FILED by RGS D.C.
NOV 23 2009
STEVEN M. LARIMORE
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S. D. of FLA. – MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No.

09-23543

Federal Trade Commission

Plaintiff,

v.

Truman Foreclosure Assistance, LLC, a Florida limited liability company, **Truman Mitigation Services, LLC**, a Florida limited liability company, **Franklin Financial Group US LLC**, a Florida limited liability company, and **Eli Hertz**, **Benzion Jack Itzkowitz a/k/a Jack Itzkowitz**, and **Richard Zafrani a/k/a Rick Zafrani**, individuals,

Defendants.

CIV-LENARD

MAGISTRATE JUDGE
TURNOFF

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC"), for its complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with the marketing and sale of mortgage loan modification and foreclosure relief services.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq*. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

DEFENDANTS

6. Defendant Truman Foreclosure Assistance, LLC ("Truman Foreclosure") is a Florida limited liability company with its principal place of business at 951 NE 167th St., Suite 234, Miami, FL 33162. Truman Foreclosure transacts or has transacted business in this district and throughout the United States. From approximately October 2008 through at least September 2009, Truman Foreclosure, acting alone or in concert with others, advertised, marketed, distributed, or sold mortgage loan modification and foreclosure relief services to consumers throughout the United States.

7. Defendant Truman Mitigation Services, LLC ("Truman Mitigation") is a Florida limited liability company with its principal place of business at 951 NE 167th St., Suite 234,

Miami, FL 33162. Truman Mitigation transacts or has transacted business in this district and throughout the United States. From approximately October 2008 through at least September 2009, Truman Mitigation, acting alone or in concert with others, has advertised, marketed, distributed or sold mortgage loan modification and foreclosure relief services to consumers throughout the United States.

8. Defendant Franklin Financial Group US LLC ("Franklin Financial") is a Florida limited liability company with its principal place of business at 2185 NE 163rd St., Miami, FL 33162. Franklin Financial transacts or has transacted business in this district and throughout the United States. From at least July 2009 through the present, Franklin Financial, acting alone or in concert with others, advertised, marketed, distributed, or sold mortgage loan modification and foreclosure relief services to consumers throughout the United States.

9. Defendant Eli Hertz is a Manager and the Registered Agent for Truman Foreclosure, Truman Mitigation, and Franklin Financial. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Defendants set forth in this Complaint. Defendant Eli Hertz resides in this district and in connection with the matters alleged herein, transacts or has transacted business in this district.

10. Defendant Benzion Jack Itzkowitz, a/k/a Jack Itzkowitz, is a Manager of Truman Foreclosure and Truman Mitigation. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Defendants set forth in this Complaint. Defendant Jack Itzkowitz resides in this district and in connection with the matters alleged herein, transacts or has transacted business in this district.

11. Defendant Richard Zafrani, a/k/a Rick Zafrani, is a Manager of Franklin Financial. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Defendants set forth in this Complaint. Defendant Richard Zafrani resides in this district and in connection with the matters alleged herein, transacts or has transacted business in this district.

12. From approximately October 2008 through at least September 2009, Truman Foreclosure and Truman Mitigation operated as a common enterprise while engaging in the deceptive acts and practices alleged below. During this time, Truman Foreclosure and Truman Mitigation shared office space and employees, were commonly controlled, and participated in a common scheme to deceive consumers. Because Truman Foreclosure and Truman Mitigation operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below beginning as soon as October 2008 and ending no earlier than September 2009. Individual Defendants Eli Hertz, Benzion Jack Itzkowitz, and Richard Zafrani formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the common enterprise.

13. In or around July 2009, Defendants Eli Hertz and Richard Zafrani formed Franklin Financial. Truman Foreclosure and Truman Mitigation apparently ceased active operations in or around September 2009. At about that same time, Franklin Financial took over the operations of Truman Foreclosure and Truman Mitigation. Franklin Financial and Truman Foreclosure and Truman Mitigation had overlapping ownership and personnel. Franklin Financial markets using a website that is virtually identical to that of Truman Foreclosure.

