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10  
11 UNITED STATES DISTRICT COURT  
12 FOR THE DISTRICT OF IDAHO

13  
14 FEDERAL TRADE COMMISSION

15 Plaintiff,

16 v.

17 APPLY2SAVE, INC., a corporation;  
18 SLEEPING GIANT MEDIA WORKS, INC.,  
a corporation; and DEREK R.  
19 OBERHOLTZER, individually and as an  
officer of Apply2Save, Inc., and Sleeping  
20 Giant Media Works, Inc.,

21 Defendants.

Civil Action No. 09-00345-EJL

**STIPULATED FINAL ORDER FOR  
PERMANENT INJUNCTION AND  
OTHER EQUITABLE RELIEF  
AGAINST DEFENDANTS  
APPLY2SAVE, INC., SLEEPING  
GIANT MEDIA WORKS, INC., AND  
DEREK R. OBERHOLTZER**

22  
23 On July 14, 2009, Plaintiff, Federal Trade Commission ("FTC" or "Commission"), filed  
24 a Complaint for Injunctive and Other Equitable Relief pursuant to Sections 5(a) and 13(b) of the  
25 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), to obtain  
26 preliminary and permanent injunctive relief, rescission of contracts and restitution, disgorgement  
27 of ill-gotten gains, and other equitable relief against Defendants Apply2Save, Inc., Sleeping  
28 Giant Media Works, Inc., and Derek R. Oberholtzer (hereafter "Defendants"), for engaging in

1 deceptive acts or practices in connection with the marketing and sale of mortgage loan  
2 modification and foreclosure relief services in violation of Section 5(a) of the FTC Act, 15  
3 U.S.C. § 45(a). On July 7, 2009, the Court entered a Stipulated Order for Preliminary Injunction  
4 and Other Equitable Relief, an Amended version of which was entered August 10, 2009.

5 On June 9, 2009, Defendant Apply2Save, Inc., filed a voluntary petition for relief under  
6 Chapter 7 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.*, in the United States  
7 Bankruptcy Court for the District of Idaho (Case No. 09-20607-TLM) ("Apply2Save  
8 Bankruptcy"). Subsequently, on July 7, 2009, Defendants Sleeping Giant Media Works, Inc.,  
9 and Derek Oberholtzer, each filed voluntary petitions for relief under Chapter 7 of Title 11 of the  
10 United States Code, 11 U.S.C. § 101, *et seq.*, in the United States Bankruptcy Court for the  
11 District of Idaho (Case No. 09-20725-TLM) ("Sleeping Giant Bankruptcy") and (Case No. 09-  
12 20727-TLM) ("Oberholtzer Bankruptcy"). J. Ford Elsaesser was appointed the chapter 7  
13 Trustee in each of the Apply2Save and Sleeping Giant Bankruptcies, and Anthony E. Grabicki  
14 was appointed as chapter 7 Trustee in the Oberholtzer Bankruptcy. Defendants Apply2Save,  
15 Inc., and Sleeping Giant Media Works, Inc., have ceased operating and will be dissolved after  
16 their respective bankruptcy cases have been fully administered. The Commission's action  
17 against the Defendants, including the enforcement of a judgment other than a monetary  
18 judgment obtained in this action, is not stayed by 11 U.S.C § 362(1), (2), (3), or (6), because it is  
19 an exercise of the Commission's police or regulatory power as a governmental unit pursuant to  
20 §362(b)(4) and, thus, falls within an exception to the automatic stay. On August 10, 2009, the  
21 Court entered an Amended Stipulated Preliminary Injunction.

22 Plaintiff FTC and Defendants, by and through their attorneys, have agreed to entry of this  
23 Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief  
24 ("Order") by this Court in order to resolve all claims against the Defendants in this action.  
25 Plaintiff and Defendants have consented to entry of this Order without trial or adjudication of  
26 any issue of law or fact herein and without Defendants admitting liability for any of the  
27 violations alleged in the Complaint.

28 Being fully advised in the premises and acting upon the joint motion of the parties to

1 enter this Order,

2 **IT IS ORDERED, ADJUDGED, AND DECREED** as follows:

3 **FINDINGS**

4 1. This is an action by the FTC instituted under Sections 5 and 13(b) of the FTC  
5 Act, 15 U.S.C. §§ 45 and 53(b). The Complaint seeks both permanent injunctive relief and  
6 consumer redress for Defendants' alleged deceptive acts or practices in connection with the  
7 marketing and sale of mortgage loan modification and foreclosure relief services.

8 2. The FTC has the authority under Section 13(b) of the FTC Act to seek the relief it  
9 has requested, and the Complaint states a claim upon which relief can be granted against  
10 Defendants.

11 3. This Court has jurisdiction over the subject matter of this case and has jurisdiction  
12 over Defendants. Venue in the District of Idaho is proper.

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

15 5. The parties stipulate and agree to entry of this Order, without trial or final  
16 adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from  
17 the conduct alleged in the Complaint to the date of entry of this Order. This settlement does not  
18 settle and resolve any matters not alleged in the Complaint.

19 6. Defendants waive all rights to seek judicial review or otherwise challenge or  
20 contest the validity of this Order. Defendants also waive any claim that they may have held  
21 under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this  
22 action to the date of this Order. Each settling party shall bear its own costs and attorneys fees.

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

25 8. Entry of this Order is in the public interest.

