UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. BAY AREA BUSINESS COUNCIL, INC., a Florida corporation, *et al.*, Defendants.	Civil Action No. 02 C 5762 Judge John W. Darrah
FEDERAL TRADE COMMISSION, Plaintiff, v. SAFE HARBOUR FOUNDATION OF FLORIDA, INC., a Florida corporation, *et al.*, Defendants.	Civ. No. 08 C 1185

STIPULATED ORDER FOR PERMANENT INJUNCTION AND FINAL JUDGMENT AS TO DEFENDANTS PETER J. PORCELLI, II, SAFE HARBOUR FOUNDATION OF FLORIDA, INC., SILVERSTONE LENDING, LLC, AND SILVERSTONE FINANCIAL LLC

Plaintiff Federal Trade Commission ("Commission" or "FTC") has filed a Complaint for Injunctive and Other Equitable Relief ("Complaint") against Defendants Safe Harbour Foundation of Florida, Inc., Silverstone Lending, LLC, Silverstone Financial LLC, Keystone Financial, LLC, Southeast Advertising, Inc., MT25 LLC, Peter J. Porcelli, II, Bonnie A. Harris, and Christopher Tomasulo, for acts and practices in connection with a mortgage foreclosure rescue business. The Complaint alleges that deceptive acts and practices associated with that business violated the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601-1666j (including the

Home Ownership and Equity Protection Act of 1994 ("HOEPA"), 15 U.S.C. § 1639), an implementing regulation of TILA entitled Regulation Z, 12 C.F.R. Part 226, and Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a).

In conjunction with the filing of its Complaint, the Commission also moved this Court for entry of an order holding certain Defendants in contempt of the Order for Permanent Injunction with Monetary Judgment and Other Relief Against Bay Area Business Council, Inc., Bay Area Business Council Customer Service Corp., American Leisure Card Corp., Bay Memberships, Inc., Sr. Marketing Consultants, Inc., Special Technologies, Inc., Peter J. Porcelli, II, and Bonnie A. Harris (the "Porcelli/Harris Order"), entered by this Court on April 14, 2004, and the Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief Against Defendant Christopher Tomasulo (the "Tomasulo Order"), entered by this Court on February 2, 2005, in connection with the case *FTC v. Bay Area Business Council, Inc., et al.*, No. 02 C 5762.

The Commission and Defendants Peter J. Porcelli, II, Safe Harbour Foundation of Florida, Inc., Silverstone Lending, LLC, and Silverstone Financial LLC (the "Porcelli Defendants"), have stipulated to the entry of the following Stipulated Order For Permanent Injunction And Final Judgment As To Defendants Peter J. Porcelli, II, Safe Harbour Foundation of Florida, Inc., Silverstone Lending, LLC, and Silverstone Financial LLC ("Order") in settlement of the Commission's Complaint and contempt action.

NOW, THEREFORE, the Commission and the Porcelli Defendants, having requested the Court to enter this Order, and the Court having considered the Order and being fully advised in the premises, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. The Complaint is an action by the Commission instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Pursuant to this section of the FTC Act, the Commission has the authority to seek the relief contained herein.

2. The Commission's Complaint states a claim upon which relief may be granted against the Porcelli Defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), and Section 108(c) of the Truth in Lending Act, 15 U.S.C. § 1607(c).

3. This Court has jurisdiction over the subject matter of this case and contempt action and the parties hereto. Venue in the Northern District of Illinois is proper. The Porcelli Defendants have been properly served with process.

4. The alleged activities of the Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. The Porcelli Defendants, without admitting the allegations set forth in the Commission's Complaint, agree to entry of this stipulated Order.

6. The Porcelli Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. The Porcelli Defendants further waive and release any claims they may have against the Commission, its employees, representatives, or agents.

7. The Porcelli Defendants agree that this Order does not entitle them to seek or obtain attorney's fees as prevailing parties under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended; and the Porcelli Defendants further waive any right to attorney's fees that may arise under said provision of law. The parties shall each bear their own costs and attorney's fees incurred in this action.

8. Any voluntary bankruptcy petitions filed by the Porcelli Defendants do not

automatically stay this action, which the Court finds is the "commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police or regulatory power," as set forth in 11 U.S.C. § 362(b)(4).

9. Any voluntary bankruptcy petitions filed by the Porcelli Defendants do not divest this Court of jurisdiction to enter this Order against the Porcelli Defendants.

10. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

11. As to Porcelli only, Sections VI through IX below supersede Sections VIII through XI of the Porcelli/Harris Order. All other Sections of the Porcelli/Harris Order shall remain in full effect as to Porcelli. Nothing in this Order shall supercede or otherwise limit the enforceability of any provision of the Porcelli/Harris Order with respect to any person other than Porcelli.

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

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Plaintiff," "Commission," or "FTC" means the Federal Trade Commission.