COMMERCE

14. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

AVAILABILITY OF FREE LOAN MODIFICATION AND FORECLOSURE RELIEF SERVICES

15. Numerous mortgage lenders and servicers have instituted free programs to assist financially distressed homeowners by offering them the opportunity to modify loans that have become unaffordable. Many of these "loan modification" programs have expanded as lenders have increased participation in the federal government's "Making Home Affordable" program, a plan to stabilize our housing market and help up to 7 to 9 million Americans reduce their monthly mortgage payments to more affordable levels. The Making Home Affordable program includes the Home Affordable Modification Program, in which the federal government has committed $75 billion to keep up to 3 to 4 million Americans in their homes by preventing avoidable foreclosures. Moreover, numerous major mortgage lenders and servicers, non-profit and community-based organizations, the federal government, and the news media have helped publicize the availability of these free mortgage loan modification programs. Lenders often notify consumers of the availability of these programs, or of consumers' eligibility, through their "loss mitigation" departments. Defendants divert consumers from these free programs and induce them to spend thousands of dollars on their mortgage loan modification and foreclosure relief services.

DEFENDANTS' BUSINESS PRACTICES

16. Since at least October 2008, Defendants, through a continuation of different companies as described below, have engaged in a course of conduct to advertise, market, offer to sell, and sell to consumers mortgage loan modification and foreclosure relief services. Defendants have marketed their mortgage loan modification and foreclosure relief services through the Internet to homeowners in danger of losing their homes to foreclosure. Defendants' Internet marketing includes their own websites as well as the websites of their branches or affiliates. Defendants then reinforce the claims in videos on www.youtube.com, in handouts and in telephone and email sales pitches.

Defendants' Internet Websites

17. From approximately October 2008 to at least September 2009, Defendants marketed their mortgage loan modification and foreclosure relief services to consumers primarily through Truman Foreclosure's website, www.trumanfa.com. In or about September 2009, Truman Foreclosure apparently ceased active operations; www.trumanfa.com, however, has remained functional through at least part of November.

18. Beginning in about September 2009 and continuing to the present, Defendants continued their operations through Franklin Financial, which was incorporated in July 2009 and began operating as a mere continuation of Truman Foreclosure and Truman Mitigation. Since that time, Defendants have marketed their mortgage loan modification and foreclosure relief services to consumers primarily through Franklin Financial's website, www.franklinfg.com.

19. The Franklin Financial "landing page" that appears when a potential customer clicks on a search-engine result is different from Truman Foreclosure's. However, once a visitor clicks on Franklin Financial's link entitled "Read More," the Franklin Financial website brings

the visitor to a page that is virtually identical to Truman Foreclosure's website, except for slightly different headers, different toll-free telephone numbers, and the name Franklin Financial Group substituted for Truman Foreclosure Assistance. In at least one instance on its website, Franklin Financial neglected to replace the name Truman (*e.g.*, "The Truman Difference").

20. The Truman Foreclosure and Franklin Financial websites invite consumers to contact Defendants regarding their mortgage loan modification and foreclosure relief services. In addition to providing a toll-free telephone number, the websites also encourage consumers to contact Defendants by clicking a link entitled, "Click Here to Save Your Home!" and providing contact and financial information to Defendants or by completing a form entitled, "STOP My Foreclosure EXPRESS Consultation Form" that, when completed, would be submitted to Defendants.

21. Both the Truman Foreclosure and Franklin Financial websites contain statements to induce consumers to purchase Defendants' mortgage loan modification and foreclosure relief services, including the following:

a. With extensive loss mitigation experience, the experts at Franklin Financial Group have the knowledge and the ability to help stop your lender from foreclosing on your home.

b. Our experienced loan modification team will work with you to create a detailed financial analysis and hardship package to show your Lender why it is in their best interest to agree to the terms of your new loan.

c. Franklin Financial Group is led by a seasoned and proved team of professionals.

d. We get your bank to listen to your needs because they know and trust us. We have mitigated many of [sic] home foreclosure cases. That kind of experience gives us credibility with your lender. Over the years we have developed positive working relationships with key people at most banks. Our integrity and professionalism have earned us a reputation that allows us to be heard when no one else can get through the red tape. We will use our experience and connections to your advantage.

e. We have some of the most experienced and well respected specialists in the industry whose sole purpose is to save your home, not buy it, sell it, or send you into bankruptcy.

f. We can help guide you through this daunting process, and put what must be a very unpleasant time in your life to rest once and for all.

g. We will do our utmost to help save your home, your dignity, and your peace of mind.