26 **DEFINITIONS**

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

28 1. "*Assisting others*" includes, but is not limited to, providing any of the following

1 goods or services to another person: (A) performing customer service functions, including, but  
2 not limited to, receiving or responding to consumer complaints; (B) formulating or providing, or  
3 arranging for the formulation or provision of, any telephone sales script or any other marketing  
4 material, including but not limited to, the text of any Internet website, email, or other electronic  
5 communication; (C) providing names of, or assisting in the generation of, potential customers;  
6 (D) performing marketing services of any kind; or (E) acting or serving as an owner, officer,  
7 director, manager, or principal of such entity.

8 2. "*Credit*" means the right granted by a creditor to a debtor to defer payment of  
9 debt or to incur debt and defer its payment.

10 3. "*Debt relief good or service*" means any good, service, plan, or program,  
11 including debt management plans, debt settlement, debt negotiation, and for-profit credit  
12 counseling, represented, expressly or by implication, to renegotiate, settle, or in any way alter the  
13 terms of payment or other terms of the debt between a consumer and one or more unsecured  
14 creditors, servicers, or debt collectors, including but not limited to, a reduction in the balance,  
15 interest rate, or fees owed by a consumer to an unsecured creditor, servicer, or debt collector.

16 4. "*Defendants*" means the Individual Defendant and the Corporate Defendants,  
17 individually, collectively, or in any combination. "*Corporate Defendants*" means Apply2Save,  
18 Inc., and Sleeping Giant Media Works, Inc., and their successors and assigns. "*Individual*  
19 *Defendant*" means Derek R. Oberholtzer.

20 5. "*Federal homeowner relief or financial stability program*" means any program  
21 (including its sponsoring agencies, telephone numbers, and Internet websites) operated or  
22 endorsed by the United States government to provide relief to homeowners or stabilize the  
23 economy, including but not limited to (A) the Making Home Affordable Program; (B) the  
24 Financial Stability Plan; (C) the Troubled Asset Relief Program and any other program  
25 sponsored or operated by the United States Department of the Treasury; (D) the HOPE for  
26 Homeowners program, any program operated or created pursuant to the Helping Families Save  
27 Their Homes Act, and any other program sponsored or operated by the Federal Housing  
28 Administration; or (E) any program sponsored or operated by the United States Department of

1 Housing and Urban Development ("HUD"), the HOPE NOW Alliance, the Homeownership  
2 Preservation Foundation, or any other HUD-approved housing counseling agency.

3 6. "**Financial-related good or service**" means any good, service, plan, or program  
4 that is represented, expressly or by implication, to: (A) provide any consumer, arrange for any  
5 consumer to receive, or assist any consumer in receiving, credit, debit, or stored value cards;  
6 (B) improve, or arrange to improve, any consumer's credit record, credit history, or credit rating;  
7 (C) provide advice or assistance to any consumer with regard to any activity or service the  
8 purpose of which is to improve a consumer's credit record, credit history, or credit rating; (D)  
9 provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving,  
10 a loan or other extension of credit; (E) provide any consumer, arrange for any consumer to  
11 receive, or assist any consumer in receiving, debt relief goods or services; (F) provide any  
12 consumer, arrange for any consumer to receive, or assist any consumer in receiving any service  
13 represented, expressly or by implication, to renegotiate, settle, or in any way alter the terms of  
14 payment or other terms of the debt between a consumer and one or more secured creditors,  
15 servicers, or debt collectors.

16 7. "**Material fact**" means any fact that is likely to affect a person's choice of, or  
17 conduct regarding, goods or services.

18 8. "**Mortgage loan modification or foreclosure relief service**" means any good,  
19 service, plan, or program that is represented, expressly or by implication, to assist a consumer in  
20 any manner to: (A) stop, prevent, or postpone any residential mortgage or deed of trust  
21 foreclosure sale; (B) obtain or arrange a modification of any term of a residential loan, deed of  
22 trust, or mortgage; (C) obtain any forbearance from any mortgage loan holder or servicer on any  
23 residential loan, deed of trust, or mortgage; (D) exercise any right of reinstatement of any  
24 residential mortgage loan; (E) obtain, arrange, or attempt to obtain or arrange any extension of  
25 the period within which the owner of residential property sold at foreclosure may cure his or her  
26 default or reinstate his or her obligation; (F) obtain any waiver of an acceleration clause  
27 contained in any promissory note or contract secured by a deed of trust or mortgage on a  
28 residence in foreclosure or contained in that deed of trust; (G) obtain a loan or advance of funds

21 that is connected to the consumer's home ownership; (H) avoid or ameliorate the impairment of  
 22 the consumer's credit record, credit history, or credit rating that is connected to the consumer's  
 23 home ownership; (I) save the consumer's residence from foreclosure; (J) assist the consumer in  
 24 obtaining proceeds from the foreclosure sale of the consumer's residence; (K) obtain or arrange  
 25 a pre-foreclosure sale, short sale, or deed-in-lieu of foreclosure of a consumer's residence; (L)  
 26 obtain or arrange a refinancing, recapitalization, or reinstatement of a residential loan, deed of  
 27 trust, or mortgage; (M) audit or examine a consumer's mortgage or home loan application; or  
 28 (N) obtain, arrange, or attempt to obtain or arrange any extension of the period within which the  
 9 renter of residential property sold at foreclosure may continue to occupy the property. The  
 10 foregoing shall include any manner of claimed assistance, including, but not limited to, debt,  
 11 credit, budget, or financial counseling; receiving money for the purpose of distributing it to  
 12 creditors; contacting creditors or servicers on behalf of the consumer; and giving advice of any  
 13 kind with respect to filing for bankruptcy.

14 9. "*Person*" means a natural person, organization, or other legal entity, including a  
 15 corporation, partnership, proprietorship, association, cooperative, or any other group or  
 16 combination acting as an entity.

