

1 other equitable relief. The FTC alleges that Defendants have violated Section 5(a) of the Federal
2 Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), in the offering of loan modification and
3 loan refinancing services.

4 Defendant Infinity is a California corporation that has been doing business in the
5 mortgage and lending industry since 2001. It is undisputed that the company has a California
6 finance license and a real estate license. In addition, up until 2008, Infinity had an A+ rating
7 with the Better Business Bureau. However, when the current mortgage crisis hit, Infinity
8 entered the loan modification market, receiving approval from the United States Department of
9 Housing and Urban Development (“HUD”) to represent borrowers in the Hope for Homeowners
10 Program. Infinity marketed the Hope for Homeowners’ program, as well as other non-
11 governmental loan modification programs, until February 2009. The FTC alleges that in
12 marketing these programs, the Defendants engaged in deceptive practices by guaranteeing
13 successful modifications, taking consumers’ up-front fees of \$995, promising refunds in the
14 event of failure to obtain modifications, and then doing little or nothing to help consumers and
15 rarely refunding monies paid.

16 After ceasing to offer loan modifications, the FTC alleges that Defendants proceeded to
17 market a very similar deceptive scheme under the guise of promised loan refinancing. However,
18 again, Defendants almost always promised one-hundred percent success rates, took flat fees of
19 \$995, and then did barely anything to provide services for consumers. In addition, the FTC
20 contends that any disclaimers, either included in consumer contracts or, for example, on
21 Defendants’ websites, did not correct the deception inherent in other representations made by
22 Defendants with respect to their offered services, specifically that Defendants almost always
23 one-hundred percent guaranteed that they would be able to obtain the sought modifications or
24 refinancings with minimal caveats. At the filing of the complaint, the FTC contended that
25 Defendants were still engaging in unlawful loan refinancing services and would likely reenter
26 the modification business.

27 By its complaint, the FTC includes four prayers for relief. First, the FTC seeks temporary
28 and preliminary injunctive and ancillary relief in order to avoid the likelihood of consumer

1 injury during the pendency of this action and to ensure the possibility of full, effective relief at
2 the lawsuit's close. Second, the FTC seeks a permanent injunction to prevent Defendants from
3 violating the FTC Act in the future. Third, the FTC seeks redress to consumers through, *inter*
4 *alia*, rescission, reformation of contracts, restitution, refund of monies, and disgorgement of ill-
5 gotten gains. And fourth, the FTC seeks its costs in bringing the suit and any other equitable
6 relief this Court deems necessary.

7 Thus, upon filing its complaint, the FTC sought to have this Court enter its *ex parte*
8 Application for Temporary Restraining Order with Asset Freeze and Other Equitable Relief, and
9 Order to Show Cause Why Preliminary Injunction Should Not Issue ("the Application"),
10 essentially shutting down Defendants' business. In support of its Application, the FTC filed,
11 among other things, fifteen consumer declarations, declarations of two FTC investigators, a
12 declaration of a Better Business Bureau representative, and over one-hundred consumer
13 complaints filed against Defendants through various avenues. Defendants opposed the
14 Application. In arguing that the FTC's position has no merit, Defendants offered an alternative
15 request to the Court denying the FTC's Application in its entirety. Specifically, Defendants
16 asked that the Court deny the TRO but issue an Order to Show Cause Why a Preliminary
17 Injunction Should Not Issue, in order to allow the parties to engage in full and thorough briefing
18 and a hearing before this matter is resolved.

19 On September 2, 2009, the Court took the Defendants' middle-ground approach. In other
20 words, while the Court denied the FTC's request for a temporary restraining order and also
21 chose not to then enter the FTC's request for immediate ancillary relief, the Court issued an
22 Order to Show Cause Why Preliminary Injunction Should Not Issue ("OSC"). In deciding not to
23 enter a temporary restraining order, the Court took no position whether preliminary injunctive
24 relief would ultimately be available in this matter. However, the Court apprised the parties of
25 certain concerns it had that warranted a full denial of the Application with the exception of the
26 OSC request.