2. "Defendants" means Safe Harbour Foundation of Florida, Inc., Silverstone Lending, LLC, Silverstone Financial LLC, Keystone Financial, LLC, Southeast Advertising, Inc., MT25 LLC, Peter J. Porcelli, II, Bonnie A. Werner, and Christopher Tomasulo, individually, collectively, or in any combination, by whatever names each may be known.

3. "Porcelli" means Peter J. Porcelli, II, by whatever names he may be known.

4. The "Porcelli Defendants" means Peter J. Porcelli, II, Safe Harbour Foundation of

Florida, Inc., Silverstone Lending, LLC, and Silverstone Financial LLC, by whatever names they may be known, and their successors and assigns.

5. "Corporate Defendants" means Safe Harbour Foundation of Florida, Inc., Silverstone Lending, LLC, and Silverstone Financial LLC, by whatever names they may be known, and their successors and assigns.

6. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, accounts, credits, premises, receivables, funds, and all cash, wherever located.

7. "Assisting others" means providing services to any person or entity that include, but are not limited to: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any sales script or other marketing material; (3) providing, or arranging for the provision of, potential customers; or (4) performing marketing services of any kind.

8. "Consumer" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

9. "Credit-Related Product" means any product, program, or service which is advertised, offered for sale, or sold as a method by which persons may establish or obtain any extension of credit or credit device, including, but not limited to credit cards, loans, or financing,

or as a method to consolidate or liquidate debts.

10. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

11. "Person" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

12. "Clear and conspicuous" or "clearly and conspicuously" shall mean that the information is displayed in a manner that is readily noticeable, readable, and understandable to the audience to whom it is disseminated if the information is conveyed in writing, and stated in a manner that is readily noticeable and understandable to the audience to whom it is disseminated if the information is conveyed orally.

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that the Corporate Defendants, and any entity through which they do business, and their officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, promotion, offering, telemarketing, or sale of any product, program, good or service, are hereby permanently restrained and enjoined from:

A. making a HOEPA loan without regard to the consumer's repayment ability, in violation of Section 129(h) of TILA, 15 U.S.C. § 1639(h), and Section 226.34(a)(4) of Regulation Z, 12 C.F.R. § 226.34(a)(4);

B. including a prohibited "balloon payment" provision in short-term HOEPA mortgage loans, in violation of Section 129(e) of TILA, 15 U.S.C. § 1639(e), and Section 226.32(d)(1) of Regulation Z, 12 C.F.R. § 226.32(d)(1);

C. including a prohibited "negative amortization" provision in HOEPA mortgage loans, in violation of Section 129(f) of TILA, 15 U.S.C. § 1639(f), and Section 226.32(d)(2) of Regulation Z, 12 C.F.R. § 226.32(d)(2);

D. violating the disclosure requirements of HOEPA and Regulation Z by:

1. failing to disclose, or disclose accurately:

(a) the annual percentage rate, in violation of Section 129(a)(2) of TILA, 15 U.S.C. § 1639(a)(2), and Section 226.32(c)(2) of Regulation Z, 12 C.F.R. § 226.32(c)(2);

(b) the amount of any balloon payment, in violation of Section 129(a)(2) of TILA, 15 U.S.C. § 1639(a)(2), and Section 226.32(c)(3) of Regulation Z, 12 C.F.R. § 226.32(c)(3); and

2. failing to furnish the disclosures of the annual percentage rate and amount of any balloon payment clearly and conspicuously in writing at least three business days prior to consummation of a HOEPA mortgage loan transaction, in violation of Section 129(b)(1) of TILA, 15 U.S.C. § 1639(b)(1), and Sections 226.31(b) and (c)(1) of Regulation Z, 12 C.F.R. § 226.31(b) and (c)(1);

E. misrepresenting to consumers the cost of credit or annual percentage rate

("APR") on loans;

F. violating the requirements of TILA and Regulation Z by:

1. failing to make required TILA disclosures in writing before consummating consumer credit transactions, in violation of Sections 121(a) and 128(b)(1) of TILA, 15 U.S.C. §§ 1631(a) and 1638(b)(1), and Sections 226.17(a) and (b) and 226.18 of Regulation Z, 12 C.F.R. §§ 226.17(a) and (b) and 226.18; and

2. failing to disclose, or disclose accurately:

(a) the amount being financed, in violation of Section 128(a)(2) of TILA, 15 U.S.C. § 1638(a)(2), and Section 226.18(b) of Regulation Z, 12 C.F.R. § 226.18(b);

(b) the finance charge, in violation of Sections 106 and 128(a)(3) of TILA, 15 U.S.C. §§ 1605 and 1638(a)(3), and Sections 226.4 and 226.18(d) of Regulation Z, 12 C.F.R. §§ 226.4 and 226.18(d);

