

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 14-80931-CIV-COHN-SELTZER**

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CONSUMER FINANCIAL PROTECTION  
BUREAU and THE STATE OF FLORIDA,  
Office of the Attorney General,  
Department of Legal Affairs

Plaintiffs,

v.

MICHAEL HARPER, an individual; BENN  
WILLCOX, an individual; MARC HOFFMAN,  
an individual; THE HOFFMAN LAW GROUP,  
P.A. f/k/a THE RESIDENTIAL LITIGATION  
GROUP, P.A., a Florida corporation;  
NATIONWIDE MANAGEMENT SOLUTIONS,  
LLC, a Florida limited liability company;  
LEGAL INTAKE SOLUTIONS, LLC, a Florida  
limited liability company; FILE INTAKE  
SOLUTIONS, LLC, a Florida limited liability  
company; and BM MARKETING GROUP,  
LLC, a Florida limited liability company,

Defendants.

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**PLAINTIFFS' MOTION FOR JUDGMENT UPON DEFAULT  
AGAINST THE HOFFMAN LAW GROUP, NATIONWIDE MANAGEMENT  
SOLUTIONS, LEGAL INTAKE SOLUTIONS, FILE INTAKE SOLUTIONS, AND BM  
MARKETING GROUP**

Pursuant to Federal Rule 55(b)(2) and Local Rule 7.1, Plaintiffs, the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) and the State of Florida (“Florida”), seek a default judgment against the five Corporate Defendants in this action — The Hoffman Law Group, P.A. (“HLG”), Nationwide Management Solutions, LLC, Legal Intake Solutions, LLC, File Intake Solutions, LLC, and BM Marketing Group, LLC (collectively, “Corporate Defendants”). The Corporate Defendants were served with the summons and Complaint, but failed to file an answer or otherwise defend, resulting in the Clerk’s entry of default on September 12, 2014. *See* Clerk’s Default, DE 71, 72 (Sept. 12, 2014). Plaintiffs now request that the Court enter the attached proposed Default Judgment and Order for Permanent Injunction, Other Equitable Relief, and Civil Money Penalties (“Default Judgment”). The Default Judgment award includes injunctive relief, an equitable monetary judgment of \$11,730,579, a civil money penalty of \$10,000,000 for the claims under the Mortgage Assistance Relief Services Rule, 12 C.F.R. §§ 1015.1 *et seq.* (“Regulation O”), civil penalties of \$6,005,000 for the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) claims, and attorneys fees and costs, to be imposed against the Corporate Defendants, jointly and severally.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Plaintiffs’ Allegations**

Plaintiffs filed the Complaint on July 14, 2014, alleging that the Corporate Defendants operated as a common enterprise: they commingled finances, shared an address and employees, operated under the control of the same three persons, and existed for the sole purpose of selling mortgage assistance relief services to consumers and splitting the profits. Compl. ¶¶ 64–69.

The Complaint alleges that the Corporate Defendants advertised that they would be able to assist consumers with obtaining mortgage modifications and relief from foreclosure. Compl.

¶¶ 40–41. They targeted consumers who had home mortgages, had difficulty making their monthly payments, and were at risk of losing their homes to foreclosure. Compl. ¶¶ 40, 43.

The Corporate Defendants promised consumers help in obtaining loan modifications to reduce the consumers' monthly mortgage payments or interest rates by including the consumers in mass-joinder lawsuits in exchange for an advance fee. Compl. ¶¶ 42, 45. They charged consumers a varying upfront fee, typically \$6,000 as an initial fee, which might be broken into four to six monthly payments, and \$495 per month thereafter. Compl. ¶ 46; *see also* Def. Michael Harper's Am. Answer to Compl. ¶ 46, DE 91 (Sept. 23, 2014) (admitting Compl. ¶ 46); Def. Benn Willcox's Corrected Am. Answer to Compl. ¶ 46, DE 97 (Sept. 25, 2014) (same).

All of these fees were charged by Corporate Defendants and paid by consumers before any loan modification agreement was executed between the consumers and their mortgage lender or servicer. Compl. ¶¶ 46, 52, 56. In most instances, the Corporate Defendants failed to help consumers obtain a loan modification, substantially reduce consumers' mortgage payments, or stop foreclosure. Compl. ¶ 52. Even when the Corporate Defendants had made no progress towards helping the consumers obtain a loan modification or when their mass joinder lawsuits were dismissed, they continued to encourage consumers to pay upfront fees. Compl. ¶¶ 52–56.

The Corporate Defendants discouraged consumers from communicating directly with their lenders or servicers, and claimed that HLG would handle all such communications. Compl. ¶ 48. The Corporate Defendants further discouraged consumers from making mortgage payments to their lenders and services, ostensibly in order for the consumer to better demonstrate the hardship their mortgage was causing them. Compl. ¶ 49. The Corporate Defendants did not disclose to consumers that ceasing mortgage payments could lead to foreclosure and damaged credit ratings. Compl. ¶ 49. Because of the Corporate Defendants' representations, many

consumers did not seek other relief from any hardship caused by their mortgage, including working directly with their lender to receive a loan modification. Compl. ¶ 57.

The Corporate Defendants marketed their services to consumers through a variety of media, including websites, mailers, and television advertisements. Compl. ¶ 39. In addition, the Corporate Defendants communicated with consumers via outbound telemarketing calls and via incoming calls to their toll-free number. Compl. ¶¶ 39, 44. Many of these solicitations failed to include the disclosure language mandated by law. Even when the Corporate Defendants' solicitations did include one of the required disclosures, it was not made clearly and prominently, as the regulation requires. Compl. ¶¶ 50-51; *see* 12 C.F.R. §§ 1015.4(a)(1) & (2), (b)(1)–(3).

Florida alleges that this conduct also violated FDUTPA, and that the violations were willful. Additionally, Florida alleges that Defendant File Intake Solutions submitted an application for licensure as a Commercial Telephone Seller that included false information and intentionally omitted material facts, and that this constituted a willful FDUTPA violation.

#### **B. Procedural History Related to the Corporate Defendants' Default**

Plaintiffs served The Hoffman Law Group with the summons and Complaint on July 16, 2014. *See* Proof of Service, DE 23 (July 23, 2014). Under Federal Rule of Civil Procedure 12(a)(1)(A)(i), the original deadline for The Hoffman Law Group to respond to the Complaint was August 6, 2014. On July 17, 2014, Plaintiffs served Nationwide Management Solutions, Legal Intake Solutions, File Intake Solutions, and BM Marketing Group with the summons and Complaint. *See* Proofs of Service, DE 25, 26, 27, 28 (July 23, 2014). The original deadline for those defendants to respond to the Complaint was August 7, 2014.

On July 31, 2014, the Court issued an order granting the withdrawal motion filed by defendants' original counsel and rescheduling the preliminary injunction hearing. Order, DE 36.

In that order, the Court extended the Corporate Defendants' deadlines for responding to the Complaint to September 4, 2014. *Id.* at ¶ 13. The Court also required the Corporate Defendants to acquire new counsel to appear for them by August 21, 2014. *Id.* at ¶ 4. The Corporate Defendants never acquired new counsel to appear and never served any response to the Complaint. On September 12, 2014, the Clerk entered a Clerk's Default against the Corporate Defendants. Clerk's Default, DE 71, 72.

After the entry of the Clerk's Default against the Corporate Defendants, Plaintiffs continued to litigate the case against the three Individual Defendants — Michael Harper, Marc Hoffman, and Benn Willcox ("Individual Defendants"). On May 5 and May 6, 2015, the Court entered Stipulated Final Judgments and Orders as to each of the Individual Defendants. DE 139, 140, 144. Plaintiffs now ask the Court to enter final default judgment against the Corporate Defendants. The proposed Default Judgment contains injunctive relief addressing the misconduct by the Corporate Defendants described in the Complaint, monetary relief to redress the consumer injury caused by that misconduct, and civil penalties as prescribed by statute.

## **II. ARGUMENT**

### **A. Standard for Entering Default Judgment**

Under Federal Rule 55(b)(2), this Court may enter a default judgment against a defendant that has failed to appear and defend. Entry of a default judgment is appropriate if the defendant's liability is well-pled in the complaint and the defendant has failed to participate in the litigation in good faith. *Eagle Hosp. Physicians v. SRG Consulting*, 561 F.3d 1298, 1307 (11th Cir. 2009); *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987).

### **B. Plaintiffs' Well-Pled Allegations Support Entry of a Default Judgment**

#### **1. Counts I through IV: Violations of Regulation O**

Regulation O defines a mortgage assistance relief services provider as a person or entity that offers or provides a service, plan, or program (in exchange for consideration) that purports to assist consumers to prevent the foreclosure of their home, to obtain a loan modification on their home mortgage, to negotiate forbearance on mortgage loan payments, or to take other measures designed to aid homeowners facing foreclosure. 12 C.F.R. § 1015.2. The regulation prohibits advance fees, prior to consummation of the mortgage modification (12 C.F.R. § 1015.5(a)); it prohibits representations that a consumer cannot or should not contact or communicate with his or her lender or servicer (12 C.F.R. § 1015.3(a)); it prohibits misrepresentations of any material aspect of the defendants' mortgage assistance relief service (12 C.F.R. § 1015.3(b)(4)); and it requires purveyors of mortgage assistance relief services to make several specific disclosures to consumers (12 C.F.R. § 1015.4).

The Complaint contains well-pled factual allegations supporting a finding of liability against the Corporate Defendants on each of these provisions of Regulation O:

- The Corporate Defendants offered a service, in exchange for a fee, that purported to assist consumers to prevent the foreclosure of their home or to obtain a loan modification on their home mortgage. Compl. ¶¶ 2, 28–38, 40–42, 45, 73.
- The Corporate Defendants charged consumers a varying upfront fee, which typically consisted of a \$6,000 initial fee and \$495 per month thereafter. Compl. ¶ 46; *see also* Def. Michael Harper's Am. Answer to Compl. ¶ 46, DE 91 (Sept. 23, 2014) (admitting the allegations in Complaint ¶ 46); Def. Benn Willcox's Corrected Am. Answer to Compl. ¶ 46, DE 97 (Sept. 25, 2014) (same). The fees were charged before the consumers had executed a written agreement with the loan holder or servicer that incorporated an offer obtained by the Corporate Defendants. Compl. ¶¶ 45, 46, 52, 84.
- The Corporate Defendants "discouraged consumers from communicating directly with their lenders or servicers and claimed that they [would] handle all communications with consumers' lenders and servicers. Compl. ¶¶ 48, 86.
- The Corporate Defendants misrepresented material aspects of their mortgage assistance relief services. Compl. ¶ 88. For instance, in "the HLG Enterprise . . . encouraged consumers to stop making mortgage payments, and in some instances told consumers that delinquency will demonstrate the consumers' hardship to the consumers' lenders."

Compl. ¶ 49. The Corporate Defendants did “not disclose that if consumers stop[ped] making mortgage payments, they could lose their homes and damage their credit ratings.” *Id.* And the Corporate Defendants misrepresented the likelihood that their mass-joiner cases would result loan modifications with favorable terms. Compl. ¶ 42.

- The Corporate Defendants’ solicitations to consumers failed to state that the consumer could stop doing business with the Corporate Defendants or reject an offer of mortgage assistance, if one was made, without having to pay for the services; that the Corporate Defendants were not associated with the government or approved by the government or the consumer’s lender; and that even if the consumer used the HLG Enterprise’s service, the consumer’s lender may not agree to modify the loan. Compl. ¶¶ 50, 90. Moreover, where any of these disclosures were made, they were not made in a “clear and prominent manner,” preceded by the heading “IMPORTANT NOTICE,” or made in the font size required by law. Compl. ¶¶ 51, 90.

Given these well-pled allegations and the Corporate Defendants’ failure to answer or defend, the Court should enter a default judgment against the Corporate Defendants for violations of Regulation O. *See, e.g., CFPB v. Jalan*, No. 12-02088 (C.D. Cal. July 23, 2013) (awarding default judgment for Regulation O and other violations) (attached as Ex. 2).

## **2. Count V: Using False and Misleading Statements, Advertising, and Marketing Materials in Violation of FDUTPA**

Pursuant to Section 501.204(1) of FDUTPA, “unfair or deceptive acts or practices in the conduct of any trade or commerce” are unlawful. Florida follows the “standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts.” Fla. Stat. § 501.203(3)(b). To that end, the Florida Supreme Court has noted a deceptive practice is one that “involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances.” *See PNR Inc. v. Beacon Prop. Mgmt.*, 842 So.2d 773, 777 (Fla. 2003). FDUTPA is liberally construed to protect the consuming public from those who engage in deceptive or unfair acts or practices in trade or commerce. Fla. Stat. § 501.202(2).

Whether a representation or practice is deceptive is a matter of judicial determination. *Dept. of Legal Affairs v. Father and Son Moving & Storage, Inc.* 643 So.2d 22, 26 (Fla. 4th

DCA 1994). To determine whether a representation is deceptive, courts must consider “the impression created by the representation, not its literal truth or falsity.” *FTC v. Peoples Credit First, LLC*, 2005 WL 3468588 (M.D. Fla. 2005), *aff’d* 2007 WL 2071712 (11th Cir. 2007). Advertising claims are deceptive if they have the capacity to convey misleading impressions to consumers even though non-misleading interpretations may be possible. *Dept. of Legal Affairs v. Father and Son Moving & Storage*, 643 So. 2d 22, 26 (Fla. 4th DCA 1994).

The Complaint alleges that Corporate Defendants utilized false and deceptive statements disseminated through websites, direct mailings, television advertisements, and telemarketing sales presentations to induce consumers to pay advance fees, typically in the amount of \$6,000, plus monthly fees of \$495 to participate in the purported mass-joinder litigation against mortgage lenders. Compl. ¶¶ 39-46, 52-56, 96; Stephens Tr., DE 7, Ex. 3 at 71-72.

The Corporate Defendants led consumers to believe that the mass-joinder litigation had a high likelihood of success, and that plaintiffs in the litigation were likely to receive relief, including favorable modifications of the terms of their mortgage, reductions in principal and interest rates, and even punitive damages against the lenders. Compl. ¶¶ 40-42, 45, 53; Stephens Tr., DE 7, Ex. 3 at 35, 38, 63.

Through various methods of sales presentations, the Corporate Defendants led consumers to believe that HLG was staffed with experienced, competent attorneys who had significant experience in complex tort litigation, and that the attorneys had spent, and would continue to spend, a significant amount of time researching, planning, and pursuing each individual client’s claims in the proposed mass-joinder litigation. Compl. ¶¶ 40, 42, 96.

Although litigation was eventually filed on behalf of some clients by other law firms that were hired by the Corporate Defendants, the pleadings filed were facially insufficient to obtain

the relief promised to HLG clients, and the Corporate Defendants did nothing to move the cases forward once filed. Compl. ¶¶ 53, 56. This was because the Corporate Defendants, including the law firm HLG, were controlled mostly by the non-lawyer Individual Defendants, without significant regard for litigation theories, litigation strategy, or even a sound legal basis upon which the litigation would be brought. Compl. ¶ 97; Decl. of William Featheringill, DE 7, Ex. 1 ¶¶ 3-8; Stephens Tr., DE 7, Ex. 3 at 14-15, 20-22, 27-28, 58.

The Corporate Defendants collaborated in a deceptive scheme to first provide potential clients misleading information about the likely outcomes of the proposed litigation, and who would be actually litigating the matter, in order to convince them to sign up and pay the large enrollment fee, then to continue to deceive the clients about the progress of said litigation in order to continue to collect monthly fees from them. Compl. ¶¶ 46, 52-56; Stephens Tr., DE 7, Ex. 3 at 19, 51, 59, 62-63, 66, 68, 85; Decl. of Maureen Eagone, DE 7, Ex. 1 Attach. H; Decl. of Sarah Schoppman, DE 7, Ex. 1 Attach. I.

Given these well-pled allegations and the Corporate Defendants' failure to answer or defend, the Court should exercise its discretion to enter a default judgment against the Corporate Defendants for violations of FDUTPA, as alleged in Count V by Florida.

### **3. Count VI: Civil Theft**

Under Florida law, a "person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to either temporarily or permanently: (a) deprive the other person of a right to the property or a benefit from the property; (b) appropriate the property to his or her own use or to the use of any person not entitled to the use of the property." Fla. Stat. § 812.014. "Obtains or uses [includes] obtaining property by fraud, willful misrepresentation of a future act, or false promise." Fla. Stat.

§ 812.012(3)(c); *see also State v. Hurley*, 676 So.2d 1010 (Fla. 2d DCA 1996).

To prevail on a civil theft count, all elements of theft must be proven, but a criminal conviction for theft is not necessary and the standard of proof is “clear and convincing,” not “beyond a reasonable doubt,” as would be required for a criminal conviction. *Senfeld v. Bank of Nova Scotia*, 450 So. 2d 1157 (Fla. 3d DCA 1984). Intent to commit theft may be proved by circumstantial evidence. *Brewer v. State*, 413 So. 2d 1217 (Fla. 5th DCA 1982). The mere fact that a contractual relationship existed between the parties is not a defense to civil theft. *Masvidal v. Ochoa*, 505 So. 2d 555 (Fla. 3d DCA 1987). When there is a contractual relationship between the parties, “an intricate and sophisticated scheme of deceit and theft” is evidence of a civil theft. *Trend Setter Villas of Deer Creek v. Villas on the Green, Inc.*, 769 So. 2d 766, 767 (Fla. 4th DCA 1990). Furthermore, partial performance under a contract does not preclude a finding of the intent to commit a theft. *Henry v. State*, 133 So. 3d 1034 (Fla. 4th DCA 2014).

The Corporate Defendants knowingly obtained money from HLG clients through fraud and willful misrepresentation of the benefits of participation in the mass-joinder lawsuits and misrepresenting what clients were paying for. The Corporate Defendants obtained payments with the intent to deprive the clients of their money, which were appropriated to the Corporate Defendants and other persons. Compl. ¶¶ 103-109.

The Corporate Defendants made numerous false claims to potential clients about the likely outcome of the litigation to induce them to sign up for participation in the mass-joinder litigation. *Id.* Consumers signed up as clients based on the Corporate Defendants’ false promises that participation in the litigation would enable them to receive loan modifications and/or help them avoid or stop foreclosure proceedings. Compl. ¶¶ 103, 108. Corporate Defendants touted a high record of success in obtaining beneficial mortgage modifications for its clients, although

HLG did not, as a matter of practice, engage in any such negotiations with lenders. Bryant Decl., DE 7, Ex. 13 at ¶¶ 37-41. Clients who lost their homes to foreclosure were told that they would receive monetary damages based upon the fair market value of their homes, but this relief was not even sought in any of the mass-joinder complaints filed. Stephens Tr., DE 7, Ex. 3 at 86-87.

The Corporate Defendants' practices of routinely misleading consumers, saying and doing whatever it took in order to collect a fee, knowing that the information was false or not substantiated, combined with the fact that no relief was actually being obtained as promised, demonstrates that the Corporate Defendants' sole intent, and the purpose of their existence, was to obtain money from clients which was then appropriated to the Corporate Defendants and others not entitled to it, through fraud and deception. Compl. ¶¶ 103-105, 108.

Given these well-pled allegations and Corporate Defendants' failure to answer or defend, the Court should exercise its discretion to enter a default judgment against Corporate Defendants for Theft, as alleged in Count VI by Florida.

**4. Count VIII: Falsifying a Commercial Telephone Seller Application, in Violation of FDUTPA (against File Intake Solutions)**

A violation of FDUTPA may also be based on a violation of "any law, statute, rule, regulation or ordinance which proscribes . . . unfair, deceptive, or unconscionable acts or practices." Fla. Stat. § 501.203(3)(c). On or about March 14, 2013, File Intake Solutions filed an application with the Florida Department of Agriculture and Consumer Services for licensure as a commercial telephone seller, pursuant to Section 501.605, Florida Statutes. Compl. ¶ 120. The application contained several incorrect answers and information was intentionally omitted in response to questions relating to the business activities of File Intake Solutions, as well as the previous activities of Benn Willcox and Michael Harper. Compl. ¶ 121. File Intake Solutions failed to truthfully answer at least seven material questions on the commercial telephone seller

license, as alleged in Count VIII. Compl. ¶ 121.