27 For example, the Court noted that Section 13(b) (i.e. 15 U.S.C. § 53(b)) cannot be used to
28 remedy past violations of Section 5 of the FTC Act. *See F.T.C. v. Evans Products Co.*, 775 F.2d

1 1084, 1087 (9th Cir. 1985) (“The FTC may only seek a temporary restraining order or a
2 preliminary injunction when it believes a person ‘is violating, or is about to violate’ any law
3 enforced by the FTC; the statute does not mention past violations.”). Thus, as to Defendants’
4 offering of loan modification services that ceased in February 2009, the Court found
5 unpersuasive the FTC’s position that such unlawful offerings were likely to recur based on the
6 single equivocal representation of an Infinity employee made to an undercover FTC agent.

7 Furthermore, the Court found that the FTC’s allegations with respect to Defendants’ loan
8 refinancing services did not clearly warrant the issuance of a TRO absent the full briefing of a
9 preliminary injunction. As to the ancillary relief, the Court specifically advised the FTC that the
10 issuance of an asset freeze did not appear to be supported by the record, in light of the minimal
11 evidence demonstrating even a possibility of asset dissipation. Thus, the Court found the wisest
12 course to allow this matter to proceed to a fully briefed preliminary injunction hearing.

13 On September 1, 2009, the day before the Court entered its denial of the Application,
14 Defendants filed a Notice of Automatic Stay Pursuant to 11 U.S.C. § 362(a) (the “Notice”). By
15 the Notice, Defendants informed the Court that Infinity voluntarily petitioned for Chapter 7
16 bankruptcy, as did individual Defendant Zamani.

17 On September 2, 2009, the same day this Court denied the FTC’s Application, the FTC
18 filed a response to the Notice. The FTC correctly notes that its law enforcement action is
19 exempt from the automatic stay pursuant to the exception found in 11 U.S.C. § 362(b)(4), as this
20 action was brought by the FTC to enforce its police and regulatory powers. Section 352(b)(4)
21 expressly states that the filing of a bankruptcy petition does not operate as a stay of “the
22 commencement or continuation of an action or proceeding by a governmental unit...to enforce
23 such governmental unit’s...police and regulatory powers.” 11 U.S.C. § 362(b)(4). The instant
24 matter clearly falls under this exception. *See FTC v. First Alliance Mortgage Co. (In re First*
25 *Alliance Mortgage Co.)*, 264 B.R. 634, 651 (C.D. Cal. 2001) (reversing bankruptcy court and
26 holding that FTC’s actions to enforce consumer protection and fair lending laws fall within
27 Section 362(b)(4) exemption from stay); *FTC v. Am. Standard Credit Sys.*, 874 F. Supp. 1083
28 n.2 (C.D. Cal. 1994) (holding FTC’s action to enforce consumer protection laws exempt from

1 automatic stay).

2 By its proposed preliminary injunction order, the FTC seeks to have the Court: (1) enjoin
3 Defendants from making any further misrepresentations in violation of the FTC's consumer
4 protection laws; (2) order Defendants to produce financial reports within forty-eight hours; (3)
5 preserve company records; (4) prohibit the release of customer information or customer lists; (5)
6 enjoin Defendants from failing to make and keep an accurate accounting of Defendants' income,
7 use of money, etc.; (6) enjoin Defendant Zamani from engaging in any other employment
8 activity without first notifying the FTC; (7) require Defendants to distribute the preliminary
9 injunction order to all agents, affiliates, etc. of Defendants; (8) allow Plaintiff to obtain credit
10 reports concerning Defendants; (9) require all correspondence with Plaintiff to be directed to
11 Gary D. Kennedy and Eliseo N Padilla; and (10) allow the service of the preliminary injunction
12 order by any means on financial institutions, entities, or persons who may have possession or
13 control over documents or assets of the Defendants. Due to the bankruptcy petitions, the FTC no
14 longer presently seeks to freeze Defendants' assets.

15 II. Legal Standard

16 Generally, courts grant equitable relief in the event of irreparable injury and the
17 inadequacy of legal remedies. *See Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir.
18 1994); *see also Weinberer v. Romero-Barcelo*, 456 U.S. 305, 312, 102 S. Ct. 1798 (1982)
19 (“[T]he basis for injunctive relief in the federal courts has always been irreparable injury and the
20 inadequacy of legal remedies.”). Plaintiffs must satisfy additional requirements in order to be
21 granted preliminary relief. Plaintiffs have the burden of showing that they are entitled to
22 preliminary relief. The “traditional test” requires non-governmental plaintiffs to demonstrate (1)
23 a strong likelihood of success on the merits; (2) a significant threat of irreparable injury; (3)
24 greater hardship to Plaintiffs than Defendants; and (4) that the public interest favors granting the
25 injunction. *See American Motorcyclist Ass’n v. Watt*, 714 F.2d 962, 965 (9th Cir. 1983).

