearly instructed customers that the \$995 fee was
17 not refundable. **Second**, the FTC adduced no evidence to prove that IGS had a
18 record of engaging in misrepresentations prior to the financial crisis in 2008 and
19 2009. The evidence was to the contrary. See Trial Tr., dated September 14, 2010,
20 Vol. II, at 62:20-63:7 (“I went on the Better Business Bureau [website], because
21 they had a little logo on their website. So I clicked on that and looked that they
22 had an A.”); see id. at 68:14-19 (noting that IGS rating fell from A to D between
23 January and March 2009). Through years of operating in the mortgage industry,
24 seeking modifications from lenders on behalf of customers and refinancing loans,
25 IGS never faced the kind of consumer revolt it faced in connection with the ill-
26 fated Hope to Homeowners program. The Court accordingly denies the FTC’s
27 request for the entry of injunctive relief against IGS and Zamani in connection
28 with the provision of mortgage modification services.

- 1 8. The Sears, Roebuck & Co. factors also weigh against enjoining IGS, and therefore
2 Zamani, from continuing to provide mortgage refinancing services. The FTC
3 faults IGS for making representations in its advertisements about the provision of
4 refinanced loans at specified rates, but those representations were, for the most
5 part, not deliberately false. The unprecedented credit crisis that affected banks in
6 the United States, including CitiBank, hobbled lenders like IGS from continuing to
7 sell loans on the secondary market. Though IGS erred by failing to pare back its
8 own advertising in response to the crisis, its executives, including Zamani,
9 nevertheless attempted in vain to encourage CitiBank to purchase loans that IGS
10 had accumulated on its line of credit. The absence of scienter is further
11 corroborated by IGS' subsequent efforts to accommodate customers by offering
12 loans at interest rates that would (and eventually did) result in losses to IGS. See,
13 e.g., Trial Tr., dated September 14, 2010, Vol. II, at 86-87. Because IGS'
14 struggles with the mortgage refinance service were unprecedented for the
15 company, the second Sears, Roebuck & Co. factor likewise disfavors the entry of
16 injunctive relief. See ¶ IV(4), supra. The Court accordingly denies the FTC's
17 request for the entry of an injunction that prevents IGS and Zamani from
18 continuing to offer mortgage refinancing services.
- 19 9. Narrower injunctive relief is nevertheless proper. Though IGS did not deliberately
20 engage in misrepresentations about the Hope to Homeowners program and
21 mortgage refinance service, it failed to rein in its advertisements even after
22 realizing that the prevailing economic climate would prevent it from fulfilling its
23 promises to customers. See ¶¶ III(23-25), supra. Its continued promises induced
24 clients and prospective customers to choose IGS over marketplace alternatives,
25 causing them to lose out on prevailing interest rates lower than the interest rates
26 IGS was ultimately able to honor. Id. Even though Zamani knew that consumer
27 complaints were ubiquitous and the secondary market for loans was dry, he made
28 no effort to exercise his control, as Chief Executive Officer, over the continued

1 advertisement of IGS' loan refinance services. See id. His conduct was not born
2 of willfulness but mismanagement, poor delegation of responsibility, and an
3 inability to come to grips with reality as his company floundered and the credit
4 market collapsed. Since these traits may motivate future misrepresentations in
5 light of the volatility of the credit markets and the financial vulnerability of many
6 prospective consumers of mortgage modification and mortgage refinance products,
7 narrow injunctive relief should be entered to address the “cognizable danger of
8 recurrent violation[s].” See United States v. W.T. Grant Co., 345 U.S. 629, 633,
9 73 S.Ct. 894 (1953).

10 10. Though the Court declines to banish Zamani from the mortgage industry, it is
11 appropriate to enjoin Zamani “from making misrepresentations or false
12 representations in the future.” See Goodman v. FTC, 244 F.2d 584, 595-96 (9th
13 Cir. 1957). To ensure that this injunction is observed, a court can also “order
14 record-keeping and monitoring to ensure compliance” with an order prohibiting
15 further misrepresentations. FTC v. Think Achievement Corp., 144 F. Supp. 2d
16 1013, 1017 (N.D. Ind. 2000) (citing FTC v. Sharp, 782 F. Supp. 1445, 1456-57 (D.
17 Nev. 1991)). Such monitoring provisions should permit the FTC to periodically
18 review personnel records, timely approve hiring decisions (or propose
19 alternatives), and alter advertisements for any services offered by Zamani and/or
20 his agents. Cf. Sharp, 782 F. Supp. at 1456-57 (entering judgment requiring
21 defendants and their agents to submit their records to FTC inspection). The Court
22 considers such relief appropriate in this case: though it is not equitable to restrain
23 Zamani from engaging in his trade, the FTC is entitled to ensure that he does not
24 repeat the mistakes that enabled the misconduct at issue.