In general, a state has the power to regulate and license certain activities for the purpose of protecting its citizens, and to ensure that businesses do not act in a manner detrimental to the public interest. *See, e.g., United Enterprises v. Dubey*, 128 F. 2d 843 (5th Cir. 1942) (finding that a state may exercise its police power for the public welfare unless it is federally preempted). The stated purpose of the Florida Telemarketing Act is to protect consumers from telemarketers. *See* 1991 Fla. Laws 91-237. Telemarketing activities require licensure so that, through administrative action, the state can require telemarketers to abide by certain standards, including the power to review scripts and marketing materials for false or misleading statements, to randomly inspect the business premises of a telemarketer to ensure compliance, and to protect the public by keeping individuals with a prior history of engaging in unfair and deceptive trade practices from engaging in telemarketing, by virtue of denying their license applications.

Falsifying or omitting material information on an application for a professional license creates an unfair advantage over other businesses that are in compliance with the law, offends established public policy, and is substantially injurious to consumers, as well as competitors, and is therefore a violation of FDUTPA. It impedes the state from being able to properly use its licensing regime to protect consumers from rogue telemarketers. Given these well-pled allegations and File Intake Solutions' failure to answer or defend, the Court should exercise its discretion to enter a default judgment against File Intake Solutions for violating FDUTPA, as alleged in Count VIII by Florida.

#### **5. Defendants' Joint and Several Liability as a Common Enterprise**

Plaintiffs pled facts sufficient to show that the Corporate Defendants operated as a common enterprise, and are therefore jointly and severally liable for the misconduct alleged in

the Complaint. “[T]he Individual Defendants operated their scheme by using the Corporate Defendants as a common enterprise.” Compl. ¶ 63. Each corporation existed “to participate in the same mortgage relief operation,” with roles ranging from giving “consumers the impression of a legitimate law firm” to “funnel[ing] revenue to non-attorneys,” to operating the “telemarketing boiler rooms that convince[d] consumers to pay HLG’s fees.” Compl. ¶ 64. Plaintiffs alleged that the Corporate Defendants commingled finances; paid each other’s rents; shared a common address; shared employees; and operated under the common control of the same principals. Compl. ¶¶ 65–68. The Corporate Defendants “all exist[ed] for the single purpose of selling consumers mortgage assistance relief services and splitting the profits . . . .” Compl. ¶ 69. None of the companies had any other business purpose. *Id.*

These facts are borne out through documents and testimony gathered in Plaintiffs’ investigation, and by the Receiver’s investigation of the Corporate Defendants since his appointment by the Court. For instance, the Receiver found no evidence of a written contract between Nationwide Management Services and Hoffman Law Group, or any set fee that was charged by Nationwide. Receiver’s Initial Report at 16, DE 84 (Sept. 18, 2014). Based on extensive document review and interviews, the Receiver concluded that the Corporate Defendants shared services, were controlled by the same three individuals, and were engaged in a single, common business scheme, with no other sources of revenue. *Id.* at 16–18.

Based on Plaintiffs’ well-pled factual allegations — none of which are refuted by the Corporate Defendants and all of which are supported by the Receiver’s independent investigation — the Court should find that the Corporate Defendants operated as a common enterprise in effectuating the alleged mortgage relief scheme, and are therefore jointly and severally liable for all of the violations alleged in the complaint. Where one or more corporate

entities operate in a common enterprise, each may be held liable for the deceptive acts and practices of the other. *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir.1973); *FTC v. Wolf*, No. 94-8119-CIV-FERGUSON, 1996 WL 812940, \*7–8 (S.D. Fla. Jan. 31, 1996); *Commodity Futures Trading Comm’n. v. Int’l Berkshire Grp. Holdings*, No. 05-61588-CIV-ALTONAGA, 2006 WL 3716390, \*7 (S.D. Fla. Nov. 3, 2006).

### **C. Injunctive Relief, Restitution, and Penalties Are Appropriate**

It is within the Court’s discretion to enter injunctive and monetary relief at this stage, without holding an evidentiary hearing. *Tara Prods., Inc. v. Hollywood Gadgets, Inc.*, 449 F. App’x 908, 911–12 (11th Cir. 2011). In this case, the Complaint against the Corporate Defendants seeks (1) a permanent injunction to prevent future violations of Regulation O and Florida law; (2) monetary relief to redress injury to consumers; and (3) civil money penalties. These forms of relief are authorized under the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. § 5565, and Sections 501.207, 501.2075, and 812.035, Florida Statutes.

#### **1. Injunctive Relief to Prevent Future Violations**

Plaintiffs seek injunctive relief against the Corporate Defendants for the violations of federal and state law pled in the Complaint. The requested relief is detailed in the proposed Default Judgment and is tailored to the allegations of the Complaint. The requested injunctive relief includes directing the Court-appointed Receiver to permanently wind down and dissolve the Corporate Defendants; directing the Receiver to cooperate with Plaintiffs to identify and locate affected consumers and determine the fees they paid; directing the Receiver to liquidate all remaining assets of the Corporate Defendants; and establishing a process by which the Receiver will pursue any remaining, viable assets and dissolve the Receivership.

This relief is authorized by Section 1055 of the CFPA, 12 U.S.C. § 5565, and by Sections

501.207(3) and 812.035(1)(b),<sup>1</sup> Florida Statutes. A permanent injunction is justified when there is a “cognizable danger of recurrent violation,” *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), and where courts can infer “from the defendant’s prior conduct, viewed in light of present circumstances,” that there is a “reasonable likelihood of future transgressions.” *SEC v. Zale Corp.*, 650 F.2d 718, 720–21 (5th Cir. 1981); *see also Commodity Futures Trading Comm’n. v. Int’l Berkshire Grp. Holdings*, No. 05-61588-CIV-ALTONAGA, 2006 WL 3716390, \*11 (S.D. Fla. Nov. 3, 2006). In cases of this kind, involving elaborate, illegal schemes to defraud consumers, “broader ‘fencing-in provisions are needed to prevent similar and related violations from occurring in the future.’” *CFPB v. Jalan*, No. 12-02088, at 11 (attached as Ex. 2) (quoting *Trans World Accounts v. F.T.C.*, 594 F.2d 212, 215 (9th Cir. 1979)); *FTC v. 1st Guar. Mortg. Corp.*, No. 09-61840-CIV-O’SULLIVAN, 2011 WL 1233207, \*19–21 (S.D. Fla. Mar. 30, 2011). Here, the Corporate Defendants had no lawful business and a history of more than two years of misconduct. They should be enjoined from future misconduct. Florida is also permitted to seek this injunctive relief pursuant to FDUTPA. *State v. Beach Blvd. Automotive, Inc.*, 139 So.3d 380 (Fla. 1st DCA 2014).

Florida also moves the Court to order the Florida Department of Agriculture and Consumer Services to revoke or cancel File Intake Solutions’ Commercial Telephone Seller license. Florida bases this request on the numerous well-pled allegations of Corporate Defendants’ use of deceptive and misleading telemarketing sales presentations to bilk millions from unsuspecting consumers, as alleged in Count V, Corporate Defendants’ scheme to obtain

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<sup>1</sup> Pursuant to Section 812.035, Florida Statutes, a court may order dissolution of a corporation upon a finding that it is necessary for the prevention of future fraudulent activities and that “the public interest requires [that] the charter of the corporation [be] forfeited and the corporation dissolved.” *Tobin & Thompson, P.A. v. Golan*, 568 So. 2d 100 (Fla. 3d DCA 1990) (quoting *City Gas Co. v. Miller Gas Co.*, 137 So. 2d 836 (Fla. 3d DCA 1962)).

payments from the HLG clients by fraud and false promises, as alleged in Count VI, as well as the numerous misrepresentations in the licensing application itself, as alleged in Count VIII.

Florida requests this pursuant to the Court's authority to grant such injunctive relief pursuant to Sections 501.207(3) and 812.035(1)(d), Florida Statutes, and in order to protect the public from any possible reactivation of the license in the future.

## **2. Equitable Monetary Relief to Compensate Consumers**

Plaintiffs have established that approximately 2,000 consumers were victimized by and paid money to the Corporate Defendants between April 2012 and July 16, 2014. *See* Decl. of Theresa Ridder at ¶ 23 (attached as Ex. 1). In sum, as demonstrated by the attached declaration and supporting evidence, defendants collected \$11,730,579 from consumers in connection with their unlawful scheme. Ridder Decl. ¶ 47.

The CFPA authorizes the Court to grant relief, including refund of moneys, restitution, and disgorgement or compensation for unjust enrichment. 12 U.S.C. § 5655(a)(2)(B), (C), and (D). As shown in numerous deception, mortgage relief, and telemarketing cases brought by the Consumer Financial Protection Bureau and the Federal Trade Commission, the proper measure of consumer redress is the total amount consumers paid to purchase goods or services, less refunds already returned. *McGregor v. Chierico*, 206 F.3d 1378, 1389 (11th Cir. 2000); *Jalan*, No. 12-02088, at 11 (attached as Ex. 2); *FTC v. 1st Guar. Mortg. Corp.*, No. 09-61840-CIV-O'SULLIVAN, 2011 WL 1233207, \*22 (S.D. Fla. Mar. 30, 2011); *FTC v. Wolf*, No. 94-8119-CIV-FERGUSON, 1996 WL 812940, \*9 (S.D. Fla. Jan. 31, 1996). Defendants are liable for the entire amount spent by consumers, regardless of whether consumers received anything of value; the relevant factor is the "fraud in the selling, not the value of the thing sold." *Chierico*, 206 F.3d at 1389 (quoting *FTC v. Figgie Int'l*, 994 F.2d 595, 606 (9th Cir. 1993)).

In seeking a default judgment, Plaintiffs bear the burden of proving damages. They may do so through affidavits and other documentary evidence showing the amount and calculation of damages; an evidentiary hearing is unnecessary, particularly where the evidence before the Court is not controverted. *Tara Prods.*, 449 F. App'x at 911–12. Where two or more individuals or entities collaborate or have a close relationship in engaging in illegal conduct, it is appropriate to hold them jointly and severally liable. *Jalan*, No. 12-02088, at 12 (attached as Ex. 2); *SEC v. Rosen*, No. 01-0369-CIV-MIDDLEBROOKS, 2002 WL 34414715, \*12 (S.D. Fla. Apr. 24, 2002) (noting the difficulty of apportioning damages among closely-collaborating defendants); *FTC v. Wolf*, No. 94-8119-CIV-FERGUSON, 1996 WL 812940, \*7–8 (S.D. Fla. Jan. 31, 1996).

Here, the proposed order includes a judgment against the Corporate Defendants, jointly and severally, for restitution of \$11,730,579. As explained in the attached declaration of Theresa Ridder, this figure was derived from the Corporate Defendants' records, including QuickBooks accounting records obtained through the TRO, and from the records of the Corporate Defendants' third-party payment processors and bank statements, obtained through document requests. Ridder Decl. ¶¶ 4-6. The total amount was calculated by adding consumer payments received through payment processors, checks, and direct deposits and subtracting any payments that were refunded or returned. Ridder Decl. ¶¶ 9-47. Plaintiffs calculate that between April 2012 and August 2014, the time period during which the Corporate Defendants were collecting consumer payments, defendants took in gross deposits of \$12,608,600. Ridder Decl. ¶ 23, Att. C. During the same period, consumers received \$878,021 in refunds. *Id.* ¶ 24, Att. D. The net amount, \$11,730,579, represents a reasonable approximation of consumer loss. Ridder Decl. ¶ 47. Because the five Corporate Defendants operated as a single enterprise for purposes of this illegal scheme, the apportionment of proceeds received by the various entities cannot be

determined with any certainty. Absent robust rebuttal evidence from the defendants, the Court should require the Corporate Defendants to repay this amount, jointly and severally, as restitution.

### **3. Civil Money Penalties Pursuant to the Consumer Financial Protection Act**

The CFPA authorizes the Court to order civil money penalties. 12 U.S.C. § 5565(a)(2)(H). Penalties may be assessed against “[a]ny person that violates, through any act or omission, any provision of Federal consumer financial law.” 12 U.S.C. § 5565(c)(1). There are three tiers of penalties, based on the degree of scienter: up to \$5,000 per day for any violation; up to \$25,000 per day for each reckless violation; and up to \$1,000,000 per day for each knowing violation. 12 U.S.C. § 5565(c)(2). The amount assessed within these tiers depends on various factors listed in the statute, including “the size of financial resources . . . of the person charged,” “the gravity of the violation,” “the severity of the risks to or losses of the consumer,” “the history of previous violations,” and “such other matters as justice may require.” 12 U.S.C. § 5565(c)(3).

A civil penalty in this case will punish the Corporate Defendants and deter others from committing similar violations in the future. *S.E.C. v. Lauer*, No. 03-80612-CIV-JOHNSON, 2008 WL 4372896, \*26 (S.D. Fla. Sept. 24, 2008), *aff’d*, 478 F. App’x 550 (11th Cir. 2012). The Corporate Defendants’ scheme was egregious; they victimized struggling homeowners, seized upon their financial vulnerability, and bilked them for thousands of dollars in illegal fees. The Corporate Defendants’ conduct was at least reckless, if not knowing, subjecting them to penalties of up to \$25,000 per day, or even \$1,000,000 per day. As the scheme lasted more than two years, they could face a penalty under the CFPA up to \$800 million.

To avoid a penalty that is disproportionate to the gross receipts defendants collected from consumers, Plaintiffs seek a penalty of \$5,000 for each of the 2,000 injured consumers. This

parallels the approach proposed by the Bureau and adopted by the court in *Jalan*, a comparable Regulation O case brought by the Bureau in the Central District of California. *Jalan*, No. 12-02088, at 12 (attached as Ex. 2). Here, the calculation results in a civil money penalty of \$10,000,000 against the Corporate Defendants, or slightly less than the sum of the illegal fees defendants collected in the course of their scheme. The gravity of defendants' violations and the severity of the harm inflicted on consumers militate against further reductions in the civil penalty amount. *See* 12 U.S.C. § 5655(c)(3).

If the Court grants the proposed Default Judgment against the Corporate Defendants, all available assets in the Receiver's possession, as of the date of the judgment, would be dedicated to consumer redress. *See* Default Judgment, Section IV. The Bureau would then distribute those funds to consumers as restitution.<sup>2</sup> After judgment, any additional funds collected by the Receiver would be paid towards the Corporate Defendants' outstanding civil money penalty.<sup>3</sup>

#### **4. Civil Penalties Pursuant to FDUTPA**

Anyone who has willfully used a trade practice found to be unlawful under FDUTPA is liable for a civil penalty up to \$10,000 per violation. *See* Fla. Stat. § 501.2075. A willful violation occurs when the person knew or should have known that the conduct was unfair or deceptive. *See* Fla. Stat. § 501.2075. Each instance in which a deceptive representation is disseminated constitutes a violation. *U.S. v. Reader's Digest Ass'n, Inc.*, 662 F.2d 955, 966 (3d Cir. 1981) (finding a separate FTC Act violation occurred with each deceptive mailing sent to a

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<sup>2</sup> If some consumer harm remains uncompensated, the Bureau may consider making additional restitution payments to consumers from the Consumer Financial Civil Penalty Fund. *See* 12 U.S.C. § 5497(d)(1).

<sup>3</sup> Civil penalties collected by the Bureau are deposited into the Consumer Financial Civil Penalty Fund. They are then used to make payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws and, in some cases, for consumer education and financial literacy programs. 12 U.S.C. § 5497(d)(2).

consumer). A separate violation occurs with each separate, unlawful method, act, or practice and with each consumer affected by the wrongful conduct. *See Fla. Stat. § 501.2075.*

The Court has discretion to determine the amount of the penalty for each violation and whether the transactions are construed as single or as continuing violations. *Army Aviation Heritage Foundation v. Ruis*, 504 F. Supp. 2d 1254 (N.D. Fla. 2007).

Because they were paying large sums of money to the Corporate Defendants, many victims fell into even deeper default on their mortgages due to the lack of funds to pay for both the participation in the mass joinder lawsuits and their monthly mortgage payment. Other victims fell deeper into default due to the Corporate Defendants instructing the homeowner to stop making their mortgage payment. The Corporate Defendants' acts and practices caused extreme harm to consumers who paid large sums of money under the guise that they would be able to save their home from foreclosure or receive other relief from the mortgage lender or servicer. Corporate Defendants' conduct was egregious and harmful.

In this case, there were at least 2,000 transactions in which the Corporate Defendants violated FDUTPA. These violations are undisputed and therefore admitted by the Corporate Defendants, who have defaulted. Given the blatant and willful nature of the violations and the egregiousness of the consumer harm, Florida moves for an award of a civil penalty of no less than \$3,000 per victim, for a total civil penalty of \$6,000,000.<sup>4</sup>

Florida also moves for a civil penalty of \$5,000 against File Intake Solutions for willful violation of FDUTPA for submitting a falsified Commercial Telephone Seller application.

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<sup>4</sup> "There is no requirement in chapter 501 that [Plaintiff] list each allegedly affected consumer. The civil pleading requirements state the complaint must (1) provide an allegation of ultimate facts which state a cause of action and (2) provide well-pled facts upon which a damage award is based." *Taubert v. Office of the Attorney General*, 79 So. 3d 77 at 79 (Fla. 1st DCA, 2012).

#### **D. Entry of the Proposed Default Judgment Is in the Public Interest**

Plaintiffs are government entities charged with enforcing federal and state consumer financial protection laws. The relief they seek is in the public interest. As the Supreme Court has stated, “since the public interest is involved in [an enforcement] proceeding of this nature,” the district court’s “equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.” *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). The Eleventh Circuit has concluded that “the court’s authority to exercise full equitable powers is especially appropriate in a case like the one at bar,” where the statutes at issue “play an important role in enabling [the government] to enforce consumer protection laws.” *FTC v. Gem Merchandising Corp.*, 87 F.3d 466, 470 (11th Cir. 1996). Plaintiffs would be prejudiced if a default judgment were not entered because, without a final judgment against the Corporate Defendants, there would be no permanent injunction preventing future violations of law, to the public’s detriment. In addition, without a judgment for monetary relief, Plaintiffs would be unable to return funds to consumers who fell victim to defendants’ scheme. Finally, the failure to award default judgment here would create a perverse incentive for future defendants in public enforcement actions, by rewarding the Corporate Defendants’ failure to answer or defend this action. These considerations weigh heavily in favor of entering the Default Judgment here.

#### **III. CONCLUSION**

For these reasons, Plaintiffs respectfully request that the Court enter the proposed Default Judgment against the Corporate Defendants and award Plaintiffs attorneys’ fees and costs in an amount to be determined upon subsequent motion.

Dated: May 6, 2015

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of May, 2015, I filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on this day on all counsel of record or *pro se* corporate parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

*VIA CM/ECF:*

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Nationwide Management Solutions, LLC  
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BM Marketing Group, LLC  
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Palm Beach Gardens, FL 33418

Dated: May 6, 2015

Respectfully Submitted,

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EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 14-80931-CIV-COHN-SELTZER**

CONSUMER FINANCIAL PROTECTION  
BUREAU and THE STATE OF FLORIDA,  
Office of the Attorney General,  
Department of Legal Affairs

Plaintiffs,

v.

MICHAEL HARPER, an individual; BENN  
WILLCOX, an individual; MARC HOFFMAN,  
an individual; THE HOFFMAN LAW GROUP,  
P.A. f/k/a THE RESIDENTIAL LITIGATION  
GROUP, P.A., a Florida corporation;  
NATIONWIDE MANAGEMENT SOLUTIONS,  
LLC, a Florida limited liability company;  
LEGAL INTAKE SOLUTIONS, LLC, a Florida  
limited liability company; FILE INTAKE  
SOLUTIONS, LLC, a Florida limited liability  
company; and BM MARKETING GROUP,  
LLC, a Florida limited liability company,

Defendants.

**DECLARATION OF THERESA RIDDER IN SUPPORT OF PLAINTIFFS’  
MOTION FOR JUDGMENT UPON DEFAULT**

I, Theresa Ridder, hereby state that I have personal knowledge of the facts as set forth below. If called as a witness, I could and would testify as follows:

1. I am a United States citizen over 18 years of age. I am an employee of the Consumer Financial Protection Bureau (the “Bureau”). I am an investigator working in the Office of Enforcement within the Bureau in Washington, D.C. As an employee with

1 the Bureau, my current duties include conducting financial and data analysis for  
2 investigations. I have been an employee of the Bureau since December 1, 2013.

3 2. I have been a Certified Public Accountant (CPA) since 2012. I am currently  
4 licensed as a CPA in Maryland. I have been a Certified Fraud Examiner (CFE) since  
5 2012. I am a member of the Association of Certified Fraud Examiners (ACFE), the  
6 organization that issues the CFE designation.