26 The standard for governmental plaintiffs, such as the FTC, is different. 15 U.S.C. § 53(b)
27 (“Section 13(b)”) generally provides for temporary restraining orders and preliminary
28 injunctions. Plaintiff FTC avers that it moves for preliminary injunctive relief pursuant to the

1 final proviso of Section 13(b) of the FTC Act. Under that proviso, the FTC “may seek, and,
2 after proper proof, the court may issue a permanent injunction.” 15 U.S.C. § 53(b). Inherent in
3 the ability of the Court to provide final, permanent injunctive relief is the Court’s power to grant
4 preliminary and ancillary relief upon a proper showing. *See F.T.C. v. U.S. Oil & Gas Corp.*, 748
5 F.2d 1431, 1434 (9th Cir. 1984) (“Congress did not limit the court’s powers under the final
6 proviso of § 13(b) and as a result this court’s inherent equitable powers may be employed to
7 issue a preliminary injunction, including a freeze of assets, during the pendency of an action for
8 permanent injunctive relief.”). In addition, because the FTC seeks to vindicate the public
9 interest, it need not prove irreparable harm; injury to the public from deceptive practices is
10 presumed. *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999) (citing *FTC v.*
11 *Warner Communications, Inc.*, 742 F.2d 1156, 1159 (9th Cir. 1984)). Thus, to award such relief
12 here, the Court must “‘1) determine the likelihood that the [FTC] will ultimately succeed on the
13 merits and 2) balance the equities.’” *Id.* (quoting *Warner*, 742 F.2d at 1160).

14 **III. Discussion**

15 **a. Cessation of Illegal Activity**

16 Defendants do not dispute that this action can still proceed in light of their bankruptcy
17 petitions. Instead, building on this Court’s noted concerns when denying the Application,
18 Defendants contend that the bankruptcy petitions support even further their argument that
19 *preliminary* injunctive relief is unwarranted in this action, as Defendants have completely ceased
20 operations. In other words, not only are Defendants no longer offering loan modifications (a fact
21 already established at the time of the TRO Application), but Defendants also are not engaging in
22 loan refinancing services as the bankruptcy trustee now has primary control over Infinity as well
23 as the assets of individual Defendant Zamani.

24 The Court is cognizant of the fact that Defendants’ bankruptcy petitions were only
25 voluntarily filed. As a result, Defendants are not necessarily prevented from reentering the debt
26 negotiation business going forward; put differently, the clear issue for the FTC is the likelihood
27 that the violations will *recur* despite their current cessation, undermining an assertion that the
28 request for preliminary injunctive relief is rendered moot. As the FTC points out, Infinity’s

1 management (individuals who could be reached by a preliminary injunction but are untouched
2 by bankruptcy filings) could pursue another scheme in the guise of a different company name, or
3 Defendants could voluntarily dismiss or convert their bankruptcy proceedings, potentially
4 allowing them to resume their alleged unlawful activities.

5 While the Court is aware of these risks, the Court finds that the current cessation at least
6 militates against the imposition of a preliminary injunction. However, the Court's position here
7 does not mean that the FTC will not be able to ultimately obtain a permanent injunction in this
8 matter once definitive liability is established. *See Am. Standard Credit Sys., Inc.*, 874 F. Supp. at
9 1086-87 (at summary judgment stage, recognizing that FTC's request for injunction not rendered
10 moot just because allegedly deceptive pay-per-call advertising scheme was prohibited by VISA
11 and Mastercard; such prohibition did not have force of court injunction and did not guarantee
12 that deceptive practices would not be engaged in going forward with respect to *other* credit
13 cards). Instead, without liability yet established, and in light of the Court's further discussion
14 *infra* of the likelihood of the FTC's success based on the evidence currently before the Court, a
15 *preliminary* injunction is not yet warranted. However, as stated further below, this denial is
16 without prejudice to the FTC again seeking preliminary injunctive relief during the pendency of
17 this action if new evidence comes to light demonstrating that Defendants have reentered the debt
18 negotiation business and are offering similar services to those complained of herein.