25 11. The FTC also seeks restitutionary relief, the “monetary equivalent” of the
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1 injunctive relief available under Section 13(b) of the Act, 15 U.S.C. § 57(b).⁴ See
2 FTC v. Kitco of Nevada, Inc., 612 F. Supp. 1282, 1292 (D. Minn. 1985).
3 “Although [Section 13(b)] does not expressly provide for restitution, several courts
4 . . . have concluded that [it] allows restitution or other ancillary equitable relief.”
5 FTC v. Verity Intern., Ltd., 443 F.3d 48, 66 & n. 6-8 (2d Cir. 2006) (citing Singer,
6 668 F.2d at 1113). In Verity, the Second Circuit held that the amount of restitution
7 is not “the full amount lost by consumers,” but instead “the benefit unjustly
8 received by the defendants.” See 443 F.3d at 67. Recent decisions in other
9 Circuits have endorsed this principle, see Commodity Futures Trading Com’n v.
10 Wilshire Inv. Mgmt. Corp., 531 F.3d 1339, 1345 (11th Cir. 2008); FTC v. QT,
11 Inc., 512 F.3d 858, 863 (7th Cir. 2008), though the Ninth Circuit’s decision in FTC
12 v. Stefanchik, 559 F.3d 924, 931 (9th Cir. 2009) may hold otherwise. See FTC v.
13 Medlab, Inc., 615 F. Supp. 2d 1068, 1083 (N.D. Cal. 2009). The Court need not
14 resolve this uncertainty because, in this case, the competing legal rules yield the
15 same result, since the parties do not dispute that “the defendant’s gain [if any] will
16 be equal to the consumer’s loss [if any].” Verity, 443 F.3d at 68.⁵

18 ⁴ In its proposed findings, the FTC also seeks recovery pursuant to Section 19(b) of
19 the FTC Act, 15 U.S.C. § 57(b)(2). That section provides: “If any person, partnership, or
20 corporation engages in any un fair or deceptive act or practice . . . with respect to which
21 the Commission has issued a final cease and desist order which is applicable to such
22 person, partnership, or corporation, then the Commission may commence a civil action
23 against such person, partnership, or corporation in a United States district court . . . If the
24 Commission satisfies the court that the act or practice to which the cease and desist order
25 relates is one which a reasonable man would have known under the circumstances was
26 dishonest or fraudulent, the court may grant relief under subsection (b) of this section.”
However, the FTC has not satisfied the Court, as is its burden, that it has satisfied the
procedural prerequisites for the issuance of relief under Section 19(b). See Figgie, 994
F.2d at 603 (“[T]he FTC may, after satisfying procedural requirements, order [a firm] to
cease and desist from the violation” prior to seeking relief under Section 19(b)).

27 ⁵ Because the distinction drawn in Verity is of no consequence to the disposition of
28 this case, the Court is not limited to awarding profits, and may award IGS’ gross receipts.
See FTC v. Direct Mktg. Concepts, Inc., 624 F.3d 1, 14-15 (1st Cir. 2010).