7 3. I was assigned to work on the Bureau's investigation of Michael Harper,  
8 Benn Willcox, Marc Hoffman, The Hoffman Law Group, P.A. (f/k/a The Residential  
9 Litigation Group, P.A., hereinafter "The Hoffman Law Group"), Nationwide  
10 Management Solutions, LLC, Legal Intake Solutions, LLC, File Intake Solutions, LLC,  
11 and BM Marketing Group, LLC (collectively, "Defendants").

12 4. During the course of my investigation, I analyzed the business records of  
13 The Hoffman Law Group, Nationwide Management Solutions, Legal Intake Solutions,  
14 File Intake Solutions, and BM Marketing Group (collectively, "Corporate Defendants"),  
15 including the Corporate Defendants' electronic bookkeeping records in QuickBooks;  
16 customer lists maintained on the company's Google Docs website; and employee  
17 timekeeping records in LeadTrac, the Corporate Defendants' enterprise software.

18 5. I analyzed bank records associated with the Corporate Defendants that the  
19 Bureau received from Bank of America, Citibank, FirstCity Bank of Commerce, Florida  
20 Community Bank, JPMorgan Chase, PNC Bank, Regions Bank, SunTrust Bank, and  
21 Wells Fargo Bank. For the 56 bank accounts analyzed, I have provided in **Attachment**  
22 **A** to this Declaration a list of the account names, last four digits of the account numbers,  
23 and persons authorized to sign for the account, where available.

24 6. I also analyzed payment processor records associated with the Corporate  
25 Defendants that the Bureau received from Actum Processing LLC (Actum), CardFlex  
26 Payment Solutions, Inc. (CardFlex), EMS Payment Solutions (EMS), Global Client  
27 Solutions (GCS), Green By Phone, Inc. (GBP), Heartland Payment Systems (Heartland),  
28 Meracord, LLC, PayPal, Inc. (PayPal), Reliant Account Management, LLC (RAM), and

1 SkyBank Financial, via International Payout Systems Inc. (I-Payout). The payment  
2 processor account names and affiliated bank account information are provided in  
3 **Attachment B** to this Declaration.

4 7. Based on my review of the records of the Corporate Defendants, banks,  
5 and payment processors, I made the observations listed in paragraphs 9 through 47 and  
6 summarized in **Attachments C and D**.

7 8. The underlying business records are voluminous. They are available for  
8 inspection and copying by Corporate Defendants and will be provided to the Court if the  
9 Court so requests.

10  
11 **Consumer Payments**

12 9. The accounts controlled by the Corporate Defendants accepted payments  
13 from consumers (hereinafter “Consumer Payments”) through third-party payment  
14 processors via Automatic Clearing House (ACH) transactions, credit card transactions,  
15 and remotely created check transactions. The accounts controlled by the Corporate  
16 Defendants also accepted personal checks and direct deposits from consumers.

17 10. Consumers typically made payments to The Hoffman Law Group on a  
18 monthly basis. Corporate records suggest that The Hoffman Law Group divided the  
19 payments into various categories; though based on the varying amounts allocated to  
20 each category, I observed that they did not rigidly adhere to the categorization of  
21 payments.

22 11. The Multi-Plaintiff Litigation Agreement found in the Corporate  
23 Defendants’ records stated that consumers must make an initial payment of a retainer  
24 fee of \$6,000, which may be broken up into smaller monthly payments. Corporate  
25 Defendants allowed consumers to pay a slightly reduced retainer fee amount if they paid  
26 it in a lump sum or over three months, as opposed to a longer timeframe. A sample  
27 Agreement is provided as **Attachment E** to this declaration.  
28

1           12. Initial payments from consumers to The Hoffman Law Group were  
2 generally recorded with the label “retainer” or “retainer fees” in the QuickBooks and  
3 Google Docs records of the Corporate Defendants, as well as in some payment processor  
4 records. The retainer fees were often paid by the consumer over a three to six month  
5 time period and the totals for each consumer ranged from approximately \$195 to  
6 \$16,000.

7           13. Approximately 61 percent of Consumer Payments were recorded in the  
8 Corporate Defendants’ records as “retainer fees.”

9           14. The Multi-Plaintiff Litigation Agreement found in the Corporate  
10 Defendants’ records stated that after the retainer fee was paid, the consumer would pay  
11 a monthly “maintenance fee” of approximately \$195 to \$495 per month “over the term  
12 of the active litigation.”

13           15. Approximately 37 percent of Consumer Payments were recorded in the  
14 Corporate Defendants’ records as “maintenance fees.”

15           16. The Corporate Defendants’ records also show payments recorded as  
16 “hardship.” Company records indicate that “hardship” payments referred to payments  
17 made by consumers who could not fully meet the retainer or maintenance fee payment  
18 amounts, as described in the Multi-Plaintiff Litigation Agreement, and who were found  
19 to have been undergoing financial hardship, including, but not limited to, filing for  
20 bankruptcy or being unable to pay for necessities including food and utilities.

21           17. Approximately one percent of Consumer Payments were recorded in the  
22 Corporate Defendants’ records as “hardship” payments.

23           18. The Corporate Defendants’ records also show fees and retainer payments  
24 titled “referral.” Company records indicate that “referral” payments were payments  
25 made by consumers who were referred to foreclosure defense.

26           19. Approximately one percent of Consumer Payments were recorded in the  
27 Corporate Defendants’ records as “referral” payments.

28

1           20. I reviewed and relied on the records from third-party payment processors  
2 and banks in order to determine the total amount of Consumer Payments, refunds, and  
3 returns, and ultimately to determine the amount each consumer paid to the Corporate  
4 Defendants.

5           21. I summarized those payment processor and bank account records in  
6 **Attachments C and D. Attachment C** sets out gross Consumer Payments by method  
7 of payment. **Attachment D** sets out refunds and returns to consumers by method of  
8 refund or return.

9           22. To confirm that the Corporate Defendants received the Consumer  
10 Payments, I also traced and confirmed transactions between the payment processors  
11 and the Corporate Defendants' bank accounts.

12           23. Adding all Consumer Payments, including the "retainer fees,"  
13 "maintenance fees," "hardship payments," and "referral payments" described above, I  
14 found that approximately 2,000 consumers paid a total of \$12,608,600 to the Corporate  
15 Defendants between April 2012 and August 2014. *See Attachment C.*

16           24. The total amount of returns and refunds that the Defendants issued to  
17 consumers from April 2012 through August 2014 was \$878,021. *See Attachment D.*

18  
19                           **Details Regarding Consumer Payments**  
20                           **via Third-Party Payment Processors**

21           25. Almost all Consumer Payments were processed by third-party payment  
22 processors and deposited into Corporate Defendants' bank accounts.

23           26. The Corporate Defendants received automatic recurring payments or one-  
24 time payments from consumers through payment processors Meracord, Global Client  
25 Solutions, Actum, CardFlex, EMS, GBP, Heartland, Skybank Financial (via I-Payout),  
26 RAM and Intuit.

27           27. The payment processor records show the total amount paid by consumers  
28 before any payment processor fees were assessed.

1           28. Most of the payment processor records also show individual Consumer  
2 Payments, the total fees paid to the payment processor, the total returns and refunds  
3 issued to consumers, and the total amount ultimately disbursed to the Corporate  
4 Defendants' bank accounts.

5           29. Set forth below is a description of each company's general practices for  
6 processing Consumer Payments for the Corporate Defendants.

7           30. **Meracord.** Between May 2012 and January 2013, consumers opened up  
8 accounts and signed a Payment Date & Authorization Information form (the "Meracord  
9 Authorization Form") and a Payor Services Agreement ("Payor Agreement") with  
10 Meracord.

11           31. The Corporate Defendants prepared the payment schedule on the  
12 Meracord Authorization Form on behalf of consumers, and Meracord withdrew  
13 payments from the consumers' bank accounts according to the payment schedule or as  
14 instructed by the Corporate Defendants. An example of the Meracord Authorization  
15 Form can be found at page 9 of **Attachment E**.

16           32. The Payor Agreement authorized Meracord to hold such payments, and  
17 then disburse the payments to The Hoffman Law Group. Meracord subtracted  
18 transaction fees from the Consumer Payments prior to disbursing the payments to The  
19 Hoffman Law Group's bank accounts. An example of the Payor Agreement can be found  
20 at pages 11 through 13 of **Attachment E**.

21           33. **Global Client Solutions.** Between February 2013 and August 2014,  
22 consumers opened up accounts and signed a Dedicated Account Agreement and  
23 Application ("Dedicated Account Agreement") and a Payment Date & Authorization  
24 Information form (the "GCS Authorization Form") with GCS. The Corporate Defendants  
25 prepared the payment schedule on the GCS Authorization Form on behalf of consumers,  
26 and GCS withdrew payments from the consumers' bank accounts according to the  
27 payment schedule or as instructed by the Corporate Defendants.  
28

1           34. According to the Dedicated Account Agreement, GCS deducted a monthly  
2 fee of \$10.75 from the Consumer Payments and then disbursed the remaining funds into  
3 The Hoffman Law Group's account at GCS. Thereafter, GCS automatically deposited  
4 funds from The Hoffman Law Group's GCS account to the Corporate Defendants' bank  
5 accounts.

6           35. **Green By Phone.** GBP facilitated remotely created check transactions.  
7 In the Corporate Defendants' bank records, the remotely created check transactions  
8 appear as regular check deposits. GBP submitted Consumer Payments to the Corporate  
9 Defendants' bank accounts.

10           36. **PayPal.** PayPal batch-processed funds received from consumers and held  
11 the funds in the Corporate Defendants' PayPal account until they were transferred into  
12 Corporate Defendants' bank accounts, less PayPal's fees.

13           37. **Actum Processing, International Payout, CardFlex Payment**  
14 **Solutions, and Reliant Account Management.** Actum, CardFlex, and RAM  
15 processed ACH transactions from consumers. They deducted fees from the Consumer  
16 Payments and then transferred the remaining balances into the Corporate Defendants'  
17 bank accounts. I-Payout transferred the Consumer Payments directly to the Corporate  
18 Defendants' bank accounts through ACH without deducting fees prior to that transfer.

19           38. **Heartland Payment Systems and EMS Payment Solutions.**  
20 Heartland and EMS processed credit card payments from consumers. Heartland and  
21 EMS deducted their fees from the Consumer Payments and then transferred the  
22 remaining balances into the Corporate Defendants' bank accounts.

23           39. **Intuit.** The company and bank records show that a small percentage of  
24 consumers used the payment processor Intuit to make payments to Corporate  
25 Defendants. The Consumer Payments made through Intuit are included in the bank  
26 deposit amounts on **Attachment C.**



1 accounts. These returns were included in the bank records only, which are summarized  
2 in **Attachment D**.

3  
4 **Damages Total**

5 47. In total, consumers paid \$12,608,600 to the Corporate Defendants and  
6 the Corporate Defendants returned or refunded to consumers \$878,021. Thus, the net  
7 amount consumers paid to Corporate Defendants between April 2012 and August 2014  
8 was \$11,730,579.

9  
10 I declare under penalty of perjury that the foregoing is true and correct. Executed  
11 on May 6, 2015.

12  
13   
\_\_\_\_\_

14 Theresa Ridder  
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**List of Bank Accounts**

	<b>Institution</b>	<b>Last 4 Digits of Account No.</b>	<b>Account Name</b>	<b>Authorized Signatories</b>
1.	Bank of America	4497	Florida IOTA Trust Accounts The Hoffman Law Group, P.A. TRTEE	Marc H. Hoffman
2.	Bank of America	4507	The Hoffman Law Group, P.A.	Marc H. Hoffman Benn Willcox Michael Harper
3.	Bank of America	4510	The Hoffman Law Group, P.A.	Marc H. Hoffman Benn Willcox Michael Harper
4.	Bank of America	4552	The Hoffman Law Group, P.A.	Marc H. Hoffman Benn Willcox Michael Harper
5.	Citibank CBO Services	9031	The Hoffman Law Group PA	Marc H. Hoffman Benn Willcox Michael Harper
6.	Citibank CBO Services	9044	The Hoffman Law Group PA	Marc H. Hoffman Benn Willcox Michael Harper
7.	Citibank CBO Services	9057	The Hoffman Law Group PA	Marc H. Hoffman Benn Willcox Michael Harper
8.	Citibank CBO Services	0272	The Hoffman Law Group PA	Marc H. Hoffman Benn Willcox Michael Harper
9.	Citibank CBO Services	6852	The Hoffman Law Group PA; Attorney Trust Account	Marc H. Hoffman Benn Willcox Michael Harper
10.	Citibank CBO Services	5328	Benn Willcox	Benn Willcox
11.	FirstCity Bank of Commerce	4208	The Hoffman Law Group PA Operating Account	Benn J Willcox Michael J Harper Marc H Hoffman *As of July 11, 2013, Moira Mackenzie could view account, transfer funds between accounts, and originate wire transfers
12.	FirstCity Bank of Commerce	4216	The Hoffman Law Group PA Maintenance Account	Benn J Willcox Michael J Harper Marc H Hoffman *As of July 11, 2013, Moira Mackenzie could view account, transfer funds between accounts, and originate wire transfers

	<b>Institution</b>	<b>Last 4 Digits of Account No.</b>	<b>Account Name</b>	<b>Authorized Signatories</b>
13.	FirstCity Bank of Commerce	4232	The Hoffman Law Group PA IOTA Trust Account	Benn J Willcox Michael J Harper Marc H Hoffman *As of July 11, 2013, Moira Mackenzie could view account, transfer funds between accounts, and originate wire transfers
14.	Florida Community Bank	0300	The Hoffman Law Group, P.A. Hardship Account	Benn J Willcox Michael Harper Marc H Hoffman
15.	Florida Community Bank	3201	The Hoffman Law Group, P.A. Operating Account	Benn J Willcox Michael Harper Marc H Hoffman
16.	Florida Community Bank	4800	The Hoffman Law Group, P.A. Maintenance Account	Benn J Willcox Michael Harper Marc H Hoffman
17.	Florida Community Bank	2901	The Hoffman Law Group, P.A. Referral Account	Benn J Willcox Michael Harper Marc H Hoffman
18.	JPMorgan Chase Bank	6775	The Hoffman Law Group PA DBA The Residential Litigation Group PA	Benn J Willcox Michael J Harper Marc H Hoffman
19.	JPMorgan Chase Bank	5616	Marc H Hoffman Attorney at Law IOLTA Trust Account	Marc H Hoffman
20.	JPMorgan Chase Bank	6620	The Residential Litigation Group PA	Benn J Willcox Michael J Harper Marc H Hoffman
21.	JPMorgan Chase Bank	5453	The Residential Litigation Group PA IOTA Trust Account	Benn J Willcox Michael J Harper Marc H Hoffman
22.	JPMorgan Chase Bank	3760	The Hoffman Law Group PA DBA The Residential Litigation Group PA	Benn J Willcox Michael J Harper Marc H Hoffman
23.	JPMorgan Chase Bank	1494	Nationwide Management Solutions LLC	Benn J Willcox Michael J Harper
24.	JPMorgan Chase Bank	0060	Nationwide Management Solutions LLC - Savings	No signature card provided
25.	JPMorgan Chase Bank	1124	Legal Intake Solutions LLC	No signature card provided
26.	JPMorgan Chase Bank	0130	BM Marketing Group LLC	No signature card provided
27.	JPMorgan Chase Bank	4059	Legal Intake Solutions LLC	No signature card provided
28.	PNC Bank	6071	The Hoffman Law Group, P.A. Operating Account	No signature card provided

	<b>Institution</b>	<b>Last 4 Digits of Account No.</b>	<b>Account Name</b>	<b>Authorized Signatories</b>
29.	PNC Bank	6178	The Hoffman Law Group, P.A. IOTA Client TRT FND IOLTA Account	No signature card provided
30.	PNC Bank	6151	The Hoffman Law Group, P.A. Maintenance Account	No signature card provided
31.	PNC Bank	6194	The Hoffman Law Group, P.A. Foreclosure Defense	No signature card provided
32.	Regions Bank	6143	The Hoffman Law Group PA Operating	No signature card provided
33.	Regions Bank	6151	The Hoffman Law Group PA Maintenance	No signature card provided
34.	Regions Bank	6178	The Hoffman Law Group PA Hardship	No signature card provided
35.	Regions Bank	5724	The Hoffman Law Group PA Hardship	Marc H Hoffman Michael Harper Benn Willcox
36.	Regions Bank	5732	The Hoffman Law Group PA Referral Account	Marc H Hoffman Michael Harper Benn Willcox
37.	Regions Bank	5783	The Hoffman Law Group PA Operating	Marc H Hoffman Michael Harper Benn Willcox
38.	Regions Bank	5791	The Hoffman Law Group PA Maintenance	Marc H Hoffman Michael Harper Benn Willcox
39.	Regions Bank	6259	The Hoffman Law Group PA Referral Account	No signature card provided
40.	Regions Bank	6267	The Hoffman Law Group IOTA	No signature card provided
41.	SunTrust Bank	8811	BM Marketing Group LLC	Benn Willcox Michael Harper
42.	SunTrust Bank	2050	BM Marketing Group LLC	Benn Willcox Michael Harper
43.	SunTrust Bank	3348	File Intake Solutions	Benn Willcox Michael J Harper
44.	SunTrust Bank	6987	File Intake Solutions	Benn Willcox Michael J Harper
45.	SunTrust Bank	3646	The Hoffman Law Group PA Florida Bar Foundation Inc	No signature card provided
46.	SunTrust Bank	3653	The Hoffman Law Group PA Operating Account	No signature card provided
47.	SunTrust Bank	3604	The Hoffman Law Group PA Hardship Account	No signature card provided
48.	SunTrust Bank	3638	The Hoffman Law Group PA Maintenance Account	No signature card provided

	<b>Institution</b>	<b>Last 4 Digits of Account No.</b>	<b>Account Name</b>	<b>Authorized Signatories</b>
49.	SunTrust Bank	3612	The Hoffman Law Group PA Referral Account	No signature card provided
50.	Wells Fargo Bank	7465	Nationwide Management Solutions LLC	Benn J Willcox Michael J Harper
51.	Wells Fargo Bank	6570	Nationwide Management Solutions LLC - Savings	Benn J Willcox Michael J Harper
52.	Wells Fargo Bank	8059	The Hoffman Law Group, P.A.	Benn J Willcox Michael J Harper Marc H Hoffman
53.	Wells Fargo Bank	7440	The Hoffman Law Group, P.A.	Benn J Willcox Michael J Harper Marc H Hoffman
54.	Wells Fargo Bank	6166	The Hoffman Law Group, P.A. - Savings	Benn J Willcox Michael J Harper Marc H Hoffman
55.	Wells Fargo Bank	7457	The Hoffman Law Group, P.A. FL IOTA Attorney Trust Account	Marc H Hoffman
56.	Wells Fargo Bank	8042	The Hoffman Law Group, P.A.	Benn J Willcox Michael J Harper Marc H Hoffman

**List of Payment Processors and Affiliated Bank Accounts**

	<b>Payment Processor</b>	<b>Account Name</b>	<b>Affiliated Bank Accounts</b>
1.	Actum Processing LLC	The Hoffman Law Group, PA	Bank of America (4507) Citibank (9057) FirstCity Bank of Commerce (4208)
2.	CardFlex Payment Solutions, Inc.	The Hoffman Law Group, PA	Bank of America (4507) FirstCity Bank of Commerce (4208)
3.	Electronic Merchant Services Payment Solutions	The Hoffman Law Group, PA	Citibank (9057) FirstCity Bank of Commerce (4208)
4.	Global Client Solutions	The Hoffman Law Group PA	Citibank (9057, 0272, 9031) FirstCity Bank of Commerce (4216, 4208) JPMorgan Chase (3760, 6620, 5453) Wells Fargo (8042, 8059, 7457, 7440)
5.	Green By Phone, Inc.	The Hoffman Law Group, The Residential Litigation Group	JPMorgan Chase (5453) Bank of America (4497, 4507) PNC Bank (6178) Wells Fargo (7440) FirstCity Bank of Commerce (4208)
6.	Heartland Payment Systems	The Hoffman Law Group	Citibank (9057) Florida Community Bank (3201)
7.	International Payout Systems Inc.	The Hoffman Law Group	Citibank (9057) FirstCity Bank of Commerce (4208)
8.	Meracord	Residential Litigation Group	JPMorgan Chase (3760, 6620, 5453)
9.	PayPal, Inc.	The Hoffman Law Group, PA	Wells Fargo (7457)
10.	Reliant Account Management, LLC	The Hoffman Law Group PA	Citibank (9031, 9057) FirstCity Bank of Commerce (4208)