19 **b. Likelihood of Success on the Merits and Equities Involved**

20 As discussed here, the Court finds at most that the FTC has raised serious questions going
21 to the merits of this case, rather than a likelihood of success on the merits. Thus, this finding, in
22 conjunction with evidence that the named Defendants in this matter have ceased operations due
23 to, among other circumstances, bankruptcy petitions, warrants the current denial of the
24 preliminary injunction and ancillary relief requested.

25 As an initial matter, in moving for a temporary restraining order, the FTC cites to a case
26 in which the Ninth Circuit stated that the FTC need only show "*some* probability of success on
27 the merits" (emphasis added) in order to obtain preliminary injunctive relief, potentially
28 suggesting a lesser standard than *likelihood* of success on the merits. *See F.T.C. v. World Wide*

1 *Factors, Ltd.*, 882 F.2d 344, 347 (quoting *U.S. v. Odessa Union Warehouse Co-op*, 833 F.2d
2 172, 176 (9th Cir 1987)). However, that case is clearly distinguishable on its facts. While
3 correctly noting that irreparable injury is presumed in the statutory enforcement context, in that
4 case, the district court found, upon an evidentiary hearing, that defendants “continued to engage
5 in deceptive trade practices...[and were] attempting to continue their fraudulent activities through
6 another business. [Thus, defendants’] attempts to engage in further fraudulent activity [were]
7 sufficient to establish probability of success on the merits.” *Id.* However, in the instant case, as
8 discussed *supra*, there is not yet evidence that Defendants are currently engaged in the alleged
9 deceptive practices (despite a possibility of recurrence).

10 The FTC’s complaint alleges three counts of deceptive conduct: (1) the offering of
11 guaranteed loan modifications; (2) the promise to refund fees upon failure to obtain loan
12 modifications; and (3) the offering of guaranteed loan refinancing services. However, for the
13 reasons discussed below, the Court finds that the evidence presented at most suggests serious
14 questions going to the merits.

15 First, the FTC contends that Defendants offered their problematic services through
16 extensive radio advertising and multiple websites and made their deceptive guarantees through
17 these mediums. However, Defendant Zamani, under penalty of perjury, declares that Infinity
18 only utilized a single radio advertisement through local KFI radio that did not represent the
19 availability of refunds or otherwise guarantee services and has ceased airing such
20 advertisements. *See, e.g.*, Zamani Decl. in Opp. to Prel. Inj., ¶ 32. In addition, the written
21 advertisements (i.e. the websites), as well as the contracts entered into by Defendants’ clients,
22 undisputedly contained disclaimers with respect to Defendants’ modification and refinancing
23 services.

24 While the FTC disputes the sufficiency of these disclaimers by stating, for example, that a
25 reasonable consumer would not read past the initially deceptive statement, the Court is not so
26 sure. For example, with respect to the loan refinancing services, the FTC indicates that
27 Defendants used to provide on their website that: “IGS has no HIDDEN FEES COSTS. We’ve
28 waived all the fees you have been accustomed to paying on refinances.” Gosha Decl. in Supp. of

1 Ex Part Application, Att. 4 at 135. Then, in a footnote to the statement and in less prominent
2 writing, the ad indicates that “Rates, Fees and Terms are subject to change. Finance terms
3 subject to underwriting approval and restrictions do apply.” *Id.* at 135-36. Thus, the FTC
4 disputes the sufficiency and prominence of these disclaimers. However, at most, the presence of
5 these types of disclaimers raises a serious question going to the merits. To be clear, the Court
6 agrees that disclaimers will not and cannot, in many cases, remedy the alleged initially deceptive
7 statement (especially if the disclaimer comes in a later representation made to the client, rather
8 than within the same advertisement; as the FTC avers in its complaint, the alleged radio
9 advertisement, according to customer complaints, included no disclaimer, Compl. ¶ 27).
10 However, the presence of such disclaimers, in light of other facts presented, militates against a
11 finding that the FTC has established more than serious questions going to the merits.