17 10. "*Servicer*" means any beneficiary, mortgagee, trustee, loan servicer, loan holder,  
 18 or other entity that performs loan or credit account administration or processing services and/or  
 19 its authorized agents.

### ORDER

#### I. **BAN ON MORTGAGE LOAN MODIFICATION AND FORECLOSURE RELIEF SERVICES**

23 **IT IS THEREFORE ORDERED** that Defendants, whether acting directly or through  
 24 any other person, are permanently restrained and enjoined from:

25 A. Advertising, marketing, promoting, offering for sale, or selling any mortgage loan  
 26 modification or foreclosure relief service; and

27 B. Assisting others engaged in advertising, marketing, promoting, offering for sale,  
 28 or selling any mortgage loan modification or foreclosure relief service.



1 **II. PROHIBITED REPRESENTATIONS RELATING TO FINANCIAL-RELATED**  
2 **GOODS AND SERVICES**

3 **IT IS FURTHER ORDERED** that Defendants and their successors, assigns, officers,  
4 agents, servants, employees, and attorneys, and those persons or entities in active concert or  
5 participation with them who receive actual notice of this Order by personal service, facsimile  
6 transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary,  
7 division, or other device, in connection with the advertising, marketing, promotion, offering for  
8 sale or sale of any financial-related good or service, are hereby permanently restrained and  
9 enjoined from:

10 A. Misrepresenting or assisting others in misrepresenting, expressly or by  
11 implication, any material fact, including but not limited to:

12 1. The terms or rates that are available for any loan or other extension of  
13 credit, including but not limited to:

14 (a) closing costs or other fees;

15 (b) the payment schedule, the monthly payment amount(s), or other  
16 payment terms, or whether there is a balloon payment; interest rate(s), annual percentage rate(s),  
17 or finance charge; the loan amount, the amount of credit, the draw amount, or outstanding  
18 balance; the loan term, the draw period, or maturity; or any other term of credit;

19 (c) the savings associated with the credit;

20 (d) the amount of cash to be disbursed to the borrower out of the  
21 proceeds, or the amount of cash to be disbursed on behalf of the borrower to any third parties;

22 (e) whether the payment of the minimum amount specified each  
23 month covers both interest and principal, and whether the credit has or can result in negative  
24 amortization;

25 (f) that the credit does not have a prepayment penalty or that no  
26 prepayment penalty and/or other fees or costs will be incurred if the consumer subsequently  
27 refinances; and

28 (g) that the interest rate(s) or annual percentage rate(s) are fixed rather  
29 than adjustable or adjustable rather than fixed;

1           2.     Any person's ability to improve or otherwise affect a consumer's credit  
2 record, credit history, or credit rating or ability to obtain credit;

3           3.     That any person can improve any consumer's credit record, credit history,  
4 or credit rating by permanently removing negative information from the consumer's credit  
5 record, credit history, or credit rating, even where such information is accurate and not obsolete;

6           4.     Any aspect of any debt relief good or service, including but not limited to,  
7 the amount of savings a consumer will receive from purchasing, using, or enrolling in such debt  
8 relief good or service; the amount of time before which a consumer will receive settlement of the  
9 consumer's debts; or the reduction or cessation of collection calls; and

10          5.     That a consumer will receive legal representation;

11          B.     Advertising or assisting others in advertising credit terms other than those terms  
12 that actually are or will be arranged or offered by a creditor or lender.

13 **III.   PROHIBITED REPRESENTATIONS RELATING TO ANY GOODS OR**  
14 **SERVICES**

15       **IT IS FURTHER ORDERED** that Defendants and their successors, assigns, officers,  
16 agents, servants, employees, and attorneys, and those persons or entities in active concert or  
17 participation with any of them who receive actual notice of this Order by personal service,  
18 facsimile transmission, email, or otherwise, whether acting directly or through any corporation,  
19 subsidiary, division, or other device, in connection with the advertising, marketing, promotion,  
20 offering for sale or sale of any good, service, plan, or program are hereby permanently restrained  
21 and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by  
22 implication, any material fact, including but not limited to:

23          A.     Any material aspect of the nature or terms of any refund, cancellation, exchange,  
24 or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full  
25 or partial refund, or the circumstances in which a full or partial refund will be granted to the  
26 consumer;

27          B.     That any person is affiliated with, endorsed or approved by, or otherwise  
28 connected to any other person, government entity, any federal homeowner relief or financial



1 stability program, or any other program;

2 C. The total costs to purchase, receive, or use, and the quantity of, the good or  
3 service;

4 D. Any material restriction, limitation, or condition to purchase, receive, or use the  
5 good or service; and

6 E. Any material aspect of the performance, efficacy, nature, or characteristics of the  
7 good or service.

8 **IV. PROHIBITIONS ON USE OF CUSTOMER INFORMATION**

9 **IT IS FURTHER ORDERED** that Defendants and their successors, assigns, officers,  
10 agents, servants, employees, and attorneys, and those persons or entities in active concert or  
11 participation with any of them who receive actual notice of this Order by personal service,  
12 facsimile transmission, email, or otherwise, whether acting directly or through any corporation,  
13 subsidiary, division, or other device, are permanently restrained and enjoined from:

14 A. Disclosing, using, or benefitting from customer information, including the name,  
15 address, telephone number, email address, social security number, other identifying information,  
16 or any data that enables access to a customer's account (including a credit card, bank account, or  
17 other financial account), of any person which any Defendant obtained prior to entry of this Order  
18 in connection with the advertising, marketing, promotion, offering for sale or sale of any  
19 mortgage loan modification or foreclosure relief service, and

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

25 C. *Provided, however,* that customer information need not be disposed of, and may  
26 be disclosed, to the extent requested by a government agency or required by a law, regulation, or  
27 court order.  
28

1 **V. PROHIBITION ON COLLECTING ACCOUNTS**

2 **IT IS FURTHER ORDERED** that Defendants, and their officers, agents, employees,  
3 corporations, and those persons in active concert or participation with any of them who receive  
4 actual notice of this Order by personal service or otherwise, whether acting directly or through  
5 any trust, corporation, subsidiary, division, or other device, are hereby permanently restrained and  
6 enjoined from attempting to collect, collecting, selling, or assigning, or otherwise transferring any  
7 right to collect payment for any mortgage loan modification or foreclosure relief services from  
8 any consumers who purchased or agreed to purchase mortgage loan modification or foreclosure  
9 relief services from any Defendant prior to entry of the Stipulated Order for Preliminary  
10 Injunction and Other Equitable Relief, entered August 10, 2009.