**Gross Consumer Payments to Corporate Defendants**

**I. Consumer Payments via Payment Processors**

1.	Actum Processing LLC (Actum)	\$802,710
2.	CardFlex Payment Solutions Inc. (CardFlex)	\$124,735
3.	Electronic Merchant Services (EMS)	\$333,879
4.	Global Client Solutions Inc. (GCS)	\$6,971,614
5.	Green By Phone, Inc. (Green By Phone)	\$1,393,341
6.	Heartland Payment Systems (Heartland)	\$80,459
7.	International Payout Systems Inc. (I-Payout)	\$123,420
8.	Meracord	\$2,007,244
9.	PayPal, Inc. (PayPal)	\$15,060
10.	Reliant Account Management, LLC (RAM)	\$436,528
	<b>Total Consumer Payments via Payment Processors</b>	<b>\$12,288,990</b>

**II. Other Consumer Payments, Including Check Deposits**

1.	Bank of America, IOLTA Account (4497)	\$1,000
2.	Bank of America, Operating Account (4507)	\$1,000
3.	Bank of America, Maintenance Account (4552)	\$1,980
4.	Citibank, Hardship Account (9031)	\$4,358
5.	Citibank, Maintenance Account (9044)	\$1,485
6.	Citibank, Operating Account (9057)	\$28,809
7.	FirstCity, Operating Account (4208)	\$143,271
8.	JPMorgan Chase, Operating Account (6775)	\$22,015
9.	JPMorgan Chase, IOLTA Account (5453)	\$14,685
10.	PNC Bank, IOTA Account (6178)	\$795
11.	Wells Fargo Operating Account (7440)	\$64,603
12.	Wells Fargo IOLTA (7457)	\$35,609
	<b>Total Other Consumer Payments, Including Check Deposits</b>	<b>\$319,610</b>

	<b>Total Consumer Payments (before Refunds and Returns)</b>	<b>\$12,608,600</b>
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**Refunds and Returns to Consumers**

**I. Refunds and Returns via Payment Processors**

1.	Actum Processing LLC (Actum)	\$(7,218)
2.	CardFlex Payment Solutions Inc. (CardFlex)	\$(4,455)
3.	Green By Phone, Inc. (Green By Phone)	\$(6,814)
4.	Heartland Payment Systems (Heartland)	\$(495)
5.	Meracord	\$(97,110)
	<b>Total Refunds and Returns via Payment Processors</b>	<b>\$(116,092)</b>

**II. Refunds and Returns via Bank Accounts**

1.	Bank of America, IOLTA Account (4497)	\$(38,340)
2.	Bank of America, Operating Account (4507)	\$(64,662)
3.	Citibank Operating (9057)	\$(86,986)
4.	FirstCity Operating (4208)	\$(235,435)
5.	JPMorgan Chase Operating (6775)	\$(9,186)
6.	JPMorgan Chase IOLTA (5453)	\$(101,742)
7.	PNC IOTA (6178)	\$(121,441)
8.	Wells Fargo Operating Account (7440)	\$(104,137)
	<b>Total Refunds and Returns via Bank Accounts</b>	<b>\$(761,929)</b>

	<b>Total Refunds and Returns to Consumers</b>	<b>\$(878,021)</b>
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LAW OFFICE OF



THE  
**RESIDENTIAL  
LITIGATION**  
GROUP

2200 PENNSYLVANIA AVENUE NW

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WASHINGTON D.C. 20037

P: 800-578-8700 | F: 800-620-0070

WWW.THERESIDENTIALLITIGATIONGROUP.COM

## MULTI-PLAINTIFF LITIGATION RETAINER AGREEMENT

Please sign and complete the entire retainer agreement and submit all of the items listed below required for multi-plaintiff litigation.

- ▶ Copies of most recent mortgage statements  
(if 1st and 2nd Mortgages include both)
- ▶ Original Closing Documents
- ▶ Original Title Documents
- ▶ Foreclosure Documents (all pages - if applicable)
- ▶ Additional Documents (may be requested - if applicable)





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## CLIENT & PROPERTY INFORMATION WORKSHEET

### BORROWER INFORMATION

Name: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Work Phone: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Gross/Net Income: \_\_\_\_\_ Length of Employment: \_\_\_\_\_

### CO-BORROWER INFORMATION

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ SSN: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Home Phone: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_  
Email Address: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Gross/Net Income: \_\_\_\_\_ Length of Employment: \_\_\_\_\_

### SUBJECT PROPERTY INFORMATION

Property Address: [REDACTED]  
[REDACTED]

### MORTGAGE INFORMATION

1ST TRUST DEED Lender / Servicer: [REDACTED]  
[REDACTED]  
[REDACTED]  
2ND TRUST DEED Lender / Servicer: \_\_\_\_\_ Loan Number: \_\_\_\_\_  
Type of Loan – 1st Trust Deed (check one): \_\_\_ Fixed \_\_\_ Adjustable \_\_\_ Option ARM \_\_\_ PITI \_\_\_ P&I ONLY  
Balance Owed: \_\_\_\_\_ Interest Rate: \_\_\_\_\_ % Monthly Payment: \_\_\_\_\_

### FORECLOSURE INFORMATION

In Foreclosure:  YES \_\_\_ NO Date Served: [REDACTED]  
[REDACTED]  
Modification Notes (Current/Default When did you get mod): \_\_\_\_\_  
Client 1 Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Client 1 Printed Name: [REDACTED]  
Client 2 Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Client 2 Printed Name: \_\_\_\_\_ [REDACTED]

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## MULTI-PLAINTIFF LITIGATION RETAINER AGREEMENT

Client hires The Residential Litigation Group P.A. (the "Firm") to provide legal services to Client in the matter of conducting litigation for you against your mortgage servicer or lender for violating their legal obligations toward you and to do all things necessary to bring the above-referenced litigation to a conclusion by either settlement or trial. This Agreement shall not extend to appeals, if any, or for any subsequent action necessary after said stated matter as another, separate contract will be required for such representation.

The Firm shall represent you against the financial institutions you have identified on client worksheet upon complete receipt of the retainer set forth below. We shall include you in the legal action against such named mortgage lender(s) and/or servicer(s) and their agents, successors and assigns (hereinafter the "Litigation") and shall proceed to assure that all aspects pertaining to the initiation, negotiation formation, and where appropriate the servicing, of your mortgage are litigated to judgment or best-case settlement (hereinafter the "Representation"). The Firm reserves the right to determine at its sole discretion the venue, defendants, and case for the Litigation. We are not responsible for any appellate work with respect to this Representation absent a separate agreement signed by us. In the event you so direct, the Firm will include you in any trial growing out of the Litigation, but you acknowledge such action to be beyond the scope of this agreement.

Attorneys shall provide those legal services reasonably required to represent Client in the matter described in paragraph 1 of this Agreement. Attorneys shall also take reasonable steps to keep Client informed on significant developments and to respond to Client's inquiries. Client shall be truthful with Attorneys, cooperate with Attorneys, and keep Attorneys informed of developments, perform the obligations Client has agreed to perform under this Agreement, pay scheduled payments on the days scheduled and keep Attorneys apprised of Client's address, telephone number and whereabouts if that information should change during the litigation process.

Until terminated in accordance with its terms or until amended in writing in the manner set forth below, this Agreement and all exhibits appended hereto (hereinafter "Agreement") shall cover the entirety of the Firm's evaluation and/or services in connection with the Representation. In connection with this Agreement, you are hiring the Firm for all matters related to the Representation. Furthermore, you understand and acknowledge that you are responsible to pay all fees and costs set forth below in connection with this Representation and failure to pay represents a reason for withdrawal as counsel under the Washington D.C. Rules of Professional Conduct. We have agreed to the following fee structure and basis for and with respect to all of our services hereunder:

In exchange for our representation of you, services rendered such as consultation and case analysis, our filing a complaint, litigation of and/or negotiation of the complaint and renegotiation of loan terms, foreclosure delay or foreclosure defense and any other acts already performed and to be performed under this Agreement, the Firm shall be paid a fully earned, retainer in addition to monthly installments in the amount set forth on Payment Date and Authorization Information Page.

These payments shall completely satisfy your payment of fees and costs due the Firm as referenced above with the exception of our contingency interest in this case which you agree is thirty percent (30%) of the gross recovery of monetary compensation recovered by you in the lawsuits (if any).

Initials [REDACTED]

## MULTI-PLAINTIFF LITIGATION RETAINER AGREEMENT

The term "gross recovery" shall mean the total amount of monetary recovery received by you as a result of our representation – directly or indirectly and this contingency fee shall also apply to principal reduction of notes but shall not be applied to interest rate reductions or the forgiveness of late fees, court costs and penalties which could result in lower monthly payments to the lender.

We have agreed to the following fee structure and basis for and with respect to all of our services pertaining to the Litigation hereunder: In exchange for our Representation of you in the Litigation, the Firm shall be paid a retainer fee in the amount of \$6,000.00 and a monthly maintenance fee of \$495.00 hundred dollars) dollars over the term of the active litigation. You agree and acknowledge that this flat retainer fee deemed fully earned upon receipt. The monthly maintenance fee provides you with full access to your case management attorney, paralegals and other legal staff for case status updates, in addition to allowing the firm to employ foreclosure delay tactics and/or foreclosure defense\* (Foreclosure Defense is done on a case by case basis in states that require or allow for judicial foreclosure and defense of said actions).

**You will be credited for all fees paid for the retainer fee when the Firm's Contingency Fee is calculated. In the event such sum received is non-monetary and requires valuation, we agree to negotiate in good faith regarding valuation and the judgment and decision of the Firm after such negotiation shall be final.**

### Possible actions to be taken in regard to foreclosure covered under this Agreement

- ▶ Lis Pendens prepared and recorded with the County Recorder prior to foreclosure sale.
- ▶ The compilation and submission of any and all proprietary loss mitigation programs and government loss mitigation programs to stall or stay any bank or mortgage company or servicer foreclosure efforts.
- ▶ Review and analysis for possible filing of Chapter 13 Bankruptcy protection\*

\*\*PLEASE NOTE: Bankruptcy filing is not covered by this agreement, only review of your qualification for bankruptcy is included in services. If, ultimately, you wish to file Bankruptcy a new retainer and accompanying fees will be required to cover those additional services. Our firm does not provide Bankruptcy services and can assist you in finding local Bankruptcy counsel.

In the event it becomes necessary to take action in regard to a pending foreclosure sale, the recurring \$795/month fee will be triggered in order to cover the following services:

- ▶ Use of a foreclosure service to potentially postpone sale date with sale trustee

Initials [REDACTED]

## MULTI-PLAINTIFF LITIGATION RETAINER AGREEMENT

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The Firm shall be entitled to seek recovery of all fees and costs related to the Litigation from the Court, opposing counsel, the opposing parties, or from settlement proceeds, but you shall never be required to pay any other additional fees or costs to the Firm.

Client(s) hereby grants Firm a lien in the event that those sums are not paid directly by the bank or mortgage servicer to The Residential Litigation Group. The lien will attach to the subject property in the amount of the contingency set forth on page 3 paragraph 6 of this Retainer Agreement and will be based on the principle reduction awarded at settlement or through successful outcome of the trial.

You acknowledge that the Firm has not made and will not make guarantees regarding the successful outcome of the litigation, and all expressions we make are matters of opinion only. You agree that you shall not rely upon any statement we make as a guarantee in any way, shape, or form. Rather, you agree that any statement we have made in the past or make in the future constitutes a good faith expression of opinion, is tentative, and is not promissory.

You are not bound to keep the Firm as your counsel by this Agreement and you are free to terminate this Agreement at any time. Should you elect to terminate this Agreement, however, you may be liable to the Firm under applicable law for legal fees owed us.

Any termination of this Agreement by you or us must be in writing sent certified mail return receipt requested. In the event a court proceeding is initiated on your behalf by the Firm, we can only terminate this Agreement in certain rare circumstances. Otherwise, you agree that we can terminate this Agreement for convenience.

Following any termination of this Agreement – whether through its expiration or through a written notice of termination – we shall remain bound to maintain inviolate all Firm-client privileged information absent a lawful reason for the disclosure of such information (e.g., litigation between us).

Upon any termination of this Agreement, (a) no money paid hereunder is terminable or refundable, as all money paid hereunder is deemed as fully earned the moment it has been paid in accordance with the terms hereof and (b) all money you still owe hereunder must be paid in full and (c) any termination under this Agreement shall in no way operate to terminate, modify or otherwise alter in any way any covenants contained herein. You will be expected to communicate and cooperate with lawyers, paralegals, law clerks, and others working with us on your behalf.

If any covenant, condition, term or provision of this Agreement is found by a court of competent jurisdiction to be illegal, or if the application thereof to any person or in any circumstance shall to any extent be judicially determined to be invalid or unenforceable, the remainder of this Agreement, or the application of such covenant, condition, term or provision to persons or in circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each covenant, condition, term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Initials [REDACTED]

## MULTI-PLAINTIFF LITIGATION RETAINER AGREEMENT

The lawyers of the Firm are licensed to practice law in the state of Florida, however, to the extent counsel in other States is considered necessary by the Firm when required, you agree not to unreasonably withhold authorization for us to hire such personnel at our cost. The Firm does not practice law in CA, OR, WV, or WY. Although you will not be required to compensate other lawyers with whom we may associate with your consent, you hereby agree to communicate and cooperate with all lawyers, paralegals, law clerks, legal assistants and others working with us on your behalf. You also expressly consent that all telephone calls you have with all Firm lawyers, paralegals, law clerks, and others working with us on your behalf may be recorded by the Firm for quality control/training purposes.

All parties hereto acknowledge, recite, stipulate, and agree that: (a) time is of the essence hereunder; (b) they have received all approvals necessary under fact or law for them to execute this Agreement and enter into this attorney-client relationship; and (c) they will provide the other in a truthful and forthright fashion with all information necessary for each party to effectively and successfully carry out the terms of this Agreement as applicable to each party.

This Agreement is a binding legal document with significant consequences. All parties hereto stipulate and recite that they have been advised by separate representatives to their satisfaction with regard to the advisability of entering into this Agreement.

While such extensive consideration of fees and the reciting of our mutual responsibilities may seem unduly commercial, we have found that it aids in the development of good relationships with our clients. We look forward to a longstanding, successful, honorable and rewarding relationship as your counsel with regard to these services.

Any individual fees quoted by the Firm are not set by law but are negotiable between the Firm and you. You agree that the initial Fee may be paid through an ACH transfer to Law Offices. Processing of such ACH Transfer shall be made through a third party check or ACH processing service. This Agreement constitutes the entire agreement between the parties and no verbal or other communications or correspondence shall be deemed to be part of the Agreement. This Agreement modifies, changes, and supersedes any and all prior agreements or agreements between you and the Firm, if any, relating to the subject matter of this Agreement. The parties mutually understand and agree that a party's signature on a facsimile or emailed copy of this Agreement shall be deemed an original for all lawfully enforceable purposes. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. No variance, change, modification, or augmentation of this Agreement shall be effective unless and until confirmed in writing between you and the Firm, and the writing must expressly reference this Agreement. If any provision of this Agreement is held to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

Very Truly Yours,  
The Residential Litigation Group

Name \_\_\_\_\_ Title \_\_\_\_\_

Attorney Signature \_\_\_\_\_ Date \_\_\_\_\_

Client Name [REDACTED] \_\_\_\_\_

Client Signature [REDACTED] \_\_\_\_\_ Date 6/4/2012



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## STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

Your attorney is providing you with this document to inform you of what you, as a client, are entitled to by law or by custom. To help prevent any misunderstanding between you and your attorney please read this document carefully.

If you ever have any questions about these rights, or about the way your case is being handled, do not hesitate to ask your attorney. He or she should be readily available to represent your best interests and keep you informed about your case.

An attorney may not refuse to represent you on the basis of race, creed, color, sex, sexual orientation, age, national origin or disability.

You are entitled to an attorney who will be capable of handling your case; show you courtesy and consideration at all times; represent you zealously; and preserve your confidences and secrets that are revealed in the course of the relationship.

You are entitled to a written retainer agreement which must set forth, in plain language, the nature of the relationship and the details of the fee arrangement. At your request, and before you sign the agreement, you are entitled to have your attorney clarify in writing any of its terms, or include additional provisions.

You are entitled to fully understand the proposed rates and retainer fee before you sign a retainer agreement, as in any other contract.

You may refuse to enter into any fee arrangement that you find unsatisfactory.

Your attorney may not request a fee that is contingent on the securing of a divorce or on the amount of money or property that may be obtained. Your attorney may not request a retainer fee that is non-refundable. That is, should you discharge your attorney, or should your attorney withdraw from the case, before the retainer is used up, he or she is entitled to be paid commensurate with the work performed on your case and any expenses, but must return the balance of the retainer to you. However, your attorney may enter into a minimum fee arrangement with you that provides for the payment of a specific amount below which the fee will not fall based upon the handling of the case to its conclusion.

You are entitled to know the approximate number of attorneys and other legal staff members who will be working on your case at any given time and what you will be charged for the services of each.

You are entitled to know in advance how you will be asked to pay legal fees and expenses, and how the retainer, if any, will be spent. At your request, and after your attorney has had a reasonable opportunity to investigate your case, you are entitled to be given an estimate of approximate future costs of your case, which estimate shall be made in good faith but may be subject to change due to facts and circumstances affecting the case. You are entitled to receive a written, itemized bill on a regular basis, at least every 60 days.

Initials [REDACTED]

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## STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES (CONTINUED)

You are expected to review the itemized bills sent by counsel, and to raise any objections or errors in a timely manner. Time spent in discussion or explanation of bills will not be charged to you.

You are expected to be truthful in all discussions with your attorney and to provide all relevant information and documentation to enable him or her to competently prepare your case.

You are entitled to be kept informed of the status of your case and to be provided with copies of correspondence and documents prepared on your behalf or received from the court or your adversary.

You have the right to be present in court at the time that conferences are held.

You are entitled to make the ultimate decision on the objectives to be pursued in your case and to make the final decision regarding the settlement of your case. Your attorney's written retainer agreement must specify under what circumstances he or she might seek to withdraw as your attorney for nonpayment of legal fees. If an action or proceeding is pending, the court may give your attorney a "charging lien," which entitles your attorney to payment for services already rendered at the end of the case out of the proceeds of the final order or judgment. You are under no legal obligation to sign a confession of Judgment or promissory note, or to agree to a lien or mortgage on your home to cover legal fees. Your attorney's written retainer agreement must specify whether, and under what Circumstances, such security may be requested. In no event may such security interest be obtained by your attorney without prior court approval and notice to your adversary. An attorney's security interest in the marital residence cannot be foreclosed against you.

You are entitled to have your attorney's best efforts exerted on your behalf, but no particular results can be guaranteed. If you entrust money with an attorney for an escrow deposit in your case, the attorney must safeguard the escrow in a special bank account. Your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute or upon your request.

Date: 6/4/2012 \_\_\_\_\_

Printed Name: [REDACTED] \_\_\_\_\_

Signature: [REDACTED] \_\_\_\_\_

Initials [REDACTED] \_\_\_\_\_

### PAYMENT DATE & AUTHORIZATION INFORMATION

#### ACH AUTHORIZATION INFO

ACT Bank Name: [REDACTED]

Branch City, State, Zip: \_\_\_\_\_

ACT Holder's Name on Account [REDACTED]

Check Number: \_\_\_\_\_ 9 Digit Bank Routing Number: \_\_\_\_\_

ACT Number: \_\_\_\_\_

ACT Holder's Address of Record with Bank: [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

ACT Type:  Personal Checking  Cashier's Check  Savings

#### CREDIT CARD INFO

Credit Card Holder's Name [REDACTED]

Account Number: [REDACTED]

Expiration Date: [REDACTED] Security Code: [REDACTED]

Credit Card Type:  VISA  MasterCard  Discover  American Express

#### CLIENT INFO

Billing Address: [REDACTED]

City, State, Zip: [REDACTED] [REDACTED] [REDACTED]

#### PAYMENT SCHEDULE

	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Phase 6
True Retainer Fee	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	
Date Owed	6/8/2012	7/9/2012	8/10/2012	9/10/2012	10/8/2012	

Monthly Maintenance Fee \$495.00

Begins on Date: 11/8/2012 Day of Month Billed 8

Customer 1 Signat [REDACTED] Dated: 6/4/2012

Customer 2 Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

LAW OFFICE OF



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WWW.THERESIDENTIALLITIGATIONGROUP.COM

## LETTER OF AUTHORIZATION

Power Granted By: [REDACTED]

Power Granted To: **The Residential Litigation Group**

I hereby authorize and appoint **The Residential Litigation Group**, including any of its attorneys, other staff, or other parties it may designate, as my Attorney in Fact, to do the following on my behalf:

Engage in litigation on my behalf, as may be separately authorized by me in any fully executed retainer agreement, communicate with all parties in any such litigation, communicate with any or all of my creditors, and obtain any information deemed appropriate by **The Residential Litigation Group**, regarding any litigated subject matter, credit matter, loans or lines of credit, or other legal or financial matter that I may separately entrust to **The Residential Litigation Group** under a valid retainer. This may include but not be limited to the balance of said loans, payment history, credit rating, verification of the loans, and other information necessary or appropriate to any said litigation or other legal matter entrusted to said **The Residential Litigation Group**.