22. The websites also contain consumer testimonials to induce consumers to purchase Defendants' mortgage loan modification and foreclosure relief services, including the following:

a. When I first called Truman Foreclosure Assistance I felt hopeless. I was behind on my mortgage payments and the bank was already in the process of foreclosing on my home. My consultant was very sensitive to my situation and negotiated with my bank to stop the foreclosure and modify the terms of my loan. I not only got to keep my house but my monthly payments are now lower than they were before. I can't thank you enough.

b. I just wanted to take the time to thank your staff for helping save my house. They were patient with me throughout the entire process and answered all my questions and concerns. I was presented with several options to avoid foreclosure, and we came up with a plan of action that would help me keep my home and most importantly allow me to afford my monthly mortgage payments. I am very satisfied with the solution, and if I am ever in a position to recommend your services, I will certainly refer them to Truman Foreclosure Assistance. Thank you again.

23. Defendants' websites also contain numerous representations that hiring Truman Foreclosure or Franklin Financial entails little risk because their mortgage loan modification and foreclosure relief services are backed with a 100% money back guarantee, including the following:

> **100% Money Back Guarantee** – We stand firmly behind our promise to try and help save your home. Our guarantee insures that if we are unable to negotiate a plan with your lender that improves your situation or gives you a viable strategy to avoid or stop foreclosure, we will refund 100% of your money… **NO QUESTIONS ASKED!**

24. Defendants' websites also contain a 100% Money Back Guarantee Certificate. Franklin Financial's 100% Money Back Guarantee Certificate includes the following representations:

> 100% MONEY BACK
> GUARANTEE
>
> At Franklin Financial we stand firmly behind our promise to try and help you with your foreclosure. Due to the fact that the ultimate decision sits with your lender, we clearly cannot guarantee that your foreclosure will be stopped or avoided. However, we can assure you that if we are unable to negotiate a plan with your lender that betters your situation, or gives you a viable strategy to avoid or stop foreclosure, we will refund 100% of your money*. No questions asked! You have nothing to lose, and everything to gain.
>
> Time is the most critical factor here. Do not hesitate another minute.
> Call us now toll free at 877-40-FRANKLIN
> and receive your FREE foreclosure prevention consultation NOW!

Although the 100% Money Back Guarantee Certificate indicates that Franklin Financial "will refund 100% of your money*," there is nothing on the Certificate explaining what the asterisk means. Truman Foreclosure's 100% Money Back Guarantee Certificate was virtually identical.

Defendants' Websites Marketing to Potential Affiliates

25. From about October 2008 until at least September 2009, Defendant Truman Mitigation focused primarily on recruiting individuals to the business opportunity of establishing a "branch" of Truman Foreclosure.

26. Defendant Truman Mitigation's website, www.trumanmitigation.net, contains statements to induce individuals to become affiliates to sell Truman's mortgage loan modification and foreclosure relief services. These statements include:

a. Truman Mitigation Services LLC is pleased to offer realtors, mortgage brokers, financial consultants, entrepreneurs who are looking to reap the rewards of a booming and extremely lucrative industry, the opportunity to market foreclosure

prevention and loss mitigation services under the Truman Foreclosure Assistance umbrella.

b. You have the ability to take advantage of the experience and back office support that comes with joining our team, while you focus on marketing loss mitigation services to your clients. We offer you full training and all the necessary legal documents to open your doors and start seeing immediate results.

c. In business for over 20 years, no other firm has the experience and background as Truman Mitigation Services.