11 **VI. MONETARY JUDGMENT**

12 **IT IS FURTHER ORDERED** that:

13 A. Judgment for equitable monetary relief is hereby entered against Defendants, in  
14 the amount of **Four Million, Sixty-One Thousand, Three Hundred Seventy- Four dollars (\$**  
15 **4,061,374.00)**, and the FTC is awarded a monetary judgment in this amount. *Provided, however,*  
16 *that payment of this judgment shall be suspended only after entry of the nondischargeability order*  
17 *in the Defendants' Bankruptcy Cases as required by Subsection B below, and, subject to the*  
18 *conditions set forth in the Section of this Order titled "Right to Reopen;"*

19 B. Defendant Oberholtzer further stipulates and agrees that the judgment ordered by  
20 this Section is not dischargeable in bankruptcy and agree to the concurrent filing by the  
21 Commission in the Oberholtzer Bankruptcy Case, of: 1) a Complaint to Determine  
22 Nondischargeability of Debt Owed to the Federal Trade Commission (in the form attached hereto  
23 as **Attachment A**), and 2) a Stipulated Judgment for Nondischargeability of Debt owed to the  
24 Federal Trade Commission (in the form attached hereto as **Attachment B**), which Defendant  
25 Oberholtzer shall execute concurrently with his execution of this Order, determining that the  
26 judgment ordered by this Section, including the conditions set forth in the Section of this Order  
27 titled "Right to Reopen," will be nondischargeable pursuant to Section 523 of the Bankruptcy  
28 Code, 11 U.S.C. § 523;

1 C. Defendants further stipulate and agree, pursuant to Section 502 of the Bankruptcy  
2 Code, 11 U.S.C. § 502, to the allowance of a general unsecured claim in the Oberholtzer,  
3 Apply2Save, and Sleeping Giant Bankruptcy Cases in favor of the FTC in the amount of **Four**  
4 **Million, Sixty-One Thousand, Three Hundred Seventy- Four dollars (\$ 4,061,374.00)**, less  
5 the sum of any payments previously made, and that the FTC is entitled to participate in any  
6 payments in the Defendants' Bankruptcy Cases paid on account of such allowed general  
7 unsecured claim.

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

15 E. Proceedings instituted under this Section are in addition to, and not in lieu of, any  
16 other civil or criminal remedies that may be provided by law, including any other proceedings the  
17 Commission may initiate to enforce this Order.

18 **VII. RIGHT TO REOPEN**

19 **IT IS FURTHER ORDERED** that:

20 A. Within ten (10) business days after the date of entry of this Order by the Court,  
21 Defendants shall submit to the Commission truthful sworn statements (in the form shown on  
22 Attachment C of this Order), that shall reaffirm and attest to the truthfulness, accuracy, and  
23 completeness of their own sworn financial information and bankruptcy schedules filed in the  
24 Oberholtzer, Apply2Save, and Sleeping Giant Bankruptcy Cases; the voluntary petitions for  
25 relief under Chapter 7 of the U.S. Bankruptcy Code in the Oberholtzer, Apply2Save, and Sleeping  
26 Giant Bankruptcy Cases; Defendants' sworn testimony taken by the trustees at the meetings of  
27 creditors in the Oberholtzer, Apply2Save, and Sleeping Giant Bankruptcy Cases, and any other  
28 financial materials Defendants provided to the FTC or the trustees (collectively, the "Financial

211 Statements"). Plaintiff's agreement to this Order is expressly premised upon the truthfulness,  
212 accuracy, and completeness of Defendants' financial condition, as represented in the Financial  
213 Statements referenced above, which contain material information upon which Plaintiff relied in  
214 negotiating and agreeing to the terms of this Order;

215 B. If, upon motion by the Commission to the Court, the Court finds that Defendants  
216 failed to disclose any material asset, materially misrepresented the value of any asset, or made  
217 any other material misrepresentation or omission in Defendants' Financial Statements, the  
218 suspension of the monetary judgment will be terminated and the entire judgment amount of **Four**  
219 **Million, Sixty-One Thousand, Three Hundred Seventy- Four dollars (\$ 4,061,374.00)**, shall  
220 become immediately due and payable by Defendants, and interest computed at the rate prescribed  
221 under 28 U.S.C. § 1961, as amended, shall begin immediately to accrue on the unpaid balance;  
222 and

223 C. Proceedings instituted under this Section are in addition to, and not in lieu of, any  
224 other civil or criminal remedies that may be provided by law, including any other proceedings the  
225 Commission may initiate to enforce this Order.