**This Letter of Authorization shall remain in force until or unless modified or rescinded in writing.**

Date: 6/4/2012

Printed Name: [REDACTED]

Signature [REDACTED]

Social Security Number: [REDACTED]

Date of Birth: [REDACTED]

Loan Number: [REDACTED]

Initials [REDACTED]



# Payor Services Agreement

Meracord LLC dba Meracord® is committed to helping businesses and consumers by providing payment processing services where there is a written promise between two or more parties. Meracord is not owned or controlled by, or in any way affiliated with your Service Provider.

### CUSTOMER INFORMATION (PLEASE PRINT)

**Customer 1**

[REDACTED] \_\_\_\_\_  
 Last Name

[REDACTED] \_\_\_\_\_  
 First Name

[REDACTED] \_\_\_\_\_  
 M.I.

[REDACTED] \_\_\_\_\_  
 Social Security # or Tax Payer ID #\*

[REDACTED] \_\_\_\_\_  
 Date of Birth (if applicable)\*

[REDACTED] \_\_\_\_\_  
 Street Address

[REDACTED] \_\_\_\_\_  
 City

[REDACTED] \_\_\_\_\_  
 State

[REDACTED] \_\_\_\_\_  
 Zip

[REDACTED] \_\_\_\_\_  
 Phone Number

[REDACTED] \_\_\_\_\_  
 E-Mail Address

\_\_\_\_\_  
 Service Provider

\_\_\_\_\_  
 Service Provider Account ID Number (if applicable)

**Customer 2**

\_\_\_\_\_  
 Last Name

\_\_\_\_\_  
 First Name

\_\_\_\_\_  
 M.I.

\_\_\_\_\_  
 Social Security # or Tax Payer ID #\*

\_\_\_\_\_  
 Date of Birth (if applicable)\*

\*Required by the Bank Secrecy Act and corresponding federal and state Anti-Money Laundering laws.

**1. Authorization for Services.** I hereby authorize Meracord to receive payments from me, hold my money, disburse payments, and provide me with account and transaction information (collectively, "Services") as these Services relate to my agreement with my Service Provider. I understand and specifically acknowledge that Meracord is providing these Services to me as an independent third-party and is not an employee, partner, joint venturer or agent of my Service Provider.

**2. Meracord Fees.** I acknowledge that Meracord charges fees for its Services that are separate from the fees I have agreed to pay my Service Provider. I understand that all of Meracord's fees will be paid by my Service Provider and that I will not be separately responsible for payment of any fees to Meracord. I understand that Meracord may change its fees at any time either with or without advance notice to me.

**3. Payments.** I understand that Meracord accepts electronic payments (ACH, Pay-By-Web, Pay-By-Phone) and non-electronic payments (money orders, personal checks) and payment cards (credit card, debit card) and that the processing fee is based on the payment method I choose. I understand that Meracord does not accept post-dated checks. If I remit a post-dated check and it is processed, I understand that Meracord takes no responsibility for any fees that I may incur as a result.

**4. Disbursements.** I authorize Meracord to disburse money on my behalf according to the terms of the agreement with my Service Provider. I agree to waive, release, and hold harmless Meracord from and against any and all claims and causes of action involving disbursements in reliance on my authorization.

**5. Trust Account.** I understand and agree that my payments will be deposited to, held in, and disbursed from a Meracord Client Trust Account. I acknowledge and agree that the Meracord Client Trust Account is non-interest bearing, which means no interest will accrue on the funds being held on my behalf and I will not be entitled to any interest or other compensation or consideration on those funds on those funds. I understand that my funds being held by Meracord belong to me and that they are separately insured by the FDIC up to the maximum amount.

**6. Account Information.** I understand and agree that my Service Provider will be given access to view my Meracord account information and that Meracord may communicate with my Service Provider about my Meracord account information.

**7. Cancellation.** I understand that, if I want to cancel this Payor Services Agreement and close my Meracord account, I can contact Meracord via: PHONE: 1-800-535-9192; E-MAIL: pas@Meracord.com; MAIL: Meracord, PO Box 2236, Tacoma WA 98401; or FAX: 1-877-830-3177. I understand that all cancellations will be completed within five (5) days of such request and that Meracord will not charge me a fee for cancellation.

**8. Refunds.** If I cancel my Meracord account or otherwise make a request for a refund, Meracord will return to me all funds in Meracord's possession, if any, as of the date my notice is received by Meracord. I acknowledge and agree that my refund will not include amounts already disbursed under the terms of my agreement with my Service Provider, fees that may be owed for work actually performed by my Service Provider as of the date of my cancellation request, and fees already received by Meracord. I understand that refunds will be processed within five (5) days of any request and that Meracord will not charge me a fee for the refund. I agree that, whenever possible, Meracord shall remit any refunds due to me in the same manner in which my payment was made unless otherwise instructed by me in writing.

**9. Release.** I agree to release Meracord and its officers, members, managers, agents and employees from any and all claims, damages, demands, lawsuits, liabilities, losses and any other legal actions or proceedings arising out of a dispute between me and my Service Provider.

**10. Electronic Signature.** In the event that I sign this Payor Services Agreement via electronic means, I acknowledge and agree that my electronic signature on the Payor Services Agreement has the same validity, enforceability and legal effect as if the document had been actually signed by me in writing.

**11. Information Sharing.** The information Meracord collects about me may be shared with other third parties to perform the Services authorized by the Payor Services Agreement. The third parties with whom Meracord may share my information include, but are not limited to: members of the Meracord family of companies (affiliated companies); my Service Provider; my bank or financial institution; Meracord's bank or financial institution; and/or other non-affiliated third parties that may assist Meracord in providing Services to me or that may help Meracord with its business operations. Please review [Meracord's Privacy Policy](#) for additional details and for other types of information sharing.

**12. USA Patriot Act Compliance.** Meracord is a registered Money Services Business (MSB) with the U.S. Department of Treasury. As an MSB, Meracord is required to conduct a review of all account holders against a list maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC). A review of names against an OFAC list is a way of identifying persons who may be using Meracord for money laundering, terrorist or other illegal activities. In order to facilitate this required screening, I agree to provide Meracord with any and all information requested, including, but not limited to, my social security number (SSN)/taxpayer identification number (TIN) and date of birth (DOB). In addition, I understand that Meracord cannot and will not process any payment of \$3,000 or more unless and until I have provided my SSN/TIN and DOB. If I fail to provide my SSN/TIN and DOB when required and/or requested, I understand that Meracord may not process my payment(s) and may terminate this Payor Services Agreement.

**13. Limits on Services.** I understand that Meracord is not an owner, employee, contractor, partner, joint venturer, or agent of my Service Provider. Meracord is a completely separate and unrelated company. I understand and acknowledge



that Meracord does not provide any legal services to me. I further acknowledge that Meracord is not responsible for any of the following: (A) the correctness, completeness or legal sufficiency of the contract between me and my Service Provider; (B) notifying my Service Provider of my non-payment; (C) performing

any act not expressly set forth in the Payor Services Agreement, even if such act is described in the contract between me and my Service Provider; (D) my failure to make full payments when due; or (E) any aspect of the contract between me and my Service Provider. Meracord's responsibilities are expressly limited to those set forth in the Payor Services Agreement.

**14. Limitations on Liability.** Meracord will be responsible only for the exercise of ordinary care in providing the Services and shall be released from all further liability. Under no circumstances will I be entitled to receive any consequential, incidental or punitive damages of any sort against Meracord. I agree to release Meracord and its officers, members, managers, agents and employees from any and all claims, demands and damages arising out of a dispute between me and my Service Provider. In no event will Meracord be liable for any act or omission of any third party, including, but not limited to, my financial institution; Meracord's financial institution; any third party service provider; any provider of telecommunications services, internet access,

or computer equipment or software; any mail or delivery service; any payment or clearinghouse system; any directive of any regulatory authority; or, for any circumstance beyond Meracord's control (including but not limited to, fire, flood, other natural disaster, war, act of terror, riot, strike, act of civil or military authority, equipment failure, computer virus, infiltration or hacking by a third party, or failure or interruption of electrical, telecommunications or other utility services).

**15. Indemnity.** I agree to indemnify and hold Meracord, its officers, managers, members and employees harmless from any and all claims, damages, demands, liabilities, suits, losses, other legal actions and proceedings, and expenses of any kind or nature, including, but not limited to, reasonable costs and attorneys' fees, arising out of or in any way related to the provision of Services to me, unless such claims, damages, demands, liabilities, suits, losses, other legal actions and proceedings, and expenses arise out of Meracord's failure to exercise ordinary care in providing Services to me. I agree to pay Meracord upon demand for said items.

**16. Interpleader.** In the event of a dispute between, or conflicting instructions from, me and my Service Provider, Meracord shall have the right to discontinue Services to me until such time as Meracord is notified in writing by me and my Service Provider that the dispute is resolved and/or the right to terminate my Payor Services Agreement. If the dispute involves funds in Meracord's possession received from me, Meracord may, at its sole election, retain the disputed funds in Meracord's non-interest bearing Trust Account or begin an interpleader action in a court of Meracord's choosing. I agree to indemnify and hold Meracord harmless for any costs, damages, attorneys' fees, employee time, expenses, and liabilities sustained in connection with such a dispute, including any attorneys' fees or costs arising out of a court action of interpleader. I agree to pay Meracord upon demand for said items.

**17. Bankruptcy.** If Meracord receives written notification that I have filed for bankruptcy protection, Meracord will take reasonable steps to notify my Service Provider; will cease all further debits from my designated bank account; will make no further disbursements on my behalf; and, will return all funds, if any, being held on my behalf in Meracord's Client Trust Account. If written notice is received by Meracord while a scheduled debit is "in process," Meracord will reverse the debit as soon as legally practical. Meracord is not responsible, or

liable to me, for any payments that were received from me or disbursed by Meracord prior to receipt of written notice of my bankruptcy filing.

**18. Amendments to the Payor Services Agreement.** Other than as specifically set forth in Paragraph 2, I agree that Meracord can amend the Payor Services Agreement, in whole or in part, at any time by posting the revised Payor Services Agreement on its website and/or by otherwise notifying me of such revisions. I further agree that any such revisions will supersede any and all previous versions of the Payor Services Agreement and will be immediately binding upon me as if they bear my signature. If I decide not to be bound by the revised Payor Services Agreement, I may cancel my Meracord account by following the procedures outlined in Paragraph 7 herein.

**19. Death.** Upon notification of the death of a Meracord account holder, Meracord will hold funds of the decedent, if any, in its non-interest bearing Trust Account until such time as Meracord, in its sole discretion, has sufficient documentation to establish rightful successor ownership.

**20. Unclaimed Property.** If no activity has occurred on my account within the time period specified by law and Meracord is unable to return funds in its possession belonging to me or my lawful successor-in-interest, my funds will be escheated in accordance with the applicable state's Unclaimed Property law. Once funds have been turned over to the applicable state, Meracord has no further responsibility for such funds.

**21. Arbitration.** In the event of a dispute or claim relating in any way to the Payor Services Agreement or the Services, I agree that such dispute/claim shall be resolved by binding arbitration, in the county in which I reside, in accordance with the American Arbitration Association's (AAA) Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer-Related Disputes. For claims of \$10,000 or less, I may choose whether the arbitration proceeds in person, by telephone, or based only on submissions. Alternatively, and in lieu of binding arbitration, I may bring my claim in the small claims court in the county in which I reside. The decision of the arbitrator will be final and subject to enforcement in a court of competent jurisdiction.

**22. Class Action Waiver.** I acknowledge and agree that binding arbitration (or small claims court action as described in Paragraph 21 above) as agreed to above will provide me with a fair and low cost method of addressing any dispute that arises between me and Meracord. I therefore waive any right I might otherwise have to participate in class action litigation or class action arbitration. I agree that all of my disputes with Meracord must be pursued by me individually and not by me in a representative capacity for others.

**23. Entire Agreement; Severability.** The Payor Services Agreement constitutes the entire understanding between me and Meracord. If any provision of the Payor Services Agreement is held by a court to be invalid or unenforceable for any reason, such provision shall be struck and the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired in any way. In the event part or all of Paragraph 21 is struck, I agree that all disputes or claims that are not subject to arbitration shall be brought in the county in which I reside, subject to Paragraph 22 above, and this Payor Services Agreement shall be governed by the laws of the state in which I resided at the time it was executed.

**24. Survival.** In the event of any termination or expiration of the Payor Services Agreement by me or Meracord for any reason, Paragraphs 1, 5, 8, 9, 11, 13-16 and 19-24 shall survive in their entirety.

By signing the Payor Services Agreement and by using the Meracord Services, I consent to, and acknowledge that I understand the provisions contained in the Payor Services Agreement.

I HAVE READ, UNDERSTAND AND VOLUNTARILY AGREE TO THE ABOVE TERMS OF THIS PAYOR SERVICES AGREEMENT.

DocuSigned by: [REDACTED]

6/4/2012

Customer 1 Signature

Date

Customer 2 Signature

Date

Please review this document carefully, make a copy of the signed Payor Services Agreement before returning it, and keep a copy of it with your other important records.



ACH DEBIT PAYMENTS

Bank Name [Redacted] Bank Account Number [Redacted] Bank Routing Number [Redacted]
\$1,200.00 \$495.00
First Payment Amount (\$000.00) 6/8/2012 Recurring Payment Amount (\$000.00) or circle N/A 8
First Payment Date (MM/DD/YYYY) Recurring Payment Date (DD) or circle N/A
Bank Account Type [ ] Savings [X] Checking

I authorize Meracord to initiate recurring Automated Clearing House (ACH) debits from, and credits to, my designated bank account identified above and I authorize the depository financial institution named above to process said entries. I understand that debits will be withdrawn on the payment dates noted above unless otherwise instructed by me, and that sufficient funds must be available in my designated bank account prior to the payment due date.

CREDIT/DEBIT CARD PAYMENTS

Payment Card Type: [ ] VISA [ ] MasterCard [ ] American Express [ ] Discover
Account Number (LAST 4 DIGITS ONLY) [Redacted] Card Expiration Date: [Redacted]
Name as it Appears on Payment Card: [Redacted]
Billing Address: [Redacted]
First Payment Amount: \$ \$1,200.00 Recurring Payment Amount: \$ \$495.00
First Payment Date: 6/8/2012 Recurring Payment Date: 8

AUTHORIZATION FOR RECURRING PAYMENTS

I authorize Meracord to make recurring charges to my payment card account identified above (which is identified more specifically in the Payment Card Information Form maintained by my Service Provider) and, if necessary, to initiate adjustments for any transaction(s) credited or debited in error.

I acknowledge that the information above is true and correct and that recurring payments are authorized by me.

DocuSigned by: [Redacted] 6/4/2012
Customer 1 Signature Date Customer 2 Signature Date

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CONSUMER FINANCIAL  
PROTECTION BUREAU

Plaintiff,

v.

NAJIA JALAN, et al.,

Defendants.

CASE NO. SACV 12-2088 AG (ANx)

ORDER GRANTING APPLICATION  
FOR DEFAULT JUDGMENT AND  
MOTION FOR CONTEMPT

Plaintiff Consumer Financial Protection Bureau (the “CFPB” or “Plaintiff”) sued Defendants Najia Jalan, Richard K. Nelsen, and National Legal Help Center, Inc. (“NLHC”) (together “Defendants”), alleging that they ran an unlawful mortgage relief scheme that preys on financially distressed homeowners. In December 2012, the Court issued a temporary restraining order (the “TRO”) and then a preliminary injunction (the “PI”) freezing Defendants’ assets, appointing a receiver to take over NLHC and its related entities, prohibiting Defendants from carrying out their mortgage relief assistance activities, and imposing reporting requirements, among other things.

The CFPB filed an Application for Entry of Default Judgment (“Motion for Default Judgment”) against Defendants. (Application for Default Judgment (“Motion for Default

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1 Judgment”), Dkt. No. 49.) The CFPB also filed a Motion for an Order to Show Cause why the  
2 Court should not hold one of the defendants and two non-parties in contempt for violating the  
3 TRO and PI. (Motion for Contempt, Dkt. No. 47.) The CFPB seeks contempt against  
4 Defendant Jalan, non-party Kari S. Simmons, and non-party United National Mortgage  
5 Protection Center and National Consumer Assistance Center (“UNMPC-NCAC BT” or  
6 “UNMPC”), a Nevada business trust. The Court granted the request for an order to show cause.

7 The Court now GRANTS both the Motion for Default Judgment and the request to hold  
8 Jalan, UNMPC, and Simmons in contempt, subject to the findings stated in this Order.

9  
10 **BACKGROUND**

11 **A. PRE-FILING CONDUCT BY DEFENDANTS**

12 The facts in this section come primarily from the Complaint. At the default judgment  
13 stage, “[t]he general rule of law is that . . . the factual allegations of the complaint, except those  
14 relating to the amount of damages, will be taken as true.” *Geddes v. United Fin. Grp.*, 559 F.2d  
15 557, 560 (9th Cir. 1997).

16 Defendants Jalan, NLHC, and Nelsen operated an unlawful scheme to trick financially  
17 struggling homeowners out of at least \$1.6 million by “deceptively promising foreclosure relief  
18 or mortgage modification that [would] make consumers’ payments substantially more  
19 affordable.” (Compl. ¶ 13.) (“Mortgage” is used in this Order to generally refer to real property  
20 security.) Defendant NLHC, formerly known as iModify Law, Inc. (“iModify”), is a California  
21 corporation formed by Defendant Jalan in January 2011. (*Id.* ¶ 10.) Jalan renamed it “National  
22 Legal Help Center, Inc.” in August 2011. (*Id.*) NLHC’s last known business address is in Santa  
23 Ana, although the company also purportedly had locations in Los Angeles. (*Id.*)

24 Defendants attracted consumers to their scheme by creating and operating approximately  
25 165 different websites, by sending mailers and unsolicited emails, and by making phone calls.  
26 (*Id.* ¶¶ 13, 24.) Many of the websites and mailers falsely stated that Defendants’ purported  
27 mortgage relief services were operated by, approved by, or affiliated with a government agency.

1 (See *id.* ¶¶ 15, 16, 25, 3-35, 38-39.) Some also misrepresented whether Defendants were  
2 affiliated with consumers' mortgage lender or servicer. (See *id.* ¶ 32.)

3 Consumers who responded to Defendants' deceptive websites, emails, and mailers were  
4 generally homeowners who were having trouble making their mortgage payments. (*Id.* ¶ 42.)  
5 Defendants' sales representatives falsely promised many of these consumers that, for an upfront  
6 fee, Defendants would obtain foreclosure relief or a loan modification for the consumer. (*Id.* ¶¶  
7 44-49.) In many cases, Defendants' representatives falsely stated that Defendants were affiliated  
8 with a government entity, that they were a law firm, and that Jalan was a lawyer. (*Id.* ¶¶ 45, 52.)

9 Defendants charged consumers advance fees of \$1,000 to several thousand dollars. (*Id.* ¶  
10 53.) In some cases, Defendants even withdrew additional fees from consumers' bank accounts  
11 without the consumers' authorization or knowledge. (*Id.* ¶ 54.) After taking these advance fees,  
12 Defendants failed to obtain any meaningful foreclosure relief or loan modification for numerous  
13 consumers. (*Id.* ¶¶ 55-56.) Often Defendants failed to even return consumers' calls inquiring  
14 about the status of Defendants' promised services. (*Id.* ¶ 57.) To make matters even worse,  
15 Defendants told some consumers to stop paying their mortgage and stop communicating with  
16 their lender, which often prevented consumers from seeking or obtaining other relief. (*Id.* ¶¶ 50-  
17 51, 58, 60.)