27. Defendant Truman Mitigation's website contains testimonials to induce potential affiliates to start a Truman branch, including by claiming Truman's success rate is 100%. For example:

a. With the economy drifting towards a recession, I am thankful to Truman Mitigation for the opportunity to be able to open my own loss mitigation branch, and make a sizeable income doing so.

b. Your experienced loss mitigation specialists have made it extremely easy for me and my staff to open our doors and start offering loss mitigation services to the millions of homeowners nationwide facing foreclosure.

c. I highly recommend joining the Truman Mitigation team. Without a doubt they are the most professional loss mitigation company I have ever done business with. They deliver results both for my team and clients, and I can't thank you enough for all the hard work your mitigation team expends to help homeowners facing foreclosure. Your 100% success rate speaks for itself.

28. Defendants represent that Truman affiliates are considered a "branch" of Truman and that all marketing and documentation by affiliates is to be under the Truman name. In addition, affiliates are responsible only for achieving sales and should "leave everything else" to Truman. For example, Defendant Truman Mitigation's website states:

a. **Am I considered a branch of Truman Mitigation?**
Yes. You and your sales team are using the full weight and experience that Truman Mitigation has already established in the Loss Mitigation industry.

b. **When speaking with a new client, who am I and my sales team representing ourselves as?**

You are representing yourself as a Senior Foreclosure Specialist from Truman Foreclosure Assistance. We encourage all sales personnel to invite their clients to review our website at www.trumanfa.com and to check with the BBB, D&B, and the Miami Chamber of Commerce as to the legitimacy of our company. All emails, paperwork, including all proper disclosures, are to be generated in the name of Truman Foreclosure Assistance.

c. **Am I required to do all of the loss mitigation work with each lender?** Absolutely not! That is why you are joining the Truman Mitigation partnership program. Your objective should be to build a team of seasoned sales people to drive as much sales as possible through your branch, and leave everything else including mitigation, customer support, billing, etc. to Truman Mitigation.

Defendants' Affiliates' Websites

29. Defendants also market their mortgage loan modification and foreclosure relief services to consumers through the websites of their affiliates, or branches. These affiliate websites include: www.trumanmodifications.com, www.franklinhomeassist.com, www.trumanassistance.com, www.trumanfg.com, www.trumanlm.com, www.TrumanMS.com, and www.TrumanFANY.com. Each of these websites is virtually identical in structure and content to www.trumanfa.com and www.franklinfg.com and indicates that the material is copyrighted by Defendant Truman Foreclosure.

30. The affiliate websites make many of the same representations found in www.trumanfa.com and www.franklinfg.com as set forth in ¶¶ 20- 22. In addition, some affiliate websites include some unique representations to induce consumers to purchase Defendants' mortgage loan modification and foreclosure relief services, including the following:

a. The single-most important factor in stopping your foreclosure is SPEED! Time is not your friend. Since you don't have a lot of time, our counselors know exactly what to do and will work diligently with your lender in order to stop Your Foreclosure Quickly! Don't go through this alone. You need professional help at a time like this.

b. All of our loss mitigation staff are well versed in the intricacies of loan modifications.

c. We start working for you from the initial call. Our Foreclosure Specialists will gather and analyze your information and begin to prepare a strategic plan to help save your home. With plan in hand, our Mitigation Team will negotiate with your lender to stop your foreclosure, so you don't have to! Because we know and work with all lenders regularly, they are very receptive to us and our clients. We know how to present your situation to them so that you end up with the best solution and outcome.

31. The affiliate websites also repeatedly represent that they have a 100% money back guarantee. Indeed, many of the affiliate websites make the same representation as www.trumanfa.com and www.franklinfg.com as set forth in ¶ 23 and provide a link to a 100% Money Back Guarantee Certificate that is substantively identical to the one set forth in ¶ 24.

Handouts

32. Defendants, either directly or through their affiliates, also market their mortgage loan modification and foreclosure relief services through a handout distributed by at least one affiliate. The front of this handout represents that: "9 out of 10 Homeowners are able to modify their modify their existing mortgage and lower their payments." The handout also tells consumers that "You must act immediately!"