12 In addition, the FTC avers that the presence of some refunds as well as some successful
13 loan modifications does not remedy the deceptive nature of the acts as delineated in Counts 1
14 and 2 of the complaint. Again, the FTC cites a correct statement of law. However, the totality
15 of facts presented to the Court only raises serious questions going to the merits. For example,
16 Defendants again contend that they never guaranteed their services or, in the context of loan
17 modifications, promised refunds (and at least one consumer declaration provided by the FTC
18 supports this position). In addition, rather than suggesting errant and occasional modifications
19 and refunds, Defendants contend that they provided significant refunds on a case-by-case basis
20 and also obtained significant modifications. Specifically, Defendant Zamani states that Infinity
21 obtained more than 300 modifications for its customers and funded 450 of the 630 mortgage
22 loans it originated since February 2009, and as previously noted by this Court, avers that
23 Defendants provided upwards of \$288,000 in refunds despite no refund guarantees.

24 While the FTC contends that Defendants provide no evidence in support of the averred
25 amount of refunds, Defendant Zamani’s declaration is under penalty of perjury. In addition, the
26 FTC’s representation that refunds only totaled approximately \$70,000 is not clearly complete.
27 For example, Plaintiff points out that it “cited to information supplied by *one* of Defendants’
28 merchant accounts to support its contention that Defendants had provided \$69,295 in refunds for

1 the period November 1, 2008 to February 28, 2009.” Pl.’s Memo. in Supp. of Prel. Inj., 6 n.5
2 (emphasis added). Thus, the FTC’s representation that this amount represents the total refunds
3 made (or at least implies as much) is based on data that comes from a single account (without
4 making it clear if other merchant accounts are at issue) and within a limited time frame.
5 Furthermore, the FTC makes it unclear if they mean to suggest that all refunds should have been
6 effectuated within that time frame and how that quick turnaround is even possible (indeed, the
7 Court notes that with respect to time frames, both the FTC’s representations, as well as a number
8 of customer complaints, make it unclear why Defendants should have also been expected to
9 complete modifications and refinancings within such strict and short time frames).

10 In addition, with respect to the number of modifications successfully completed, the
11 parties also present competing facts. For example, in conjunction with their assertion that they
12 never guaranteed modifications, Defendants represent that of approximately 730 customers that
13 sought modifications under the Hope for Homeowners program, they provided modifications for
14 approximately 330 customers, and at the filing of the instant litigation, 400 clients under that
15 program remained to be aided. The FTC however claims that Defendants are attempting to
16 misrepresent their success rate in order to undermine their culpability; the FTC contends, based
17 on the declaration of a single former Infinity consultant, that Infinity actually had 1,700 loan
18 modification customers. However, the FTC presents minimal evidence with respect to
19 Defendants’ customer base. In addition, at oral argument, Defendants clarified that they by no
20 means suggest that they have only 730 total loan modification customers. Instead, the
21 declaration of Defendant Zamani that provided such numbers was specific as to the Hope for
22 Homeowners program. *See* Zamani Decl. in Opp. to Ex Parte Appl., ¶¶ 12,14. Defendants
23 concede that they have well over one-thousand loan modification customers and never intended
24 to represent otherwise. Furthermore, the FTC makes it unclear if it means that the total 1,700
25 loan customers speaks to more than the Hope for Homeowners program, thus making the
26 significance of its comparison of the total number of customers to the successful Hope for
27 Homeowners customers rather ambiguous. Nevertheless, while the presence of some satisfied
28 customers might not ultimately suffice as a defense to otherwise deceptive practices, at this

1 nascent stage, the number of averred successful modifications with respect to the Hope for
2 Homeowners program here at least militates against awarding preliminary injunctive relief in
3 light of the many competing facts presented.

4 The FTC also contends that Defendants have not demonstrated that they ensure their
5 employees comply with the law. For example, in opposing the TRO, Defendant Zamani
6 represented that he took certain actions in order to ensure that employees were complying with
7 all applicable laws, and that to the extent he discovered any employees misrepresenting Infinity
8 services, he took corrective measures. The FTC contends that such claims by Defendant Zamani
9 are unsupported. Specifically, the FTC contends that many of Zamani's emails to his staff do
10 not instruct employees on proper procedures, and Zamani never threatens termination or other
11 disciplinary action. However, this rather categorical position is not supported by the provided
12 emails. For example, in Exhibit E to the Zamani Decl. in Opp. to Prel. Inj., Defendant Zamani
13 removes an employee from a team leader position and personally takes over the position,
14 indicating that "[a]s the new team leader I will expect and will demand nothing short of
15 excellence from my new team members. This is not a joke, it is very real."