18 Using this scheme, Defendants have taken at least \$1.6 million from consumers since  
19 early 2010. (*Id.* ¶ 14.)

20 Jalan's involvement in the scheme included: serving as President and CEO of NLHC;  
21 registering or owning several of the websites; paying for rent, employees, and services; acting as  
22 an authorized signatory on almost all of Defendants' bank accounts; and regularly  
23 communicating with consumers. (*Id.* ¶¶ 63-66.) Jalan undertook many of these acts using  
24 aliases. (*Id.* ¶ 66.) Nelsen's involvement in the scheme included: serving as Secretary and CFO  
25 of NLHC; regularly communicating with consumers; registering or owning several of the  
26 websites; and acting as an authorized signatory on most of Defendants' bank accounts. (*Id.* ¶¶  
27 68-72.)

28

**B. POST-FILING CONDUCT BY DEFENDANTS AND RELATED NON-PARTIES**

The CFPB filed the Complaint in this case and a request for a TRO on December 3, 2012. The next day, the Court entered a TRO. (Order Granting Ex Parte Application for a TRO (“TRO”), Dkt. No. 14.) The Court entered a stipulated PI on December 10, 2012. (Stipulated Preliminary Injunction with Asset Freeze, Appointment of Receiver, and Other Equitable Relief Order (“PI”), Dkt. No. 22.) The TRO and the PI established a receivership over NLHC, gave the Receiver immediate access to NLHC’s offices (the “Offices”), froze NLHC accounts, and prohibited Defendants from withdrawing or transferring NLHC funds. The TRO and PI also prohibited Defendants and those in concert with them from taking numerous types of actions related to the mortgage relief scheme, including making representations to consumers regarding mortgage relief services or affiliation with the government, demanding or receiving improper advance payments from consumers, or operating websites used for such services. Defendants were also required to provide specific financial information and other documents to the CFPB.

Jalan was served with the Complaint, TRO application, TRO, and PI, both in her individual capacity and as a representative for Defendant NLHC. (*See* Declaration of Elizabeth Boison (“Boison Decl. MDF”), Dkt. No. 49-1; Proof of Service, Dkt. No. 32; Proof of Service, Dkt. No. 33; Declaration of Cole Pritchett (“Pritchett Decl.”), Dkt. No. 47-2; Plaintiff’s Exhibits (“PX”), Dkt. No. 47-2, at 4-A.) Nelsen was served with the Complaint and TRO. (Proof of Service, Dkt. No. 34.) Non-party Kari S. Simmons is a former NLHC employee. (*See* PX4-G, PX4-H.) She was served with the PI on January 7, 2013 and February 19, 2013. (Pritchett Decl. ¶ 4; PX 4-A.) Non-party UNMPC is a Nevada business trust. (PX3.)

The mischief began almost immediately. Jalan withdrew \$9,000 from a NLHC bank account within an hour of accepting personal service of the TRO and, later that evening, she transferred \$500 from a NLHC PayPal account. (PX4-M; PX4-O.) Jalan transferred \$3,000 from the same PayPal account less than a week after. (PX4-O.) The Receiver and the CFPB have demanded return of these funds, but Jalan has not done so. (Declaration of Howard I. Camhi (“Receiver Decl.”), PX1, at ¶¶ 5-6; Declaration of Elizabeth Boison (“Boison Decl. MC”), PX11, at ¶ 3-4.)

1 Simmons created UNMPC as a fictitious business name for herself on December 10,  
2 2012, the day the PI was entered. (PX7.) Simmons and Jalan formed UNMPC-NCAC BT as a  
3 business trust on December 18, 2012. (PX3.) Representatives of UNMPC then began calling or  
4 emailing former customers of NLHC, making the type of misstatements regarding mortgage  
5 relief assistance prohibited by the TRO and PI. (*See, e.g.*, Declaration of Tonga Evans (“Evans  
6 Decl.”), PX6, at ¶¶ 11-18; Declaration of Debra Rose (“Rose Decl.”), PX10, at ¶¶ 16-20.) In  
7 many instances, the representatives told consumers they were affiliated with NLHC or taking  
8 over NLHC’s accounts. (*See, e.g.*, Tonga Decl. ¶¶ 16; Rose Decl. ¶ 16; Declaration of William  
9 Dallas Trott, Jr. (“Trott Decl.”), PX5, at ¶ 27.) Jalan’s and Simmons’ participation in these  
10 communications is evident from the use of their own names, use of Jalan’s aliases, or customers’  
11 identification of their voices. (*See, e.g.*, Transcripts of Phone Calls with Dallas Trott and Tonga  
12 Evans, PX4-G; Trotter Decl. ¶¶ 12-15.) UNMPC used deceptive websites similar to those  
13 forbidden by the TRO and PI. (*See, e.g.*, PX4-B.)

14 Jalan has also failed to provide the financial statements and other information required by  
15 the TRO and PI. (Boison Decl. MC ¶¶ 11-15.)

16 Lastly, the Offices were burglarized on December 5, 2012, shortly after the TRO was  
17 issued and the Receiver changed the locks. (Camhi Decl. ¶¶ 3-4.) There was a second burglary  
18 on December 20, 2012. (*Id.*) The Receiver has stated that the burglar tampered with a forensics  
19 device on Jalan’s computer, and took personal items on Jalan’s desk, some consumers’ files,  
20 banking information, and computer equipment. (*Id.*) The Receiver filed police reports, but the  
21 person or persons responsible have apparently not been identified. (*See id.*)

22 The CFPB presents no evidence that Nelsen has violated the TRO and PI.

23 Jalan filed a petition for Chapter 7 bankruptcy in March 2013. (Plaintiff’s Notice of  
24 Commencement of Chapter 7 Bankruptcy Case, Dkt. No. 38; Jalan’s Opposition to Receiver’s  
25 Ex Parte Application, Dkt. No. 40 (discussing bankruptcy petition).)

1 **MOTION FOR DEFAULT JUDGMENT**

2 The CFPB moves for default judgment against Jalan, NLHC, and Nelsen. The CFPB  
3 seeks a permanent injunction, as well as civil money penalties and monetary relief to compensate  
4 injured consumers. The proposed judgment would award \$2,057,983 against all defendants,  
5 jointly and severally; a \$1 million civil money penalty against Jalan; and a \$50,000 civil money  
6 penalty against Nelsen. None of the defendants opposed the CFPB's Motion for Default  
7 Judgment. The Court GRANTS the Motion for Default Judgment.

8  
9 **1. LEGAL STANDARD**

10 After entry of default, the Court may enter a default judgment. Fed. R. Civ. P. 55(b). For  
11 entry of default, a plaintiff must establish that: (1) the defendant is not an infant, incompetent, or  
12 a member of the armed services; (2) the defendant has been served with the claim; (3) the  
13 defendant has been served with written notice of the application for judgment and the amount  
14 sought; and (4) the court has undertaken any necessary and proper investigation or hearing in  
15 order to enter judgment. *Id.*; *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th  
16 Cir. 1988). Local Rule 55-1 also requires the party seeking a default judgment to file a  
17 declaration containing similar information. *See* L.R. 55-1. Entry of default is inappropriate if  
18 the defendant has appeared and demonstrated a "clear purpose to defend the suit." *Direct Mail*  
19 *Specialists, Inc. v. Eclat Computerized Technologies, Inc.*, 840 F.2d 685, 689 (9th Cir. 1988).

20 Once these required showings are made, the decision to enter a default judgment is  
21 discretionary. *See, e.g., Draper v. Coombs*, 792 F.2d 915, 925-26 (9th Cir. 1986). In making its  
22 decision, a court may consider (1) the possibility of prejudice to the plaintiff; (2) the merits of  
23 plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake  
24 in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default  
25 was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil  
26 Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir.  
27 1986). "The general rule of law is that upon default the factual allegations of the complaint,  
28 except those relating to the amount of damages, will be taken as true." *Geddes*, 559 F.2d at 560.

1 **2. PROCEDURAL REQUIREMENTS UNDER RULE 55**

2 The Court finds that the CFPB has made the required showings under Federal Rule of  
3 Civil Procedure 55(b) and Local Rule 55-1. (*See* Declaration of Elizabeth Boison (“Boison  
4 Decl.”), Dkt. No. 49-1; Proof of Service, Dkt. No. 32 (Complaint served on Jalan); Proof of  
5 Service, Dkt. No. 33 (Complaint served on NLHC); Proof of Service, Dkt. No. 34 (Complaint  
6 served on Nelsen).)

7  
8 **3. ENTRY OF DEFAULT JUDGMENT UNDER *EITEL***

9 The Court addresses each of the *Eitel* factors in turn.

10 **3.1 Risk of Prejudice**

11 Refusing to enter default judgment presents a substantial risk of prejudice to the CFPB,  
12 which is seeking permanent injunctive relief to prevent Defendants from further injuring  
13 consumers and monetary relief to redress consumers’ financial injury to consumers. The  
14 permanent injunctive relief the CFPB seeks is particularly significant here because, as discussed  
15 elsewhere in this Order, there is evidence that at least one of the Defendants has continued to  
16 violate the Court’s TRO and PI by collecting advance fees from consumers using deceptive  
17 practices related to mortgage relief. This factor favors entering default judgment.

18 **3.2 Merits of Plaintiff’s Substantive Claims and Sufficiency of the Complaint**

19 The CFPB’s Complaint alleges numerous violations of the Consumer Financial Protection  
20 Act (the “CFPA”), 12 U.S.C. §§ 5531, 5536, and “Regulation O,” 16 C.F.R. § 1015.2. The  
21 Court finds that the factual allegations of the Complaint, taken as true, adequately support the  
22 alleged violation of these laws. *See Geddes*, 559 F.2d at 560 (holding that, at default judgment  
23 stage, court must take as true factual allegations of the complaint, except those relating to  
24 damages).

25 **3.2.1 CFPA Claim**

26 The Complaint adequately alleges that Jalan, NLHC, and Nelsen qualify as either a  
27 “covered person,” “related person,” or “service provider” under the CFPA. *See* 12 U.S.C. §  
28 5481(6) (defining “covered person” as one who “engages in offering or providing a consumer

1 financial product or service”); 12 U.S.C. § 5481(25)(C)(i) (defining “related person” as  
2 including “any director, officer, or employee charged with managerial responsibility for . . . such  
3 covered person”); 12 U.S.C. § 5481(26) (defining “service provider” as including a person who  
4 “participates in designing, operating, or maintaining the consumer financial product or service”  
5 or who “processes transactions relating to the consumer financial product or service”); *see also*  
6 12 U.S.C. § 5481(19) (defining “person” as “an individual, partnership, company, corporation,  
7 association (incorporated or unincorporated), trust, estate, cooperative organization, or other  
8 entity”).

9 The Complaint also adequately alleges that Defendants engaged in deceptive practices  
10 prohibited by the CFPA. Under the CFPA, it is unlawful for covered persons or service  
11 providers “(A) to offer or provide to a consumer any financial product or service not in  
12 conformity with Federal consumer financial law, or otherwise commit any act or omission in  
13 violation of a Federal consumer financial law; or (B) to engage in any unfair, deceptive, or  
14 abusive act or practice.” 12 U.S.C.A. § 5536. In the analogous context of the Federal Trade  
15 Commission Act, the Ninth Circuit stated that “[a]n act or practice is deceptive if ‘first, there is a  
16 representation, omission, or practice that, second, is likely to mislead consumers acting  
17 reasonably under the circumstances, and third, the representation, omission, or practice is  
18 material.’” *F.T.C. v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009).

19 Defendants made numerous deceptive, material misrepresentations likely to mislead  
20 reasonable consumers. These included false statements that (1) Defendants would obtain loan  
21 modifications for consumers or help them prevent foreclosure, (2) Defendants were an agency of  
22 or affiliated with the government, (3) Defendants were affiliated with or approved by  
23 consumers’ mortgage lender or servicer, and (4) Defendants would provide or obtain legal  
24 representation for consumers. (*See, e.g.*, Compl. ¶¶ 15-16, 25, 33-35, 38-39, 44-49, 52.)

25 The CFPB has also adequately alleged that Defendants engaged in unfair practices under  
26 the CFPA by withdrawing money from consumers’ bank accounts before obtaining consumers’  
27 express consent. *See* 12 U.S.C. § 1015.5(a). (*See* Compl. ¶ 54.)

28 The CFPB’s Complaint adequately alleges that Defendants violated the CFPA.

### 3.2.2 Regulation O Claim

1  
2 Defendants qualify as providers of a “mortgage assistance relief service” who must  
3 comply with the provisions of Regulation O at 12 C.F.R. § 1015, et seq. *See* 12 C.F.R. § 1015.2  
4 (defining “mortgage assistance relief service” as “any service, plan, or program, offered or  
5 provided to the consumer in exchange for consideration, that is represented, expressly or by  
6 implication, to assist or attempt to assist the consumer with . . . [s]topping, preventing, or  
7 postponing any mortgage or deed of trust foreclosure sale for the consumer’s dwelling [or] . . .  
8 [n]egotiating, obtaining, or arranging a modification of any term of a dwelling loan . . .”).

9 The CFPB’s Complaint adequately alleges that Defendants violated Regulation O in at  
10 least four ways. First, Defendants told consumers that the consumers “cannot or should not  
11 contact or communicate with [their] lender[s] or servicer[s].” 12 C.F.R. § 1015.3(a). (*See*  
12 Compl. ¶¶ 108, 50-51, 58, 60.) Second, Defendants have, expressly or by implication,  
13 misrepresented material aspects of their services, including the likelihood of the consumer  
14 getting mortgage assistance results, the time it will take to get results, whether Defendants are  
15 affiliated with the government, and whether the consumer will get legal representation. *See* 12  
16 C.F.R. § 1015.3(b)(1), (2), (3), (8). (*See, e.g.,* Compl. ¶¶ 109, 15-16, 25, 33-35, 38-39, 44-49,  
17 52.) Third, Defendants have failed to make disclosures required by 12 C.F.R. § 1015.4(a)-(c).  
18 (*See* Compl. ¶ 110.) Fourth, Defendants have unlawfully “request[ed] or receive[d] payment”  
19 before completing the proper written agreement described in 12 C.F.R. § 1015.5(a). (*See*  
20 Compl. ¶¶ 53, 107.)

21 The CFPB has adequately alleged that Defendants violated Regulation O.  
22

### 23 3.3 Sum of Money at Stake

24 The money at stake in this case is not disproportionate to the seriousness of Defendants’  
25 actions. The CFPB seeks a monetary relief of \$2,057,983, which is the total amount of money  
26 that Defendants took from consumers, according to a financial and data analysis of Defendants’  
27 bank records and Paypal transaction logs. (*See* Corrected Declaration of Timothy Hanson  
28 (“Hanson Decl.”), Dkt. No. 63-3, at ¶¶ 1-9.) The \$1,000,000 and \$50,000 civil penalties

1 proposed are also fairly proportionate to consumers' financial loss. This factor favors entering  
2 default judgment.

### 3 4 **3.4 Possibility of Dispute concerning Material Facts**

5 The likelihood of dispute concerning material facts is not high in this case. Despite being  
6 served and communicating with counsel for the CFPB, Defendants have not presented any  
7 contrary assertion of facts. The CFPB, on the other hand, has supported its allegations,  
8 throughout this litigation, with numerous declarations and exhibits. Many of the exhibits contain  
9 uncontested copies of written communications and representations by Defendants that strongly  
10 support Plaintiff's assertions that Defendants deceived consumers, among other allegations.  
11 (*See, e.g.*, Exhibits 1-24 to Memorandum of Points and Authorities in Support of Ex Parte  
12 Application for Temporary Restraining Order, Dkt. Nos. 8-10; Exhibit Vol. 1-2 to Motion for  
13 Contempt, Dkt. No. 47.) This factor favors entering default judgment.

### 14 15 **3.5 Excusable Neglect**

16 Defendants have made no claim of excusable neglect. Moreover, excusable neglect is  
17 unlikely given Defendants' awareness of this case, which is evident from their receipt of the  
18 summons and complaint, their appearance for at least one hearing early in the litigation, and their  
19 communications with opposing counsel. (*See* Proof of Service, Dkt. No. 32 (Complaint served  
20 on Jalan); Proof of Service, Dkt. No. 33 (Complaint served on NLHC); Proof of Service, Dkt.  
21 No. 34 (Complaint served on Nelsen); Boison Decl. ¶¶ 3-4, 8 (communications with counsel for  
22 CFPB).) This factor favors entering default judgment.

### 23 24 **3.6 Policy Favoring Decisions on the Merits**

25 The last factor, the federal policy favoring decisions on the merits, is outweighed by the  
26 other *Eitel* factors that lean heavily toward granting the Motion for Default Judgment.  
27  
28

1           **3.7 Conclusion**

2           Overall, the *Eitel* factors favor entering default judgment against Defendants. Jalan’s  
3 bankruptcy petition does not prevent entry of default judgment because actions to enforce a  
4 government agency’s police or regulatory powers are excepted from automatic stays under 11  
5 U.S.C. § 362(b)(4).

6  
7           **4. REQUESTED RELIEF**

8           The CFPB asks the Court to impose injunctive relief, restitution, and civil penalties. All  
9 three are appropriate here.

10  
11           **4.1 Injunctive Relief**

12           The CFPB seeks a permanent injunction that would: (1) prohibit Defendants from  
13 “advertising or selling mortgage assistance relief products or services or assisting others who  
14 do”; (2) “prohibit Defendants from making misrepresentations relating to certain consumer  
15 financial products or services”; (3) require Defendants to substantiate all claims of “benefit,  
16 performance, or efficacy” they make to consumers regarding consumer financial products or  
17 services; (4) “prohibit [Defendants] from disclosing, using, or benefitting from any consumer  
18 information”; (5) “prohibit [Defendants] from attempting to collect payments from their former  
19 customers”; and (6) require Defendants to comply with monitoring provisions. (Motion for  
20 Default Judgment, at 8:19-20; 9:6-7; 9:8-9; 9:9-10; 9:10-11.)

21           The Court finds that the general terms of the injunction the CFPB seeks are appropriate in  
22 this case, considering the substantial evidence of Defendants’ past wrongdoing. Although the  
23 injunction is somewhat more broad than the specific illegal acts alleged in this case, these  
24 broader “fencing-in provisions are needed to prevent similar and related violations from  
25 occurring in the future.” *Trans World Accounts, Inc. v. F.T.C.*, 594 F.2d 212, 215 (9th Cir.  
26 1979) (upholding district court order that “extend[ed] beyond the immediate facts of the decided  
27 case” in analogous context of deceptive practices under the Federal Trade Commission Act).

1 Prevention of future wrongdoing is particularly important in this case, given evidence of Jalan's  
2 continued violation of the TRO and PI, as described at length in this Order.

3 The Court will grant a permanent injunction including the general terms proposed by the  
4 CFPB, subject to review of proposed language by the Court.

#### 6 **4.2 Restitution**

7 The CFPB argues the Court should impose a judgment making Defendants jointly and  
8 severally liable for restitution of \$2,057,983. The CFPA authorizes the Court to grant relief  
9 including restitution, a refund of moneys, and disgorgement or compensation for unjust  
10 enrichment. 12 U.S.C. § 5565(a)(2)(B), (C), (D). The proposed award of \$2,057,983 represents  
11 the total funds Defendants took from consumers from June 1, 2009 to December 5, 2013, minus  
12 payments that were refunded or returned. (Hanson Decl. ¶ 8.) A financial analyst with the  
13 CFPB calculated this amount using records from multiple financial institutions that held NLHC  
14 accounts. (*Id.*) The Court finds this is an appropriate amount of restitution to award. It is also  
15 proper to make all three Defendants jointly and severally liable for the restitution because there  
16 is evidence that Defendants “collaborate[d] or h[ad] a close relationship in engaging in the  
17 violations” of the CFPA and Regulation O. *S.E.C. v. First Pac. Bancorp*, 142 F.3d 1186, 1191  
18 (9th Cir. 1998) (holding that district court properly held codefendants jointly and severally liable  
19 “for their jointly undertaken violations of the securities laws”).

#### 21 **4.3 Civil Penalties**

22 The CFPB requests a civil penalty of \$1,000,000 against Jalan and \$50,000 against  
23 Nelsen. The Court agrees that these penalties are appropriate.