33. On the back of the handout is a header that reads: "URGENT NOTICE: Please Call Immediately!" Below and to the right of this header is a circle that resembles a seal. In the center of the circle is "100%" written in a bold, black font. Surrounding the "100%" is a black ring with the phrase "MONEY BACK GUARANTEE" written in white letters. Directly below the 100% money back guarantee circle, Defendants represent: "We have a **99% success rate** working with you and your lenders to restructure your current loans with a unique professional plan that everyone can accept." At the lower left corner is the Truman Foreclosure Assistance logo. The bottom of the back page refers consumers to Truman Foreclosure's address at 951 N.E. 167th Street, Suite 234, Miami, Florida 33162.

YouTube Videos

34. Defendants, either directly or through their affiliates, also market their mortgage loan modification and foreclosure relief services through videos on www.youtube.com. In at least one of these videos, it appears that the target audience is potential consumers and clients of Truman's mortgage loan modification and foreclosure relief services. In this video, a purported consumer named "Diane" gives a testimonial regarding her experience with Truman Foreclosure. The video is entitled, "Rick Saves Diane's Home." In the video, "Diane" states:

> My name is Diane. I was late on my mortgage payments. The bank was going to take my home away. I was so scared my children would be out on the streets. I didn't know what to do. Then I called the Chamber of Commerce and they referred me to Rick from Truman Modification. Rick saved my home. I'm sure he could save yours, too.

35. In other videos on www.youtube.com, the Defendants apparently are targeting potential affiliates or branches. Defendants pitch their company to these potential affiliates, telling them: "There might be a crisis in this country, but there is no crisis for the loan modification industry. And we have prepared a program to make it very easy for you to make money and sell." These videos are publicly available, so that consumers, as well as potential affiliates, can view the videos.

36. Appearing in many of these videos is Defendant Richard Zafrani. In these videos, Defendant Richard Zafrani repeatedly indicates that he is talking on behalf of Truman Foreclosure. The affiliate marketing videos are entitled: "Rick Zafrani The Loan Mod Man," "What A Great Time To Make Some Money," and "The ISA Income Opportunity." In addition, there are six "instructional" videos in which Defendant Richard Zafrani explains how Defendants convince consumers to buy their mortgage loan modification and foreclosure relief services.

37. In these videos, Defendant Richard Zafrani makes a variety of statements regarding Defendants' ability to save consumers' homes from foreclosure and obtain mortgage loan modifications, including the following:

a. We can help you save your home, reduce your monthly payments, lower your interest rates, and many times reduce your principal loan amount. We've done it for over 10,000 people, and our success rate is 97 percent.

b. We're a team of experts with over 20 years experience in real estate and mortgages.

38. In these videos, Defendant Richard Zafrani also makes a variety of statements regarding Defendants' 100% money back guarantee, including the following:

a. And we also include a 100 percent -- I should say a money back guarantee that is part of our credentials.

b. And we have something nobody else will offer you. We have a 100 percent money back guarantee. That's right. And we'll put it in writing.

c. But we do this and we put it in writing and, as I said before, it comes with a money back guarantee, meaning that in the event that we do not fulfill our promise, we will give back their money. Except for a processing fee, the rest of the money all goes back to them.

d. And we back our services with our money back guarantee. And we also put that in writing.

e. Remember, the fee comes with a money back guarantee except for the processing fees. And in other words, in the event that we do not get your loan modified or better your current mortgage situation, we will refund your money and we put it in writing. Not many companies will do that.

Telemarketing and Email Sales Pitch

39. Consumers who call the toll-free number in response to Defendants' website speak with Defendants' or Defendants' affiliates' telemarketers. After hearing sales pitches from Defendants' representatives, in numerous cases, consumers are led to believe that they are virtually guaranteed a modification. Defendants' representatives routinely tout that the company

has an exceptionally high success rate in negotiating loan modifications. Defendants' representatives frequently claim that 97% to 100% of Defendants' clients get loan modifications.

40. In numerous instances, Defendants' representatives also tout Defendants' 100% money back guarantee. On his website, rickzafrani.squarespace.com, Defendant Richard Zafrani provides information to potential affiliates, including a telemarketing script, which instructs telemarketers to say: "Let's go over your income and expenses and find out if you qualify. Remember that if you qualify not only will we get your loan modified but we will guarantee it."