(c) the annual percentage rate, in violation of Sections 107 and 128(a)(4) of TILA, 15 U.S.C. §§ 1606 and 1638(a)(4), and Sections 226.18(e) and 226.22 of Regulation Z, 12 C.F.R. §§ 226.18(e) and 226.22;

(d) the payment schedule, in violation of Section 128(a)(6) of TILA, 15 U.S.C. § 1638(a)(6), and Section 226.18(g) of Regulation Z, 12 C.F.R. § 226.18(g);

(e) the total payments, in violation of Section 128(a)(5) of TILA, 15 U.S.C. § 1638(a)(5), and Section 226.18(h) of Regulation Z, 12 C.F.R. § 226.18(h);

(f) the fact that the creditor has or will acquire a security interest in the consumer's principal dwelling, in violation of Section 128(a)(9) of TILA, 15 U.S.C. § 1638(a)(9), and Section 226.18(m) of Regulation Z, 12 C.F.R. § 226.18(m);

G. failing to comply in any other respect with TILA, 15 U.S.C. §§ 1601-1666j, and

Regulation Z, 12 C.F.R. part 226, as currently promulgated or as either hereafter may be amended; and

H. misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase or use any product, program, good, or service.

II. EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in favor of the Commission, and against the Porcelli Defendants, for equitable monetary relief, including, but not limited to, consumer redress, in the amount of Two Million, Seven Hundred Ninety-One Thousand, Forty Dollars and Forty Cents ($2,791,040.40), the estimated minimum total consumer injury from the Defendants' mortgage foreclosure rescue business; *provided however,* that this judgment shall be suspended subject to the conditions set forth in the Section of this Order titled "Right to Reopen";

B. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief. The Porcelli Defendants shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Porcelli Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. The Porcelli Defendants shall have no right to challenge the Commission's choice of remedies under this Part. The

Porcelli Defendants shall have no right to contest the manner of distribution chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture;

C. In accordance with 31 U.S.C. § 7701, as amended, the Porcelli Defendants are hereby required, unless they already have done so, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of the Defendants' relationship with the government. Porcelli is further required, unless he already has done so, to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses that he possesses, which will be used for reporting and compliance purposes;

D. The Porcelli Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. The Porcelli Defendants shall make no claim to, or demand for return of, the funds, directly or indirectly, through counsel or otherwise.

E. The Porcelli Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. The Porcelli Defendants further stipulate and agree that the facts alleged in the Complaint establish all elements necessary to sustain an action pursuant to, and that this Order shall have collateral estoppel effect for purposes of Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A); and

F. Proceedings instituted under this Section are in addition to, and not in lieu of, any

other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

III. RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

A. By agreeing to this Order, the Porcelli Defendants reaffirm and attest to the truthfulness, accuracy, and completeness of the financial statements signed by them (dated August 16, 2009) and provided to the Commission, including all attachments and subsequent amendments and corrections thereto. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of their financial condition, as represented in the financial statements referenced above, which contain material information upon which Plaintiff relied in negotiating and agreeing to the terms of this Order;

B. If, upon motion of the FTC, the Court finds that the Porcelli Defendants failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from their financial statements or supporting documents, the suspended judgment entered in Section II.A shall become immediately due and payable (less any amounts already paid). *Provided, however*, that, in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court; and

C. Any proceedings instituted under this Section shall be in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including but not limited to, contempt proceedings, or any other proceedings that the Commission or the United States might initiate to enforce this Order. For purposes of this Section, the Porcelli Defendants waive any right to contest any of the allegations in the Commission's Complaint.

IV. PROHIBITIONS REGARDING CONSUMER INFORMATION

IT IS FURTHER ORDERED that the Porcelli Defendants, and their officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, mortgage, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with promoting, offering for sale, or selling, directly or indirectly, any Credit-Related Product; and

B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

V. CEASE COLLECTION ON ACCOUNTS

IT IS FURTHER ORDERED that the Porcelli Defendants, and their officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting

directly or through any person, trust, corporation, subsidiary, division, or other device, or any of them, hereby permanently relinquish all claims, rights, and interests in any Asset obtained pursuant to any product or service sold by any Defendant, under any name, and are hereby permanently restrained and enjoined from:

A. Attempting to collect, collecting, or assigning any right to collect payment from any consumer for any product or service sold by any Defendant, under any name, including, but not limited to, any mortgage loan payments, interest, or fees; and

B. Taking any action to establish or enforce any claim, right, or interest as to any current or former customer of any Defendant, including, but not limited to, the following actions:

1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding;

2. Accelerating the due date of any obligation or claimed obligation; filing, creating, perfecting, or enforcing any lien; enforcing any right of setoff; taking or attempting to take possession, custody, or control of any Asset; attempting to foreclose, forfeit, alter, or terminate any interest in any Asset, whether such acts are part of a judicial proceeding, or acts of self-help, or otherwise; and

3. Executing, issuing, serving, or causing the execution, issuance, or service of, any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not.