- 1 12. Only *unjust* gains are subject to restitution under Section 13(b). Id. at 67. In
2 cases, like this one, alleging mass consumer fraud, the entire amount received from
3 consumers may be subject to restitution if the FTC proves that “the alleged
4 fraudulent practices were the type of misrepresentation on which a reasonably
5 prudent person would rely, that they were widely disseminated, and that the
6 injured consumers actually purchased the product.” Kitco, 612 F. Supp. at 1293.
7 However, it is error to simply conclude that the “total amount paid by consumers”
8 constitutes the defendant’s unjust enrichment without accounting for refunds and
9 actual services rendered. See id. at 69-70. The FTC bears the burden to present a
10 reasonable estimate of the defendant’s unjust enrichment. Id. The Verity court
11 recognized that “[t]he FTC’s investigatory power gives it the capacity to estimate
12 with some degree of precision” the number of consumers that purchased, and
13 subsequently failed to obtain the benefits of, a particular product or service. See
14 id. Here, the FTC has established that, after refunds, IGS generated \$2,103,099 in
15 revenue from customers that paid the \$995 up-front fee in reliance upon IGS’
16 representation that the fee would secure a modified loan through Hope to
17 Homeowners or a refinanced mortgage at specified terms.
- 18 13. The FTC seeks to hold Zamani individually liable for this amount of restitution.
19 To do so, the FTC must show that Zamani “had actual knowledge of the material
20 misrepresentations, was recklessly indifferent to the truth or falsity of a
21 misrepresentation, or had an awareness of a high probability of fraud along with an
22 intentional avoidance of the truth.” FTC v. Garvey, 383 F.3d 891, 900 (9th Cir.
23 2004). The FTC has made this showing only as to the mortgage refinance service
24 and, even in that case, only for the period of time after IGS reached capacity on its
25 line of credit and struggled to sell its loans on the secondary market. It was during
26 this period of time that IGS continued to disseminate radio and internet
27 advertisements even though the company’s executives, including Zamani, were
28 well aware that the company could not fund loans at advertised rates. Zamani’s

1 failure to restrain advertising in the face of the company’s failures or jettison his
2 ineffective corporate team was, at best, reckless. Under Garvey, Zamani is
3 therefore liable for restitution for mortgage refinance “up-front” fees collected
4 between April 2009 and June 2009.

- 5 14. The FTC argues that Zamani also had knowledge (or constructive knowledge) of
6 IGS’ misrepresentations concerning the Hope to Homeowners service. But the
7 evidence establishes that Zamani learned about *consumer complaints* in early
8 2009, as the service reached its twilight, and that he responded to these complaints
9 by directing sales agents and processors to follow a script when selling the service.
10 See ¶ III(22). Moreover, the consumer complaints, to which the FTC refers,
11 faulted IGS for failing to convince third-party lenders to commit to the federally
12 sponsored Hope for Homeowners program. The FTC has provided no reason (nor
13 is there any) that Zamani should have known in advance that the Hope for
14 Homeowners program, as championed by the Department for Housing and Urban
15 Development, would have proven so unpalatable to third-party lenders. Indeed,
16 the Hope to Homeowners contracts that IGS sent its customers actually cautioned
17 that “there are no express or implied guarantees” about third-party lenders’
18 willingness or ability to modify loan terms. See id. III(5). Because every
19 institutional correspondence by IGS in connection with Hope to Homeowners
20 warned consumers about the risks, and Zamani sought to correct the
21 misrepresentations made by the company’s sales agents and processors, the FTC
22 has failed to show that he had the *mens rea* required for restitutionary liability.
- 23 15. Under the applicable law, the facts support a limited injunction that subjects
24 Zamani to monitoring and compliance requirements, though it does not restrain
25 him from participating in the mortgage industry. In addition, Zamani is
26 individually liable to restore to the FTC the revenues generated by IGS between
27 April 2009 and June 2009, though restitution does not extend prior to April 2009.

28 **V. Disposition**

1 For the foregoing reasons, judgment is entered against Zamani and for the FTC on Counts
2 I, II, and III of the Complaint. Judgment is further entered against IGS and for the FTC on
3 Counts I, II, and III of the Complaint. Within seven (7) days of this filing, the parties shall
4 submit supplemental findings of fact that identify the evidence in the record concerning the
5 revenues generated by IGS between April 2009 and June 2009. Within seven (7) days of this
6 filing, the FTC shall also submit a proposed permanent injunction that includes monitoring and
7 compliance requirements that are consistent with those identified in Section IV, Paragraph 10 of
8 this Order. Zamani and IGS shall submit written objections, if any, to the FTC's proposed
9 permanent injunction within seven (7) days of the filing of that proposed injunction.

10
11 IT IS SO ORDERED.

12 DATED: June 6, 2011

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DAVID O. CARTER
United States District Judge