41. In numerous instances, Defendants' representatives gather detailed financial information about the consumer's mortgage and income. After consumers provide this information, Defendants' representatives often claim that the consumers are excellent candidates for a modification or tell consumers that Defendants guarantee them a loan modification.

42. In numerous instances, Defendants' representatives tell consumers that Defendants are affiliated with a law firm, a law group, or attorneys. However, Defendants' representatives assure consumers that Defendants will be performing the mortgage loan modification and foreclosure relief services on their behalf and will be negotiating with their lender.

43. In numerous instances, Defendants' representatives explain that Defendants require the payment of fees, which range from $1,500 to $3,000. Defendants require that consumers pay at least one-half of the fee up front. Some consumers pay the entire amount up front, while others pay the remaining portion of the fee in two to four installments within a month after the first payment.

44. In numerous instances, Defendants' representatives also advise consumers not to communicate with their lenders, as that could interfere with Defendants' negotiations. In some

instances, Defendants' representatives also advise consumers not to make further payments on their mortgage.

45. After the initial phone call with a consumer, Defendants send the consumer an email with additional information regarding Defendants' mortgage loan modification and foreclosure relief services. In many instances, the email includes additional representations about Defendants' ability to save consumers' homes or modify their mortgages as well as additional representations regarding the 100% money back guarantee. For example, Defendants represent that:

> With a 99% success rate, our loss mitigators are among the most experienced in the industry. They will negotiate with the bank on your behalf to ensure the best possible outcome – **or your money back GUARANTEED!**

46. In numerous instances, Defendants' email also includes documents for the consumer to complete and return to Defendants. Typically, one of these documents is the payment authorization form. Another document is the Attorney Retainer Agreement. Collectively, these documents purportedly provide that consumers become clients of law firms or legal groups affiliated with Defendants and further require that consumers pay the up-front fee to these law firms or legal groups. In truth and in fact, these law firms or legal groups do little or no substantive work relating to mitigating consumers' mortgages. Instead, according to a contract between Truman Foreclosure and one of its affiliated law firms, the law firm hired Defendants to perform mortgage loan modification and foreclosure relief services for their purported clients. Florida law prohibits payment of up-front fees to foreclosure rescue consultants, but makes an exception for an attorney who provides foreclosure rescue-related services as an ancillary matter to the attorney's representation of a homeowner as a client.

Consumer Harm

47. In numerous instances, after homeowners have paid Defendants' fee, Defendants have failed to answer or return homeowners' telephone calls or provide updates about the status of Defendants' communications with the homeowners' lenders or servicers. In many instances, after weeks or sometimes months of unreturned calls and emails, consumers disregard Defendants' request that they not contact their lender. When consumers speak with their lenders directly, they often discover that Defendants had not yet contacted the lender or only had left messages or had non-substantive contacts with the lender. At times, homeowners who have contacted their lenders after engaging Defendants have been told by the lenders that the lenders had never heard of Defendants, or that the lenders refused to work with third-party negotiators. In other instances, homeowners who have contacted their lenders have learned that Defendants sent the lenders incomplete information.

48. In numerous instances, Defendants have failed to obtain mortgage loan modifications. Some homeowners who have paid for Defendants' mortgage loan modification and foreclosure relief services have been able to obtain mortgage loan modifications and avoid foreclosure only through their own efforts and not because of any service provided by Defendants.

49. In numerous instances, Defendants have denied refunds to homeowners for whom they failed to obtain modifications. In other instances, Defendants have promised homeowners refunds only after homeowners made repeated requests, hired an attorney, or complained to entities such as the BBB or a state attorney general, but then still did not provide the refunds.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

50. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts and practices in or affecting commerce."

51. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

Count I

52. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of mortgage loan modification or foreclosure rescue services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants will obtain for consumers mortgage loan modifications, in all or virtually all instances, that will make their mortgage payments substantially more affordable.

53. In truth and in fact, Defendants do not obtain for consumers mortgage loan modifications, in all or virtually all instances, that will make their mortgage payments substantially more affordable.