226 **VIII. COMPLIANCE MONITORING**

227 **IT IS FURTHER ORDERED** that, for the purpose of: (i) monitoring and investigating  
228 compliance with any provision of this Order; and (ii) investigating the accuracy of Defendants'  
229 Financial Statements upon which the Commission's agreement to this Order is expressly  
230 premised:

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

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

238 1. Obtaining discovery from any person, without further leave of court, using

1 the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;

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

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

9 *Provided, however,* that nothing in this Order shall limit the Commission's lawful use of  
10 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to  
11 obtain any documentary material, tangible things, testimony, or information relevant to unfair or  
12 deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

13 **IX. COMPLIANCE REPORTING**

14 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this  
15 Order may be monitored:

16 A. For a period of three (3) years from the date of entry of this Order,

17 1. Each Individual Defendant shall notify the Commission of the following:

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

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

28 c. Any changes in such Defendant's name or use of any aliases or

1 fictitious names within ten (10) days of the date of such change;

2 2. Defendants shall notify the Commission of any changes in structure of any  
3 Corporate Defendant or any business entity that any Defendant directly or indirectly  
4 controls, or has an ownership interest in, that may affect compliance obligations arising  
5 under this Order, including but not limited to: incorporation or other organization; a  
6 dissolution, assignment, sale, merger, or other action; the creation or dissolution of a  
7 subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or  
8 a change in the business name or address, at least thirty (30) days prior to such change,  
9 *provided* that, with respect to any such change in the business entity about which  
10 Defendant learns less than thirty (30) days prior to the date such action is to take place,  
11 such Defendant shall notify the Commission as soon as is practicable after obtaining such  
12 knowledge.

13 B. One hundred eighty (180) days after the date of entry of this Order and annually  
14 thereafter for a period of three (3) years, Defendants each shall provide a written report to the  
15 FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the  
16 manner and form in which they have complied and are complying with this Order. This report  
17 shall include, but not be limited to:

18 1. For each Individual Defendant:

19 a. such Defendant's then-current residence address, mailing addresses,  
20 and telephone numbers;

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

27 c. Any other changes required to be reported under Subsection A of  
28 this Section.



2. For all Defendants:

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

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

c. Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant or of any motions to reopen the Apply2Save, Inc., Sleeping Giant Media Works, Inc., or Oberholtzer Bankruptcy Cases within fifteen (15) days of filing of such petition or motion.

d. For the purposes of this Order, 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  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
RE: *FTC v. Apply2Save, Inc., et al.*, File No. X090061

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

e. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with each Defendant.

**X. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this Order, Corporate Defendants and Individual Defendant for any business for which they, individually or collectively, are the majority owner or directly or indirectly control, are hereby restrained and enjoined from failing to create and retain the following records:

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

B. Personnel records accurately reflecting: the name, address, and telephone number

1 of each person employed in any capacity by such business, including as an independent  
2 contractor; that person's job title or position; the date upon which the person commenced work;  
3 and the date and reason for the person's termination, if applicable;

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

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

9 E. Copies of all sales scripts, training materials, advertisements, or other marketing  
10 materials, including copies of Internet web sites and email solicitations; and

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

16 **XI. DISTRIBUTION OF ORDER**

17 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry  
18 of this Order, Defendants shall deliver copies of the Order as directed below:

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

28 B. Individual Defendant as control person: For any business that an Individual

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

11 C. Individual Defendant as employee or non-control person: For any business where  
12 an Individual Defendant is not a controlling person of a business, but otherwise engages in  
13 conduct related to the subject matter of this Order, such Defendant must deliver a copy of this  
14 Order to all principals and managers of such business before engaging in such conduct.

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

18 **XII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

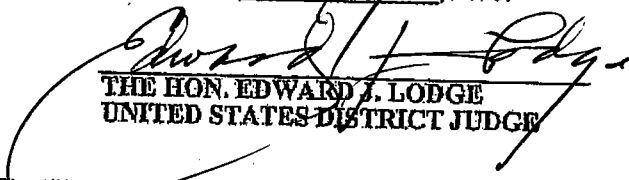
19 **IT IS FURTHER ORDERED** that each Defendant, within five (5) business days of  
20 receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn  
21 statement acknowledging receipt of this Order (in the form attached hereto as **Attachment C**).

22 **XIII. RETENTION OF JURISDICTION**

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

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IT IS SO ORDERED this 19<sup>th</sup> day of May, 2010.


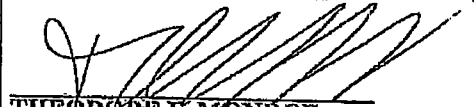
  
THE HON. EDWARD J. LODGE  
UNITED STATES DISTRICT JUDGE

SO AGREED AND STIPULATED:

FOR PLAINTIFFS:

  
NADINE S. SAMTER  
MIRY KIM  
Federal Trade Commission  
915 Second Avenue Suite 2896  
Seattle, WA 98174  
  
Attorneys for Plaintiff  
Federal Trade Commission

FOR DEFENDANT DEREK R. OBERHOLTZER:

  
DEREK R. OBERHOLTZER  
  
  
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Attorney for Defendants Apply2Save, Inc.,  
Sleeping Giant Media Works, Inc., and Derek R. Oberholtzer

~~ANTHONY T. GRABICKI  
Randall & Eanskin, PS  
601 W. Riverside Avenue, Suite 1500~~

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**ANTHONY E. GRABICKI**  
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Chapter 7 Bankruptcy Trustee for Defendant  
Derek R. Oberholtzer

**FOR DEFENDANTS APPLY2SAVE, INC., and  
SLEEPING GIANT MEDIA WORKS, INC.**

Chapter 7 Trustee

**J. FORD ELSAESSER**, Chapter 7 Trustee  
P.O. Box 2220  
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Chapter 7 Bankruptcy Trustee for Defendants  
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Attorney for Chapter 7 Bankruptcy Trustee for Defendants  
Apply2 Save, Inc., and Sleeping Giant Media Works, Inc

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In re:

DEREK R. OBERHOLTZER,  
Debtor.