16 Moreover, in another provided email to his employees, Zamani informs them that "from
17 time to time [he has] professional friends calling [Infinity's] sales center to inquire about
18 [Infinity] services...[t]o make sure that everyone is doing their jobs and to make sure everyone is
19 working in the confines & rules designated by the company." *Id.* at Exh. M. Then, after
20 identifying three misrepresentations communicated to him by professional friends, Zamani
21 warns his staff: "Let me make this vividly clear; anyone that provides misleading information to
22 land a sale and places the company in harms way will be terminated." *Id.* Thus, these emails do
23 not demonstrate any acquiescence, condoning, or participation in wrongdoing on the part of
24 Defendant Zamani. Further, to the extent they demonstrate that some misrepresentations were
25 made within the ranks of the Infinity staff, these emails paint such representations as errant
26 departures from company policy rather than indicative of the business model promoted by
27 Infinity. Thus again, these facts raise serious questions going to the merits of this suit rather
28 than a likelihood that the FTC will ultimately prevail.

1 Again, the Court reiterates its position that:

2 this is also not a situation in which a company new to the mortgage
3 industry, and seemingly in response to the present mortgage and
4 lending crisis, came on scene and started offering specious programs
5 in order to capitalize on a climate of desperation and fear. Instead,
6 Infinity had been in existence since 2001, had an A+ rating from the
7 Better Business Bureau when it decided to join the Hope for
8 Homeowners Program (a rating that has only recently dropped due to
9 the events detailed in the instant dispute), and has seemingly made
10 efforts to remedy customer dissatisfaction without knowing that it
11 was under investigation by the FTC.

12 *See* Doc. No. 18. Thus, the competing facts with respect to the merits of this case in conjunction
13 with the Defendants' exodus from the debt negotiation industry militate against granting any
14 preliminary injunctive and ancillary relief in this matter.

15 Furthermore, the FTC's argument that the balance of equities tip in its favor, only
16 presented in its brief in support of the *ex parte* application, is premised on its position that
17 Defendants are still engaged in the complained-of conduct. Thus, without this showing, the
18 Court is disinclined to find that the equities tip in favor of the FTC. Instead, subjecting
19 Defendants to the terms of the preliminary injunction (which include burdensome expedited
20 discovery, etc.) when, at most, serious questions going to the merits have been raised
21 demonstrates that, at this point, the equities tip in favor of Defendants.¹

22
23 ¹On September 22, 2009, Defendants filed Objections to the Declaration of Deirdre
24 O'Shea In Support of Plaintiff's Reply. Testimony from Ms. O'Shea, a former consultant
25 to Defendant Infinity, was presented for the first time in Plaintiff's reply briefing. In
26 response to Defendants' objections, Plaintiff filed an *ex parte* application to strike
27 Defendants' objections as a sur-reply on September 23, 2009. Because Plaintiff FTC
28 contends that this Court should treat Defendants' objections as a sur-reply, Plaintiff
alleges that Defendants violated Local Rule 7-10 by not first obtaining this Court's
permission before filing the objections. The Court declines to treat Defendants'
objections as a sur-reply and DENIES the FTC's *ex parte* application on this basis.

1 **IV. Disposition**

2 For the foregoing reasons, the Court hereby DENIES Plaintiff FTC's request for a
3 preliminary injunction and ancillary relief WITHOUT PREJUDICE to the FTC seeking such
4 relief during the pendency of this action if a change in facts so warrants.

5 IT IS SO ORDERED.

6 DATED: October 1, 2009

7
8 
9

DAVID O. CARTER
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 However, the Court is well aware of the relaxed evidentiary and procedural requirements
26 at the preliminary injunction stage. Thus, to the extent the FTC is concerned that the
27 Court will not consider Ms. O'Shea's declaration in light of Defendants' objections, the
28 Court here puts those concerns to rest. In other words, while the Court will not strike
Defendants' objections, the Court also considers Ms. O'Shea's declaration, as well as all
other evidence presented, in resolving the instant Motion.