24 The Court may impose civil money penalties under the CFPA. 12 U.S.C. §§  
25 5565(a)(2)(H), 5565(a)(c). The CFPA establishes three tiers of maximum penalties for each day  
26 that a violation occurs or that a person fails to pay: (1) \$5,000 for “any violation”; (2) \$25,000  
27 for reckless violations; and (3) \$1,000,000 for knowing violations. 12 U.S.C. §§ 5565(c)(2)(A)-  
28 (C). In assessing the appropriateness of civil penalties, courts should consider factors including:

1 (A) the size of financial resources and good faith of the person charged; (B) the gravity  
2 of the violation or failure to pay; (C) the severity of the risks to or losses of the consumer,  
3 which may take into account the number of products or services sold or provided; (D) the  
4 history of previous violations; and (E) such other matters as justice may require.

5  
6 12 U.S.C.A. § 5565(c)(3)(A)-(E).

7 The CFPB's proposed penalty of \$1,000,000 for Jalan reflects the lower "any violation"  
8 standard. The CFPB argued this penalty is proper, despite evidence that Jalan acted with greater  
9 culpability, because the \$1,000,000 penalty is in better proportion with the approximately \$2  
10 million consumer loss. Using the "reckless" or "knowing" tier would result in a  
11 disproportionately large penalty. The Court agrees that a \$1,000,000 million penalty is  
12 appropriate, considering the relevant factors in Section 5565(c)(3) and circumstances of the case.

13 The Court also agrees that \$50,000 is an appropriate civil penalty for Nelsen because his  
14 involvement in the scheme was minimal compared to Jalan, he has cooperated with the TRO and  
15 PI, and he has provided a sworn statement of his inability to pay.

16  
17 **4.4 Conclusion**

18 The Court will grant a permanent injunction including the general terms proposed by the  
19 CFPB, subject to review of proposed language by the Court. The Court grants the CFPB's  
20 requests for restitution and civil penalties. The CFPB shall submit a proposed judgment  
21 reflecting these findings.

22  
23 **MOTION FOR CONTEMPT**

24 The CFPB argues that the Court should hold Jalan, UNMPC-NCAC BT, and Simmons in  
25 civil contempt. The Court agrees.

1 **1. LEGAL STANDARD**

2 A district court has the inherent authority to enforce its orders through civil contempt.  
3 *Shillitanti v. United States*, 384 U.S. 364, 370 (1966). Civil contempt “consists of a party’s  
4 disobedience to a specific and definite court order by failure to take all reasonable steps within  
5 the party’s power to comply.” *In re Dual-Deck Video Cassette Recorder Antitrust Litigation*, 10  
6 F.3d 693, 695 (9th Cir. 1993).

7 “Sanctions in civil contempt are permitted for two purposes: (1) to coerce the [contemnor]  
8 into compliance with the court’s order; and (2) to compensate the complainant for losses  
9 sustained as a result of the contumacious behavior.” *Dystar Corp. v. Canto*, 1 F. Supp.2d 48, 58  
10 (D. Mass. 1997) (citing *United States v. United Mine Workers*, 330 U.S. 258, 303-04 (1947)).  
11 “Civil contempt sanctions . . . are only appropriate where the contemnor is able to purge the  
12 contempt by his own affirmative act and ‘carries the keys of his prison in his own pocket.’”  
13 *United States v. Ayers*, 166 F.3d 991, 997 (9th Cir. 1999) (quoting *Int’l Union v. Bagwell*, 512  
14 U.S. 821, 828 (1994)).

15 A party moving for civil contempt must show, by clear and convincing evidence, that: (1)  
16 a court order was in place; (2) the order required certain conduct by the alleged contemnor; and  
17 (3) the alleged contemnor failed to comply with the order. *Federal Trade Comm’n v. Affordable*  
18 *Media LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999). Once the court determines that the movant  
19 has satisfied this three-part showing, “[t]he burden then shifts to the contemnors to demonstrate  
20 why they were unable to comply.” *Id.* at 1239. Substantial compliance with a court order is a  
21 valid defense to civil contempt. *Dual-Deck*, 10 F.3d at 695.

22  
23 **2. ANALYSIS**

24 The Court first considers whether Jalan, UNMPC, and Simmons should be held in  
25 contempt, then the appropriateness of the sanctions proposed by the CFPB.  
26  
27  
28

1           **2.1 Whether Jalan, UNMPC, and Simmons Should Be Held in Contempt**

2           As stated in Background Section of this Order, this Court issued a TRO and PI. The TRO  
3 and PI contain specific and definite terms. UNMPC had actual notice of the TRO and PI based  
4 on the knowledge of Jalan, its trustee. Simmons had actual knowledge of the TRO and PI but  
5 only after they were served on her on January 10 and February 19, 2013. The TRO and PI  
6 expressly bind Jalan. They also bind UNMPC and Simmons because they worked in active  
7 concert with Jalan.

8           The CFPB has established by clear and convincing evidence, through declarations signed  
9 under penalty of perjury and numerous documents, that Jalan, UNMPC, or both, violated the  
10 TRO and PI by withdrawing money from NLHC accounts, continuing to engage in mortgage  
11 relief assistance services, demanding or collecting money from consumers for such services,  
12 operating prohibited websites, and failing to provide the CFPB with required documents. (*See*  
13 *generally* Background Section of this Order.) The CFPB has shown that Simmons violated the  
14 TRO and PI after she was served by engaging in prohibited mortgage relief assistance services,  
15 but the Court disregards alleged violations that occurred before this notice. (*See id.*)

16           Because the CFPB has made the required showing, the burden shifts to Jalan, UNMPC,  
17 and Simmons “to demonstrate why they were unable to comply.” *Affordable Media*, 179 F.3d at  
18 1239. In her opposition, Jalan makes the conclusory statement that she did not violate the TRO  
19 and PI. (Defendant’s Response Re: Order to Show Cause, Dkt. No. 58, at 2:7-8 (“Jalan denies  
20 the allegations and personally has not operated any business seeking advance fees since the  
21 Court granted the temporary injunction.”).) This is insufficient to show Jalan complied or could  
22 not comply. UNMPC and Simmons have not filed any oppositions. The Court concludes that  
23 Jalan, and UNMPC, and Simmons should be held in contempt of this Court’s TRO and PI.

24  
25           **2.2 Whether the Proposed Sanctions Are Appropriate**

26           The CFPB requests both compensatory and coercive sanctions. Courts that hold a party  
27 in contempt should fashion the sanction considering the “character and magnitude of the harm  
28 threatened by continued contumacy and the probable effectiveness of any suggested sanction in

1 bringing about the result desired.” *United Mine Workers*, 330 U.S. at 304. In general, the  
2 district court has wide discretion in determining the appropriate amount of a sanction award.  
3 *Torres v. Goodyear Tire & Rubber Co.*, 867 F.2d 1234, 1240 (9th Cir. 1989) (citing *Kerr v.*  
4 *Screen Extras Guild, Inc.*, 526 F.2d 67, 69 (9th Cir. 1975), cert. denied, 425 U.S. 951 (1976)  
5 (reversed on other grounds)). However, “[s]anctions may be imposed to coerce the contemnor to  
6 comply with the court’s order, but may not be so excessive as to be punitive in nature.”  
7 *Citronelle-Mobile Gathering Inc. v. Watkins*, 943 F.2d 1297, 1304 (11th Cir. 1991). Sanctions  
8 may take the form of a daily fine, compensatory fine, attorneys’ fees or coercive incarceration.  
9 *Id.*

10 As compensatory sanctions, the CFPB asks the Court to (1) order Jalan to pay to the  
11 receivership estate the \$12,500 in funds she withdrew from NLHC accounts after she was served  
12 with the TRO and (2) order Jalan, UNMPC, and Simmons to be jointly and severally liable for  
13 the \$128,500 collected from consumers after the PI was entered. The Court finds these sanctions  
14 to be appropriate to compensate the receivership estate for losses resulting from disobedience  
15 with the TRO and PI.

16 The coercive sanctions the CFPB proposes would give Jalan seven days to purge her  
17 contempt by: (1) ceasing activities related to mortgage assistance relief services, (2) giving to the  
18 receivership estate the \$128,500 collected from consumers after the PI was entered; (3) giving to  
19 the receivership estate the \$12,500 withdrawn from NLHC accounts after the TRO was entered;  
20 (4) complying with the document disclosure requirements of the PI; and (5) providing a sworn  
21 statement that she has completed these tasks. (*See* Motion for Contempt, at 22:23-23-24:10  
22 (detailed description of actions necessary to purge contempt, as proposed by CFPB).) If Jalan  
23 fails to purge her contempt, the CFPB proposes that she be incarcerated until she does. The  
24 Court recognizes that the coercive sanctions proposed by the CFPB are very serious. But this is  
25 an extraordinary case. Considering the clear evidence of Jalan’s serious, repeated violations of  
26 this Court’s orders, it is necessary to impose the coercive sanctions the CFPB proposes.

27 The CFPB proposes coercive sanctions against Simmons of a \$10,000 daily fine if she  
28 does not purge her contempt within seven days. Purging her contempt would require (1)

1 ceasing activities related to mortgage assistance relief services, (2) giving to the receivership  
2 estate the \$128,500 collected from consumers after the PI was entered; (3) complying with the  
3 document disclosure requirements of the PI; and (5) providing a sworn statement that she has  
4 completed these tasks. (*See* Motion for Contempt, at 22:23-23-24:10 (detailed description of  
5 actions necessary to purge contempt, as proposed by CFPB).) The Court agrees that these  
6 sanctions are appropriate, considering the evidence of Simmons' non-compliance balanced  
7 against her relatively less significant involvement, compared to Jalan.

8 In sum, the Court finds the sanctions proposed by the CFPB to be appropriately tailored  
9 to compensate consumers injured by the noncompliance and to impose the necessary coercive  
10 pressure to compel Jalan, UNMPC, and Simmons to comply with the Court's orders. The CFPB  
11 shall file a proposed order consistent with this Order.

12  
13 **DISPOSITION**

14 The Court GRANTS both the Motion for Default Judgment and the Motion for Contempt  
15 against. The CFPB shall file a proposed order consistent with this Order.

16  
17 IT IS SO ORDERED.

18 DATED: July 23, 2013

19  
20 

21 \_\_\_\_\_  
22 Andrew J. Guilford  
23 United States District Judge  
24  
25  
26  
27  
28

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 14-80931-CIV-COHN-SELTZER**

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CONSUMER FINANCIAL PROTECTION  
BUREAU and THE STATE OF FLORIDA,  
Office of the Attorney General,  
Department of Legal Affairs

Plaintiffs,

v.

MICHAEL HARPER, an individual; BENN  
WILLCOX, an individual; MARC HOFFMAN,  
an individual; THE HOFFMAN LAW GROUP,  
P.A. f/k/a THE RESIDENTIAL LITIGATION  
GROUP, P.A., a Florida corporation;  
NATIONWIDE MANAGEMENT SOLUTIONS,  
LLC, a Florida limited liability company;  
LEGAL INTAKE SOLUTIONS, LLC, a Florida  
limited liability company; FILE INTAKE  
SOLUTIONS, LLC, a Florida limited liability  
company; and BM MARKETING GROUP,  
LLC, a Florida limited liability company,

Defendants.

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**DEFAULT JUDGMENT AND ORDER  
AS TO CORPORATE DEFENDANTS**

Plaintiffs, the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) and the State of Florida (“Florida”), commenced this civil action on July 14, 2014, pursuant to: (1) Sections 1054 and 1055 of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5564, 5565; (2) Section 626 of the Omnibus Appropriations Act of 2009, as amended by Section 1097

of the CFPA, 12 U.S.C. § 5538, and the Mortgage Assistance Relief Services Rule, 12 C.F.R. Part 1015 (“Regulation O”); (3) the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Chapter 501, Part II, Florida Statutes; and (4) Florida’s Civil Theft Law, Sections 812.035(5), 812.014, Florida Statutes. On that date, Plaintiffs filed a Complaint for Permanent Injunction and Other Relief (“Complaint”), seeking preliminary and permanent injunctive relief, rescission or reformation of contracts, the refund of monies paid, restitution, disgorgement of ill-gotten monies, civil money penalties, and other equitable relief for Defendants’ acts or practices related to the marketing and sale of mortgage assistance relief services in violation of Regulation O, FDUTPA, and Florida’s Civil Theft Law. Compl., DE 4.

On July 16, 2014, the Court issued an *ex parte* Temporary Restraining Order against the Defendants, which froze the Defendants’ assets and placed The Hoffman Law Group (f/k/a The Residential Litigation Group, P.A.) (“HLG”), Nationwide Management Solutions, Legal Intake Solutions, File Intake Solutions, and BM Marketing Group (together, “Corporate Defendants”) into receivership. DE 13.

The Corporate Defendants failed to file an answer or otherwise defend in this action, and the Clerk entered default against them on September 12, 2014. DE 71, 72.

The Court approved and entered a preliminary injunction against Corporate Defendants on March 2, 2015. DE 131. The Court approved and entered Stipulated Final Judgments and Orders as to each of the Individual Defendants — Michael Harper, Benn Willcox, and Marc Hoffman — on May 5 and May 6, 2015. DE 139, 140, 144.

The court may enter default judgment when a defendant fails to respond to a complaint and court orders and fails to participate in the litigation or cooperate in good faith with the plaintiff. *Tara Prods., Inc. v. Hollywood Gadgets, Inc.*, 449 F. App’x 908, 910–12 (11th Cir.

2011); *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009); *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987). Default judgment is appropriate here against Corporate Defendants because they have failed to file answers or otherwise appear and defend the claims brought against them. Corporate Defendants' liability is well-pled in the Complaint, and Corporate Defendants have failed to participate in the litigation in good faith. Pursuant to Fed. R. Civ. P. 55(b)(2), upon application by Plaintiffs, the Court now enters a default judgment against Corporate Defendants for violations of Regulation O, 12 C.F.R. Part 1015; FDUTPA, Ch. Part II; and Florida's Civil Theft law, Sections 812.035(5), 812.014, Florida Statutes.

It is therefore **ORDERED, ADJUDGED, AND DECREED** as follows:

**I. Findings**

1. This Court has jurisdiction over the subject matter of this case and over Corporate Defendants pursuant to 12 U.S.C. § 5565(a)(1) and 28 U.S.C. §§ 1331, 1345, and 1367.
2. Venue in the Southern District of Florida is proper under 28 U.S.C. § 1391(b) and 12 U.S.C. § 5564(f).
3. Corporate Defendants have been properly served with the Summons and Complaint.
4. Corporate Defendants have failed to answer or otherwise defend this action.
5. The Clerk entered defaults against Corporate Defendants on September 12, 2014. DE 71, 72.
6. The Complaint states a claim upon which relief can be granted.
7. Because of Corporate Defendants' default, Corporate Defendants are deemed to have admitted the well-pled facts of the complaint and the allegations are taken as true. *Eagle Hosp.*, 515 F.2d at 1307; *Buchanan*, 820 F.2d at 361.

8. Section 1055 of the CFPA, 12 U.S.C. § 5565, as well as Sections 501.207 and 812.035, Florida Statutes, which this Court has supplemental jurisdiction over pursuant to 28 U.S.C. § 1367, empower this Court to order injunctive and other relief, restitution, and civil money penalties.

9. Plaintiffs are entitled to an Order imposing permanent injunctive relief; requiring Corporate Defendants to make restitution of \$11,730,579; and requiring Corporate Defendants to pay civil money penalties.

10. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

***Corporate Defendants Operated as a Common Enterprise***

11. Corporate Defendants operated as a common enterprise, and are therefore jointly and severally liable for the misconduct alleged in the Complaint. Plaintiffs alleged that “the Individual Defendants operated their scheme by using the Corporate Defendants as a common enterprise.” Compl. ¶ 63.

12. Each corporation existed “to participate in the same mortgage relief operation,” with roles ranging from giving “consumers the impression of a legitimate law firm” to “funnel[ing] revenue to non-attorneys,” to operating the “telemarketing boiler rooms that convince[d] consumers to pay HLG’s fees.” Compl. ¶ 64. Corporate Defendants commingled finances; paid each other’s rents; shared a common address; shared employees; and operated under the common control of the same principals: Harper, Willcox, and Hoffman. Compl. ¶¶ 65–68. Corporate Defendants “all exist[ed] for the single purpose of selling consumers mortgage assistance relief services and splitting the profits among the individual defendants.” Compl. ¶ 69. None of the companies had any other business purpose. *Id.*

13. These facts are borne out through documents and testimony gathered in Plaintiffs' investigation, and by the Receiver's investigation of Corporate Defendants since his appointment by the Court. For instance, the Receiver found no evidence of a written contract between Nationwide Management Services and Hoffman Law Group, or any set fee that was charged by Nationwide. Receiver's Initial Report at 16, DE 84 (Sept. 18, 2014). Based on extensive document review and interviews, the Receiver concluded that Corporate Defendants shared services, were controlled by the same three individuals — Harper, Hoffman, and Willcox — and were engaged in a single, common business scheme, with no other sources of revenue. *Id.* at 16–18.

14. Corporate Defendants operated as a common enterprise in effectuating the alleged mortgage relief scheme, and are therefore jointly and severally liable for all of the violations alleged in the complaint. Where one or more corporate entities operate in a common enterprise, each may be held liable for the deceptive acts and practices of the other. *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir.1973); *FTC v. Wolf*, No. 94-8119-CIV-FERGUSON, 1996 WL 812940, \*7–8 (S.D. Fla. Jan. 31, 1996); *Commodity Futures Trading Comm'n. v. Int'l Berkshire Grp. Holdings*, No. 05-61588-CIV-ALTONAGA, 2006 WL 3716390, \*7 (S.D. Fla. Nov. 3, 2006).

15. The Court, in its discretion, enters injunctive and monetary relief, without holding an evidentiary hearing. *Tara Prods., Inc. v. Hollywood Gadgets, Inc.*, 449 F. App'x 908, 911–12 (11th Cir. 2011).

16. Entry of this Order is in the public interest.

*Corporate Defendants Violated Regulation O*

**COUNTS I-IV**

17. The Complaint contains well-pled factual allegations supporting a finding of liability on each of these provisions of Regulation O:

- a. Corporate Defendants offered a service, in exchange for a fee, that purported to assist consumers to prevent the foreclosure of their home or to obtain a loan modification on their home mortgage. Compl. ¶¶ 2, 28–38, 40–42, 45, 73.
- b. Corporate Defendants charged consumers a varying upfront fee, which typically consisted of a \$6,000 initial fee and \$495 per month thereafter. Compl. ¶ 46.  
Defendants Harper and Willcox, two of the principles of the HLG Enterprise, both admitted to those facts. *See* Defendant Michael Harper’s Amended Answer to Complaint ¶ 46, DE 91 (Sept. 23, 2014) (admitting the allegations made in Complaint ¶ 46); Defendant Benn Willcox’s Corrected Amended Answer to Complaint ¶ 46, DE 97 (Sept. 25, 2014) (same admission).
- c. The upfront fees were charged before the consumers had executed a written agreement with the loan holder or servicer that incorporated the offer obtained by the defendants. Compl. ¶¶ 45, 46, 52, 84. Thus, Corporate Defendants’ upfront fees violated 12 C.F.R. § 1015.5(a).
- d. In numerous instances, Corporate Defendants “discouraged consumers from communicating directly with their lenders or servicers and claimed that they [would] handle all communications with consumers’ lenders and servicers. Compl. ¶¶ 48, 86. Corporate Defendants’ representations to consumers about contacting their lenders violated 12 C.F.R. § 1015.3(a).

- e. Corporate Defendants made numerous misrepresentations to consumers about material aspects of the defendants' mortgage assistance relief services. Compl. ¶ 88. For instance, in "numerous instances, the HLG Enterprise . . . encouraged consumers to stop making mortgage payments, and in some instances told consumers that delinquency will demonstrate the consumers' hardship to the consumers' lenders." Compl. ¶ 49. Corporate Defendants did "not disclose that if consumers stop[ped] making mortgage payments, they could lose their homes and damage their credit ratings." *Id.*
- f. Corporate Defendants also misrepresented their staffing and the likelihood that their mass-joiner cases would result in the consumer receiving a loan modification with favorable terms. Compl. ¶ 42. These and other material misrepresentations alleged in the Complaint violated 12 C.F.R. § 1015.3(b)(4).
- g. Corporate Defendants' solicitations to consumers failed to state that:
  - i. The consumer may stop doing business with Corporate Defendants or reject an offer of mortgage assistance, if one is made, without having to pay for the services;
  - ii. Corporate Defendants are not associated with the government or approved by the government or the consumer's lender; and
  - iii. Even if the consumer uses the HLG Enterprise's service, the consumer's lender may not agree to modify the loan.