Case No. 09-20727-TLM  
Chapter 7

FEDERAL TRADE COMMISSION,  
Plaintiff,

v.

DEREK R. OBERHOLTZER,  
Debtor.

Adversary Proceeding No.

**COMPLAINT FOR NONDISCHARGEABILITY  
OF DEBT OWED TO FEDERAL TRADE COMMISSION**

The Federal Trade Commission ("FTC" or "Commission"), through its undersigned attorneys, brings this adversary proceeding under Section 523 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Code"), in order to obtain a determination that a pre-petition debt owed by Derek R. Oberholtzer, the debtor herein, to the FTC is nondischargeable. Derek R. Oberholtzer (the "Debtor" or "Oberholtzer") is liable to the FTC for monetary relief arising from the advertisement and sale of mortgage loan modification and foreclosure relief services to consumers. This debt is nondischargeable under 11 U.S.C. § 523(a)(2)(A).

**JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 523. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).



1 2. Venue in the District of Idaho is proper under 28 U.S.C. § 1409(a).

2 3. This Adversary Proceeding relates to *In re Derek R. Oberholtzer*, Case No. 09-  
3 20727-TLM (Bankr. D. Idaho), a chapter 7 case now pending in this Court (the "Bankruptcy  
4 Case"). The FTC is a creditor with a general unsecured claim against the Debtor as a result of  
5 claims the Commission asserted against Oberholtzer, and others,<sup>1</sup> in the United States District  
6 Court for the District of Idaho (the "District Court") in the case *Federal Trade Commission v.*  
7 *Apply 2 Save, Inc., et al.*, Case No. 09-00345-EJL (the "Enforcement Action").

8 4. Pursuant to Section 341 of the Bankruptcy Code, the meeting of creditors was  
9 first set for August 13, 2009. The debtor's meeting of creditors was continued to and concluded  
10 September 10, 2009.

11 **THE PARTIES**

12 5. Plaintiff FTC is an independent agency of the United States Government created  
13 by statute. 15 U.S.C. §§ 41, *et seq.* The Commission is charged with, *inter alia*, enforcement of  
14 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or  
15 practices in or affecting commerce. The Commission is authorized to initiate federal district  
16 court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such  
17 other equitable relief as may be appropriate in each case, including rescission of contracts and  
18 restitution and disgorgement of unlawfully obtained monies. 15 U.S.C. § 53(b).

19 6. Oberholtzer is the Debtor in Chapter 7 case number 09-20727 (Bankr. D. Idaho),  
20 now pending before this Court.

21 **COURSE OF PROCEEDINGS AND DEFENDANT'S CONDUCT**  
22 **GIVING RISE TO THE NONDISCHARGEABLE DEBT**

23 7. Oberholtzer was the president of Apply 2 Save, Inc. ("A2S") and Sleeping Giant  
24 Media Works, Inc. ("Sleeping Giant"). At all times material to this Complaint, acting alone or in  
25

26 <sup>1</sup> The defendants to the Enforcement Action, along with Oberholtzer, are: Apply 2 Save,  
27 Inc. ("A2S"), and Sleeping Giant Media Works, Inc. ("Sleeping Giant"). Presently, both Apply  
28 2 Save and Sleeping Giant Media Works are debtors with separate cases pending in this Court.  
*In re Apply 2 Save, Inc.*, Case No. 09-20607-TLM (Bankr. D. Idaho); *In re Sleeping Giant Media*  
*Works, Inc.*, Case No. 09-20725-TLM (Bankr. D. Idaho).

1 concert with others, the Debtor has formulated, directed, controlled, had the authority to control,  
2 or participated in the acts and practices of A2S and Sleeping Giant.

3 8. Defendants A2S and Sleeping Giant (collectively, the "Corporate Defendants")  
4 have operated as a common enterprise while engaging in the deceptive acts and practices alleged  
5 below. Oberholtzer and the Corporate Defendants (collectively, "Defendants") conducted the  
6 business practices described below through interrelated companies that have common ownership  
7 and office locations. In addition, Oberholtzer formulated, directed, controlled, had the authority  
8 to control, or participated in the acts and practices of the Corporate Defendants that constitute  
9 the common enterprise.

10 9. Since at least May 2008, Defendants engaged in a course of conduct to advertise,  
11 market, offer to sell, and sell to consumers purported mortgage loan modification and  
12 foreclosure relief services. Defendants marketed their services to homeowners who are in  
13 financial distress, delinquent on their mortgage loans, or in danger of losing their homes to  
14 foreclosure. Defendants charged consumers from \$595 to \$995 in up-front fees for their  
15 services.

16 10. Defendants marketed their services through the website [www.apply2save.com](http://www.apply2save.com).  
17 The website [www.apply2save.com](http://www.apply2save.com) urged consumers to call a toll-free number. The website also  
18 requested that consumers complete a short form, after which a representative would contact the  
19 consumer.

20 11. The [www.apply2save.com](http://www.apply2save.com) website contained various statements to induce  
21 consumers to purchase mortgage loan modification and foreclosure relief services offered by  
22 Defendants, including the following:

- 23 a. Initially we are focused on helping the millions of  
24 consumers that are faced with a mortgage problem.  
25 Whether you have an ARM that has recently skyrocketed, a  
26 severe loss in property value, have suffered a loss in  
27 income, or you simply are finding that your current  
28 mortgage payment is more than you can handle . . . our loss

1 mitigation specialists can help you.