VI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of (i) monitoring and investigating compliance with any provision of this Order or the Porcelli/Harris Order, and (ii) investigating

the accuracy of any of the Porcelli Defendants' financial statements upon which the Commission's agreement to this Order is expressly premised:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, the Porcelli Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in the Porcelli Defendants' possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;

2. having its representatives pose as consumers and suppliers to the Porcelli Defendants, their employees, or any other entity managed or controlled in whole or in part by any Porcelli Defendant, without the necessity of identification or prior notice; and

C. The Porcelli Defendants each shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order or the Porcelli/Harris Order. The person interviewed may have counsel present.

Provided however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C.

§ 45(a)(1)).

VII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order and the Porcelli/Harris Order may be monitored:

A. For a period of ten (10) years from the date of entry of this Order,

1. Porcelli shall notify the Commission of the following:

a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. Any changes in his employment status (including self-employment), and any change in his ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment; and

c. Any changes in his name or use of any aliases or fictitious names, within ten (10) days of the date of such change;

2. The Porcelli Defendants shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that any Porcelli Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order or the Porcelli/Harris Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order or the Porcelli/Harris Order; or a change in the business name or address, at least thirty

(30) days prior to such change, *provided that*, with respect to any such change in the business entity about which a Porcelli Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of ten (10) years, the Porcelli Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order and the Porcelli/Harris Order. This report shall include, but not be limited to:

1. For Porcelli:

a. His then-current residence address, mailing addresses, and telephone numbers;

b. His then-current employment status (including self-employment), including the name, addresses and telephone numbers of each business that Porcelli is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of Porcelli's duties and responsibilities in connection with the business or employment; and

c. Any other changes required to be reported under Subsection A of this Section; and

2. For the Porcelli Defendants:

a. A copy of each acknowledgment of receipt of this Order or the Porcelli/Harris Order, obtained pursuant to the Section titled "Distribution of Order" in this or the Porcelli/Harris Order; and

b. Any other changes required to be reported under Paragraph A of this Section.

C. Each Porcelli Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.

D. For the purposes of this Order, the Porcelli Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, D.C. 20580
Re: FTC v. Safe Harbour Foundation of Florida, Inc., et al., Civil Action No. 08 C 1885 (N.D. Illinois); and *FTC v. Bay Area Business Council, Inc., et al.*, Civil Action No. 02 C 5762 (N.D. Illinois)

Provided, that in lieu of overnight courier, the Porcelli Defendants may send such reports or notifications by first-class mail, but only if the Porcelli Defendants contemporaneously send an electronic version of such report or notification to the Commission at: DEBrief@ftc.gov.

E. For purposes of the compliance reporting and monitoring required by this Order or the Porcelli/Harris Order, the Commission is authorized to communicate directly with each Porcelli Defendant.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of fifteen (15) years from the date of entry of this Order, for any business that Porcelli controls, directly or indirectly, or in which he has a majority ownership interest, Porcelli and his officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through

any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined from failing to create and to retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order and the Porcelli/Harris Order, including but not limited to, copies of acknowledgments of receipt of this Order or the Porcelli/Harris Order, required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order," and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

IX. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date of entry

of this Order, the Porcelli Defendants shall deliver copies of the Order as directed below:

A. Corporate Defendant: Each Corporate Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

B. *Porcelli as Control Person:* For any business that Porcelli controls, directly or indirectly, or in which he has a majority ownership interest, he must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business, (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order or the Porcelli/Harris Order, and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Porcelli. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

C. *Porcelli as employee or non-control person:* For any business where Porcelli is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order or the Porcelli/Harris Order, he must deliver a copy of this Order to all

principals and managers of such business before engaging in such conduct; and

D. The Porcelli Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each Porcelli Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XI. COOPERATION WITH FTC

IT IS FURTHER ORDERED that each of the Porcelli Defendants shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear, or cause its officers, employees, representatives, or agents to appear, at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, any of the Porcelli Defendants shall appear, or cause its officers, employees, representatives, or agents to appear, and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

XII. SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining

provisions shall remain in full force and effect.

XIII. RETENTION OF JURISDICTION

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

The Commission and the Porcelli Defendants hereby stipulate and agree to entry of the foregoing Order, which shall constitute a final judgment in this action.

IT IS SO ORDERED.

Dated: November 19, 2009

United States District Judge

STIPULATED AND AGREED TO BY:

Dated: Nov. 10, 2009

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Dated: 8/24/09

Peter J. Porcelli, II, individually,
and as an officer;
Safe Harbour Foundation of Florida, Inc.,
Silverstone Lending, LLC, and
Silverstone Financial LLC