54. Therefore, Defendants' representation as set forth in Paragraph 52 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II

55. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of mortgage loan modification or foreclosure rescue services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants have helped over 90% of their clients obtain a mortgage loan modification.

56. In truth and in fact, the material representation set forth in Paragraph 55 is false or was not substantiated at the time the representation was made.

57. Therefore, the making of the representation as set forth in Paragraph 55 of this Complaint constitutes a deceptive act or practice, in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count III

58. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of mortgage loan modification or foreclosure rescue services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants have a 100% money back guarantee, pursuant to which Defendants will give consumers all of their money back if Defendants fail to obtain a mortgage modification or stop foreclosure.

59. In truth and in fact, in numerous instances, when Defendants failed to obtain a mortgage modification or stop foreclosure, Defendants did not give consumers all of their money back.

60. Therefore, Defendants' representation as set forth in Paragraph 58 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

61. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

62. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, a preliminary injunction and an accounting of assets ;

B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including but not limited to rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: November 23, 2009

Respectfully submitted,

WILLARD K. TOM
General Counsel

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Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

JS 44 (Rev. 2/08)

CIVIL COVER SHEET

09-23543-CIV-LENARD

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

Federal Trade Commission

(b) County of Residence of First Listed Plaintiff District of Columbia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

David Wiese (202-326-2117) and Kathleen Pessolano (202-326-2029),
600 Pennsylvania Ave., NW, Mail Drop NJ-3158
Washington, DC 20580

DEFENDANTS

See Attachment

County of Residence of First Listed Defendant Miami-Dade
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Not Known

FILED by LCS D.C.
NOV 23 2009
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

(d) Check County Where Action Arose: ☑ MIAMI- DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☑ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

CIV-LENARD
MAGISTRATE JUDGE TURNOFF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reapportionment
☐ 120 Marine	☐ 310 Airplane	☐ 362 Personal Injury - Med. Malpractice	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	☐ 430 Banks and Banking
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 630 Liquor Laws	☐ 820 Copyrights	☐ 450 Commerce
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	☐ 640 R.R. & Truck	☐ 830 Patent	☐ 460 Deportation
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 650 Airline Regs.	☐ 840 Trademark	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 660 Occupational Safety/Health		☐ 480 Consumer Credit
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 690 Other		☐ 490 Cable/Sat TV
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	LABOR	SOCIAL SECURITY	☐ 810 Selective Service
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 710 Fair Labor Standards Act	☐ 861 HIA (1395ff)	☐ 850 Securities/Commodities/ Exchange
☐ 195 Contract Product Liability			☐ 720 Labor/Mgmt. Relations	☐ 862 Black Lung (923)	☐ 875 Customer Challenge 12 USC 3410
☐ 196 Franchise			☐ 730 Labor/Mgmt.Reporting & Disclosure Act	☐ 863 DIWC/DIWW (405(g))	■ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	☐ 740 Railway Labor Act	☐ 864 SSID Title XVI	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 441 Voting	☐ 510 Motions to Vacate Sentence	☐ 790 Other Labor Litigation	☐ 865 RSI (405(g))	☐ 892 Economic Stabilization Act
☐ 220 Foreclosure	☐ 442 Employment	Habeas Corpus:	☐ 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 443 Housing/ Accommodations	☐ 530 General	IMMIGRATION	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 894 Energy Allocation Act
☐ 240 Torts to Land	☐ 444 Welfare	☐ 535 Death Penalty	☐ 462 Naturalization Application	☐ 871 IRS—Third Party 26 USC 7609	☐ 895 Freedom of Information Act
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 540 Mandamus & Other	☐ 463 Habeas Corpus-Alien Detainee		☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	☐ 550 Civil Rights	☐ 465 Other Immigration Actions		☐ 950 Constitutionality of State Statutes
	☐ 440 Other Civil Rights	☐ 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):

a) Re-filed Case ☐ YES ☑ NO b) Related Cases ☐ YES ☐ NO

JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause **(Do not cite jurisdictional statutes unless diversity)**:

Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); Unfair or deceptive act or practice in or affecting commerce.

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☑ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE November 23, 2009

FOR OFFICE USE ONLY

AMOUNT Waived RECEIPT # IFP