2 b. We follow a proven, step-by-step process that will correct  
3 your existing mortgage problem by negotiating a solution  
4 with your lender that best fits your unique financial  
5 situation.

6 c. Our #1 goal is to work with you and your lender to ensure  
7 that you and your family can keep your home now and in  
8 the future, stopping the foreclosure process immediately  
9 and permanently.

10 d. **Q. What is loss mitigation?**

11 A. Loss mitigation consists of a variety of procedures set up by the  
12 government and lenders to assist homeowners threatened by foreclosure.  
13 The goal of loss mitigation is to help the homeowner to stay in their home,  
14 and protect their credit history.

15 e. **Q. How long is this going to take?**

16 A. Working with your lender to reach a suitable  
17 arrangement can take anywhere from a few days to several  
18 months. It all depends on your current financial position,  
19 and whether or not foreclosure proceedings have already  
20 been started. Typically, it takes several weeks to complete  
21 a workout agreement and stop foreclosure proceedings.

22 f. **Q. I've already talked with my lender. They just want  
23 to get paid. Can you still help me?**

24 A. Most of our clients have experienced this kind of inflexibility from  
25 their lenders before calling us. We get your bank to listen to your needs.  
26 Our integrity and professionalism have earned us a reputation that allows  
27 us to be heard when no one else can get through the red tape. We will use  
28 our experience and connections to your advantage.

1 g. Because of our extensive experience, as well as our close  
2 working relationships with mortgage lenders, we are able  
3 to help you successfully navigate through those  
4 complexities and rules, which may otherwise be  
5 overwhelming for you as you work to save your home.  
6 First we perform a thorough assessment of your personal  
7 finances, and analyze your lender's loss mitigation policies.  
8 Then our professional loss mitigators will negotiate with  
9 your lender to get you the best possible solution to your  
10 home foreclosure problem.

11 12. Consumers spoke to Defendants' telemarketers when they called the toll-free  
12 telephone number provided on the [www.apply2save.com](http://www.apply2save.com) website or when Defendants'  
13 telemarketers called consumers after receiving consumers' information via the online form.

14 13. During the telemarketing sales calls, Defendants' representatives collected  
15 information from consumers, including details about the consumers' mortgages and incomes. In  
16 numerous instances, after consumers provided this information, the Defendants' telemarketers  
17 told consumers that they qualified for a loan modification. In numerous instances, during the  
18 sales calls, Defendants' telemarketers reiterated the claims made on the website and  
19 misrepresented that they could save consumers' homes from foreclosure or obtain loan  
20 modifications for them in almost any circumstance.

21 14. In numerous instances, in the sales calls, Defendants' telemarketers promised  
22 consumers that Defendants would help modify consumers' mortgage loans to make their  
23 payments more affordable and claimed that they could prevent foreclosure. In numerous  
24 instances, Defendants' telemarketers told consumers that they had several years' experience in  
25 loan modifications and foreclosure relief and that they had special relationships with lenders that  
26 enabled them to negotiate with lenders to lower consumers' interest rates and modify their  
27 mortgage loans. The net impression of the telemarketing sales pitch was that Defendants could  
28

1 obtain a mortgage loan modification or stop foreclosure proceedings for consumers in all or  
2 virtually all instances.

3 15. In numerous instances, Defendants' telemarketers represented that Defendants  
4 would obtain a loan modification for consumers within a specified period of time, typically no  
5 more than a couple of months.

6 16. In numerous instances, Defendants' telemarketers told consumers that they must  
7 pay \$595 up-front and \$595 when the consumers' loan modification package goes to the lender.  
8 Defendants' telemarketers further told consumers that the second payment was due after A2S  
9 had begun negotiations with the lender. In numerous instances, Defendants' telemarketers also  
10 gave consumers the option of paying the full fee up-front for \$995, for a savings of \$200 on the  
11 entire fee.

12 17. In numerous instances, Defendants represented to consumers that they were  
13 entitled to a full refund of the up-front fees if they cancelled before the loan modification  
14 package was sent to the lender or A2S began negotiating with the lender.

15 18. In numerous instances, after consumers paid Defendants' up-front fee,  
16 Defendants failed to answer or return consumers' telephone calls or provide updates about the  
17 status of Defendants' purported communications with consumers' lenders. In other instances,  
18 Defendants misrepresented that lenders were the cause for delay when, in reality, Defendants  
19 had made little or no effort to contact the lenders. In numerous instances, Defendants charged  
20 consumers' credit cards or bank accounts for the second fee, even though they had not contacted  
21 consumers' lenders.

22 19. In numerous instances, Defendants failed to obtain mortgage loan modifications.  
23 Many consumers learned from their lenders that Defendants had not even contacted the lender or  
24 that Defendants had only minimal, non-substantive contacts with the lender. Some consumers  
25 who paid for Defendants' services obtained mortgage loan modifications and avoided  
26 foreclosure only through their own efforts and not because of any service provided by  
27 Defendants.  
28

1           20.     Some consumers whose loan packages were never sent to the lender or for whom  
2 A2S had performed no services failed to obtain or had difficulty obtaining promised refunds.  
3 Some received refunds only after making repeated requests or complaining to entities such as the  
4 Better Business Bureau. Some who received refunds later discovered that their refund checks  
5 did not clear when deposited in their banks.

6           21.     Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts  
7 or practices in or affecting commerce.” Misrepresentations or deceptive omissions of material  
8 fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

9           22.     In numerous instances, in connection with the advertising, marketing, promotion,  
10 offering for sale, or sale of mortgage loan modification and foreclosure relief services,  
11 Defendants have represented, directly or indirectly, expressly or by implication, that Defendants  
12 will obtain a mortgage loan modification or stop foreclosure in all or virtually all instances.