Compl. ¶¶ 50, 90. Moreover, where any of these disclosures were made, they were not made in a "clear and prominent manner," they were "not preceded by the heading "IMPORTANT NOTICE" or made in the font size required by law. Compl.

¶¶ 51, 90. Thus, Corporate Defendants' failure to provide the required, "clear and prominent" disclosures violated 12 C.F.R. § 1015.4.

18. Given these well-pled allegations and Corporate Defendants' failure to answer or defend, the Court exercises its discretion to enter a default judgment against Corporate Defendants for violations of Regulation O. *See, e.g., CFPB v. Jalan*, No. 12-02088 (C.D. Cal. July 23, 2013) (awarding default judgment against a corporation and two individual defendants for violations of Regulation O and other consumer protection laws).

***Corporate Defendants Violated Florida State Laws***

**COUNT V**

19. The Complaint contains well-pled factual allegations that Corporate Defendants violated FDUTPA. Compl. ¶¶ 96, 98.

20. Pursuant to Section 501.204(1) of FDUTPA, "unfair or deceptive acts or practices in the conduct of any trade or commerce" are unlawful. Florida follows the "standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts." Section 501.203(3)(b), Florida Statutes. To that end, the Florida Supreme Court has noted a deceptive practice is one which "involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances." *See PNR Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So.2d 773, 777 (Fla. 2003).

21. FDUTPA is liberally construed to protect the consuming public from those who engage in deceptive or unfair acts or practices in trade or commerce. *See Fla. Stat. § 501.202(2)*.

22. Whether a representation or practice is deceptive is a matter of judicial determination. *Dept. of Legal Affairs v. Father and Son Moving & Storage, Inc.* 643 So.2d 22, 26 (Fla. 4th DCA 1994).

23. To determine whether a representation is deceptive, courts must consider “the impression created by the representation, not its literal truth or falsity.” *FTC v. Peoples Credit First, LLC*, 2005 WL 3468588 (M.D. Fla. 2005), *aff’d* 2007 WL 2071712 (11th Cir. 2007) (citing *Removatron Int’l Corp. v. FTC*, 884 F.2d 1489, 1496 (1st Cir. 1989) (quoting *Am. Home Prods. Corp. v. FTC*, 695 F.2d 681, 687 (3d Cir. 1982)). Advertising claims are deceptive if they have the capacity to convey misleading impressions to consumers even though non-misleading interpretations may be possible. *Father and Son Moving & Storage*, 643 So.2d at 26.

24. The facts pled in the Complaint allege that Corporate Defendants utilized false and deceptive statements disseminated through websites, direct mailings, television advertisements, and telemarketing sales presentations to induce consumers to pay advance fees, typically in the amount of \$6000, plus monthly fees of \$495 to participate in the purported mass-joinder litigation against mortgage lenders. Compl. ¶¶ 39-46, 52-56, 96.

25. Corporate Defendants led consumers to believe that the mass-joinder litigation had a high likelihood of success, and that plaintiffs in the litigation were likely to receive relief including favorable modifications of the terms of their mortgage, reductions in principal and interest rates, and even recover punitive damages against the lenders. Compl. ¶¶ 41, 42, 45, 53.

26. Through the various methods of sales presentations employed, Corporate Defendants led consumers to believe that HLG was staffed with experienced, competent attorneys who had significant experience in complex tort litigation, and that the attorneys had spent, and would continue to spend, a significant amount of time researching, planning, and pursuing each individual client’s claims in the proposed mass-joinder litigation. Compl. ¶¶ 41, 42, 96.

27. Although litigation was eventually filed on behalf of some clients by other law firms that were hired by Corporate Defendants, the pleadings filed were facially insufficient to obtain the

relief promised to HLG clients, and Corporate Defendants did nothing to move the cases forward once filed. Compl. ¶¶ 53, 56. This was because Corporate Defendants, including the law firm HLG, were controlled mostly by the non-lawyer Individual Defendants, without significant regard for litigation theories, litigation strategy, or even a sound legal basis upon which the litigation would be brought. Compl. ¶ 97

28. Corporate Defendants collaborated in a deceptive scheme to first provide potential clients misleading information about the likely outcomes of the proposed litigation, and who would be actually litigating the matter, in order to convince them to sign up and pay the large enrollment fee, then to continue to deceive the clients about the progress of said litigation in order to continue to collect monthly fees from them. Compl. ¶¶ 46, 52-56.

29. Given these well-pled allegations and Corporate Defendants' failure to answer or defend, the Court exercises its discretion to enter a default judgment against Corporate Defendants for willful violations of FDUTPA, as alleged in Count V by Florida.

### **COUNT VI**

30. The Complaint contains well-pled factual allegations that Corporate Defendants committed Theft, as defined by Section 812.014, Florida Statutes, and Florida seeks civil remedies pursuant to Section 812.035, Florida Statutes. Compl. ¶¶ 103, 107, 109.

31. Corporate Defendants knowingly obtained money from HLG clients through fraud and willful misrepresentation of the benefits of participation in the mass-joinder lawsuits and misrepresenting what clients were paying for. Corporate Defendants obtained payments with the intent to deprive the clients of their money, and these monies were appropriated to the Individual Defendants, and other persons. Compl. ¶¶ 42, 45, 46, 52-56, 103-105, 108.

32. Corporate Defendants made numerous false claims to potential clients about the likely outcome of the litigation in order to induce them to sign up for participation in the mass-joinder litigation. Consumers signed up as clients based on Corporate Defendants' false promises that participation in the litigation would enable them to receive loan modifications and/or help them avoid or stop foreclosure proceedings. Compl. ¶¶ 103, 108.

33. Corporate Defendants' practices of routinely misleading consumers, saying and doing whatever it took in order to collect a fee, knowing that the information was false or not substantiated, combined with the fact that no relief was actually being obtained as promised, demonstrates that Corporate Defendants' sole intent, and the purpose of their existence, was to obtain money from clients which was then appropriated to Corporate Defendants and others not entitled to it, through fraud and deception. Compl. ¶¶ 103-105, 108.

34. Given these well-pled allegations and Corporate Defendants' failure to answer or defend, the Court exercises its discretion to enter a default judgment against Corporate Defendants for Theft, as alleged in Count VI by Florida.

### **COUNT VIII**

35. The Complaint contains well-pled factual allegations that Defendant File Intake Solutions, LLC, falsified or intentionally omitted material information in an application for a Florida commercial telephone seller license, and that doing so violates FDUTPA. Compl. ¶ 126.

36. A violation of FDUTPA may also be based on a violation of "any law, statute, rule, regulation or ordinance which proscribes . . . unfair, deceptive, or unconscionable acts or practices." Section 501.203(3)(c), Florida Statutes.

37. Defendant File Intake Solutions, LLC, filed an application with the Florida Department of Agriculture and Consumer Services in 2013 for licensure as a commercial telephone seller, pursuant to Section 501.605, Florida Statutes. Compl. ¶ 120.

38. The application contained several incorrect answers to certain questions, and information was intentionally omitted from other answers, to questions relating to the business activities of File Intake Solutions, as well as the previous activities of Individual Defendants Benn Willcox and Michael Harper. Compl. ¶ 121.

39. In general, a state has the power to regulate and license certain activities for the purpose of protecting its citizens, and to ensure that businesses do not act in a manner detrimental to the public interest. *See, e.g., United Enterprises v. Dubey*, 128 F. 2d 843 (5th Cir. 1942).

40. Falsifying or omitting material information on an application for a professional license creates an unfair advantage over other businesses that are in compliance with the law, offends established public policy, and is substantially injurious to consumers, as well as competitors, and is therefore a violation of FDUTPA.

41. Given these well-pled allegations and Corporate Defendants' failure to answer or defend, the Court exercises its discretion to enter a default judgment against File Intake Solutions for willfully violating FDUTPA, as alleged in Count VIII by Florida.

### **DAMAGES**

42. The proper measure of consumer redress is the total amount consumers paid to purchase goods or services, less refunds already returned. *McGregor v. Chierico*, 206 F.3d 1378, 1389 (11th Cir. 2000); Order, *CFPB v. Jalan*, No. 12-02088, slip op. at 11 (C.D. Cal. July 23, 2013); *FTC v. Ist Guar. Mortg. Corp.*, No. 09-61840-CIV-O'SULLIVAN, 2011 WL 1233207, \*22 (S.D. Fla. Mar. 30, 2011); *Wolf*, 1996 WL 812940, \*9.

43. Defendants are liable for the entire amount spent by consumers, regardless of whether consumers received anything of value; the relevant factor is the “fraud in the selling, not the value of the thing sold.” *Chierico*, 206 F.3d at 1389 (quoting *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 606 (9th Cir. 1993)).

44. Plaintiffs bear the burden of proving damages and may do so through affidavits and other documentary evidence showing the amount and calculation of damages. *Tara Prods.*, 449 F. App’x at 911–12 (11th Cir. 2011).

45. Plaintiffs have established, through competent evidence, that approximately 2,000 consumers were victimized by and paid money to Corporate Defendants between April 2012 and the end of the scheme.

46. Plaintiffs have further established, through competent evidence, that the consumer victims of Corporate Defendants’ scheme paid at least \$12,608,600 over the lifetime of the scheme.

47. During the same period, consumers received \$878,021 in refunds and returns.

48. As explained in the declaration of Theresa Ridder attached to Plaintiffs’ Motion, these figures were derived from Corporate Defendants’ records, including QuickBooks accounting records obtained through the TRO, and from the records of the defendants’ third-party payment processors and bank statements, obtained through document requests.

49. The net amount, \$11,730,579, represents a reasonable approximation of consumer loss.

50. Because the five Corporate Defendants operated as a single enterprise for purposes of this illegal scheme, the apportionment of proceeds received by the various entities cannot be determined with any certainty.

51. The Court holds the Corporate Defendants jointly and severally liable for the consumer loss caused by the conduct alleged in the Complaint.

## **II. Definitions**

52. The following definitions apply to this Order:

- a. “Affected Consumer” means any consumer who paid the Defendants or their officers, agents, servants, employees, or attorneys for mortgage assistance relief products or services between April 1, 2012, and the Effective Date.
- b. “Asset” means any legal or equitable interest in, right to, or claim to any real, personal, or intellectual property owned or controlled by, or held, in whole or in part, for the benefit of, or subject to access by any Corporate Defendant, wherever located, whether in the United States or abroad. This includes, but is not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares of stock, commodities, futures, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), funds, cash, and trusts;
- c. “Corporate Defendants” means The Hoffman Law Group, P.A. (f/k/a The Residential Litigation Group, P.A.); Nationwide Management Solutions, LLC; Legal Intake Solutions, LLC; File Intake Solutions, LLC; and BM Marketing Group, LLC; and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, successors and assigns.
- d. “Defendants” means the Individual Defendants and Corporate Defendants, individually, collectively, or in any combination, and each of them by whatever names each might be known, and their successors and assigns.

- e. “Effective Date” means the date on which this Order is signed by the Court.
- f. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegee.
- g. “Individual Defendants” means Michael Harper, Benn Willcox, and Marc Hoffman, individually, collectively, or in any combination, and each of them by any other names by which they might be known; and their successors and assigns.
- h. “Person” means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.
- i. “Receiver” means Mark Bernet, Esq., or any person subsequently appointed by this Court as a Receiver in this action.
- j. “Receivership Estate” means the Assets held by the Receiver, in whatever form they exist, pursuant to the Court’s Orders in this matter.
- k. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Defendants based on substantially the same facts as described in the Complaint.
- l. “Termination Date” means December 31, 2015, unless extended by the Court. The Court may extend the Termination Date if it determines the Receivership needs to continue beyond December 31, 2015 in order to pursue viable claims of the Receivership Estate.
- m. The words “and” and “or” will be understood to have both conjunctive and disjunctive meanings as necessary to make the applicable phrase or sentence inclusive rather than exclusive.

**ORDER**

**III. Dissolution of Corporate Defendants**

53. The Preliminary Injunction entered against Corporate Defendants dated March 2, 2015, will remain in effect for the duration of the Receivership.

54. Upon dissolution of the Receivership, the Corporate Defendant entities will be permanently dissolved.

55. The Florida Department of Agriculture and Consumer Services shall cancel the Commercial Telephone Seller license held by Defendant File Intake Solutions, LLC.

**IV. Order to Pay Redress**

**IT IS FURTHER ORDERED** that:

56. A judgment for equitable monetary relief is entered in favor of the Plaintiffs and against Corporate Defendants, jointly and severally, in the amount of \$11,730,579, which represents the monetary value of consumer damages proven through competent evidence.

57. The Receiver's Third Interim Report (DE 134), filed on April 29, 2015, reports that the balance of funds in the Receivership Estate, less administrative expenses and funds required to pursue additional recoveries, is \$655,736.98. Based on that report, Corporate Defendants are ordered to pay \$655,736.98 toward the judgment provided for in Paragraph 56. This monetary judgment is enforceable against any Asset owned by, on behalf of, for the benefit of, or in trust by or for, any Corporate Defendant. Due to the cessation of Corporate Defendants' operations and the permanent dissolution of Corporate Defendants, and the fact that the total value of Corporate Defendants' seized and liquidated Assets is insufficient to pay the full amount of relief ordered in Paragraph 56, the remainder of the monetary relief ordered in Paragraph 56 is deemed uncollectable and suspended.

58. The partial suspension provided in this Section is expressly premised on the truthfulness, accuracy, and completeness of the Receiver's Third Interim Report regarding the balance of funds in the Receivership Estate as of the date of the Third Interim Report. If the Court determines that the Third Interim Report contains any material misrepresentation, omission, or error, then the suspension of the monetary judgment will be terminated, and Plaintiffs can seek to enforce the full monetary judgment entered in Paragraph 56, less any amounts paid under this Section.

59. Any person that holds Assets of any Corporate Defendant shall turn over such Asset to the Receiver within 10 days of receiving notice of this Order.

60. Within 10 days of the Effective Date, the Receiver is ordered to pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, \$655,736.98, in partial satisfaction of the monetary judgment for equitable monetary relief provided for in Paragraph 56.

61. Any funds received by the Bureau in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or the Bureau's agent according to applicable statutes and regulations to be used for redress for injured consumers, including, but not limited to, refund of moneys, restitution, damages or other monetary relief for Affected Consumers, and for any attendant expenses for the administration of any such redress.

62. If the Bureau determines, in its sole discretion, that providing redress to consumers is wholly or partially impracticable or if funds remain after the administration of redress is completed, the Bureau, after notifying Florida, may apply any remaining funds toward other equitable relief (including consumer information remedies) as determined to be reasonably related to the allegations described in the Complaint. Any funds not used for equitable relief will

be deposited in the U.S. Treasury as disgorgement. Corporate Defendants will have no right to challenge the choice of remedies under this Section, and will have no right to contest the manner of distribution chosen.

63. Payment of redress to any Affected Consumer under this Order may not be conditioned on that Affected Consumer waiving any right.

#### **V. Order to Pay Civil Money Penalties on Federal Claims**

**IT IS FURTHER ORDERED** that:

64. Judgment is entered against Corporate Defendants, in favor of Plaintiffs, on Counts I through IV.

65. Under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in the Complaint, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Corporate Defendants must pay a civil money penalty of \$10,000,000 to the Bureau.

66. The civil money penalty paid under this Section will be deposited in the Civil Penalty Fund of the Bureau as required by Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

67. Corporate Defendants must treat the civil money penalty paid under this Section as a penalty paid to the government for all purposes.

68. If Corporate Defendants receive, directly or indirectly, any reimbursement or indemnification from any source, including, but not limited to, payment made under any insurance policy, or if Corporate Defendants secure tax deductions or tax credits with regard to any federal, state, or local tax, the Receiver, on behalf of Corporate Defendants, must: (a) immediately notify the Enforcement Director in writing, and (b) within 20 days of receiving the funds or monetary benefit, transfer the full amount, less fees approved by the court, of such funds or monetary benefit (“Additional Payment”) to the Bureau or to the Bureau’s agent

according to the Bureau's wiring instructions. The Additional Payment will be applied toward satisfaction of the monetary judgments in this Order.

#### **VI. State Civil Penalties**

69. Judgment is entered against Corporate Defendants, in favor of Florida, on Count V for willful violation of FDUTPA, for creation and dissemination of false and misleading statements in direct mail pieces, on the Hoffman Law Group website, and during telephone sales presentations.

70. Corporate Defendants knew or should have known that their conduct violated FDUTPA. The undisputed allegations in the Complaint and competent evidence put forth by Plaintiffs demonstrated that approximately 2,000 clients paid monies to Corporate Defendants based upon their deceptive and misleading practices. Accordingly, a civil penalty of \$3,000 per violation is imposed for a total civil penalty of \$6,000,000 against Corporate Defendants, jointly and severally.

71. Judgment is entered against File Intake Solutions, in favor of Florida, on Count VIII for willful violation of FDUTPA for knowingly submitting a false commercial telephone seller license application to the Florida Department of Agriculture and Consumer Services. File Intake Solutions shall pay a civil penalty of \$5,000 to the State of Florida, General Revenue Fund for this violation.

#### **VII. Additional Monetary Provisions**

**IT IS FURTHER ORDERED** that:

72. In the event of any default on Corporate Defendants' obligations to make payment under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any

outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

73. Corporate Defendants must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Corporate Defendants.

74. Plaintiffs are entitled to reasonable attorney's fees and costs, and the Court retains jurisdiction to determine the amount to be awarded upon subsequent motion.

### **VIII. Cooperation with the Plaintiffs**

**IT IS FURTHER ORDERED** that:

75. The Receiver is directed to cooperate fully to help the Plaintiffs to determine the identity and location of, and the amount of injury sustained by, each Affected Consumer.

### **IX. Liquidation of Receivership Assets and Other Matters Related to the Receivership**

**IT IS FURTHER ORDERED** that:

76. The Receiver is directed to liquidate all remaining Assets of Corporate Defendants.

77. Within 30 days from the Effective Date, the Receiver will make available to the Bureau all documents containing information regarding consumer payments made to Defendants.

78. By November 1, 2015, the Receiver will file an interim report disclosing all Assets of the Receivership Estate and the value of said property; the amount of Receiver's fees and expenses, including any outstanding fees and expenses to be paid from the Receivership Estate; any outstanding claims or judgments of the Receivership or Corporate Defendants and the expected date of payment on those claims, if any; and the amount of money and time needed for the Receiver to collect on any outstanding claims or judgments ("Interim Report"). The Interim Report will inform the Court whether the Receivership needs to continue to exist beyond

December 31, 2015, to pursue viable claims. If the Receiver believes that viable outstanding claims of the Receivership Estate will not be resolved by December 31, 2015, the Receivership will move for the Court for an appropriate extension of the Termination Date.

79. The Receiver is directed to continue to pursue viable Assets of the Receivership until the Termination Date.

80. On the Termination Date, the Receiver will pay any remaining funds in the Receivership Estate, less the Receiver's proposed reasonable fees and costs, to Plaintiffs toward any unpaid penalties and fees set forth in this Order. The payment will be made in accordance with instructions provided by Plaintiffs.

81. On the Termination Date, the Receiver shall file and serve on the parties a report and accounting ("Final Report"). The Final Report must include an accounting of Corporate Defendants' finances and total Assets. Included with the Final Report, the Receiver shall file its final application for payment of fees and expenses associated with its performance of its duties as a Receiver.

82. Ten days after the Termination Date, the Receiver will submit to the Court the Final Report and any objections to the report and the Court will determine if it should issue an order directing that the Receiver:

- a. Pay the reasonable costs and expenses of administering the Receivership pursuant to the Receiver's application for payment of costs and expenses; and
- b. To the extent that funds remain, remit such funds to the Bureau within ten days by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions.

83. Until the Termination Date, if there is any final judgment, consent order, or settlement in a Related Consumer Action, the Receiver must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that any Corporate Defendant paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

84. Upon the transfer of funds pursuant to this Section, the Receivership will be dissolved.

**X. Retention of Jurisdiction**

**IT IS FURTHER ORDERED** that this Court will retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**XI. Service**

**IT IS FURTHER ORDERED** that this Order may be served upon Corporate Defendants by certified mail or United Parcel Service, either by the United States Marshal, the Clerk of Court, or any representative or agent of the Bureau.

**IT IS SO ORDERED**, on \_\_\_\_\_, 2015.

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The Honorable James I. Cohn  
United States District Judge