13           23.     In truth and in fact, Defendants did not obtain a mortgage loan modification or  
14 stop foreclosure in all or virtually all instances.

15           24.     In numerous instances, in connection with the advertising, marketing, promotion,  
16 offering for sale, or sale of mortgage loan modification and foreclosure relief services,  
17 Defendants have represented, directly or indirectly, expressly or by implication, that Defendants  
18 would give a full refund of all up-front fees to consumers who canceled Defendants’ loan  
19 modification or foreclosure relief services before Defendants forward the consumer’s loan  
20 modification package to, or begin negotiating with, the consumer’s lender.

21           25.     In truth and in fact, in numerous instances in which Defendants have made the  
22 representation set forth in Paragraph 24 of this Complaint, Defendants did not give a full refund  
23 of all up-front fees to consumers who canceled Defendants’ loan modification or foreclosure  
24 relief services before Defendants forwarded the consumer’s loan modification package to, or  
25 began negotiating with, the consumer’s lender.

26           26.     Defendants’ representations, as set forth in Paragraphs 22 and 24, were false and  
27 misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act,  
28 15 U.S.C. § 45(a).



1                   **NONDISCHARGEABLE DEBT FOR MONEY OBTAINED BY**  
2                   **FALSE PRETENSES, FALSE REPRESENTATIONS OR ACTUAL FRAUD**

3           27.     The Commission repeats and realleges the allegations in ¶¶ 1 through 26.

4           28.     The Debtor violated Section 5 of the FTC Act, 15 U.S.C. § 45(a), by his  
5 participation in a scheme to defraud consumers in connection with the offering for sale, selling,  
6 or other promotion of alleged mortgage loan modification and foreclosure relief services. In  
7 numerous instances, in the course of offering for sale, selling, or other promotion of alleged  
8 mortgage loan modification and foreclosure relief services, the Debtor obtained money from  
9 consumers by directly or indirectly, expressly or by implication:

10           a.     falsely representing that the Debtor and the Corporate Defendants  
11 would obtain a mortgage loan modification or stop foreclosure in all or virtually  
12 all instances; and

13           b.     falsely representing that the Debtor and the Corporate Defendants  
14 would give a full refund of all up-front fees to consumers who canceled  
15 Defendants' loan modification or foreclosure relief services before Defendants  
16 forward the consumer's loan modification package to, or begin negotiating with,  
17 the consumer's lender.

18           29.     Debtor is jointly and severally liable with his co-defendants in the Enforcement  
19 Action for these fraudulent misrepresentations.

20           30.     The Debtor's activities described above were conducted with knowledge that he  
21 was engaged in a fraudulent scheme and with knowledge of the falsity of the representations in  
22 the course of that scheme, or with reckless disregard of the truth or falsity of the representations.

23           31.     The Debtor injured consumers by knowingly engaging in a fraudulent scheme and  
24 knowingly making false representations to consumers and using false pretenses in dealing with  
25 consumers. These false representations and false pretenses were material to consumers in the  
26 course of deciding to purchase the services offered from the Debtor and his co-defendants.  
27 Consumers' reliance on the Debtor's representations was justifiable.

1 32. The total amount of the monies the Debtor obtained from consumers by such false  
2 pretenses, false representations or actual fraud is at least \$ 4,061,374.00, plus applicable interest  
3 in accordance with 28 U.S.C. § 1961.

4 33. The Debtor's activities as described above constitute false pretenses, false  
5 representations or actual fraud as set forth in 11 U.S.C. § 523(a)(2)(A). Consequently, the  
6 Debtor's debt to the FTC is one for money, property, or services obtained by false pretenses,  
7 false representations or actual fraud, and is not dischargeable. 11 U.S.C. § 523(a)(2)(A).

8 **WHEREFORE**, plaintiff FTC requests that the Court:

9 (a) Determine that the pre-petition debt owed by the Debtor to the FTC, including  
10 any judgment entered against Debtor Derek Oberholtzer in the case *Federal Trade Commission*  
11 *v. Apply 2 Save, Inc., et al.*, Case No. 09-00345-EJL, plus applicable interest pursuant to 28  
12 U.S.C. § 1961, is nondischargeable;

13 (b) Enter judgment against the Debtor in the amount of at least \$ 4,061,374.00, plus  
14 applicable interest in accordance with 28 U.S.C. § 1961, which judgment is owed to the  
15 Commission, jointly and severally with his co-defendants in the Enforcement Action, and find  
16 that judgment is nondischargeable; and

17 (c) Grant the FTC such other and further relief as this case may require and the Court  
18 deems just and proper.

1  
2 Dated: March 2, 2010  
3

Respectfully submitted by:

FEDERAL TRADE COMMISSION

4 By: /s/ Kimberly L. Nelson  
5 Kimberly L. Nelson, Va. Bar. No. 47224  
6 Federal Trade Commission  
7 600 Pennsylvania Ave., N.W.  
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13 Nadine Samter, WA State Bar No. 23188  
14 Miry Kim, WA State Bar No. 31456  
15 Federal Trade Commission  
16 915 2nd Ave., Suite 2896  
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21 mkim@ftc.gov

ATTACHMENT B

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In re:

DEREK R. OBERHOLTZER,  
Debtor.

Case No. 09-20727-TLM

Chapter 7

FEDERAL TRADE COMMISSION,  
Plaintiff,

v.

DEREK R. OBERHOLTZER,  
Debtor.

Adversary Proceeding No.

**STIPULATED JUDGMENT FOR NONDISCHARGEABILITY  
OF DEBT OWED TO FEDERAL TRADE COMMISSION**

IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE PARTIES,  
through their respective attorneys of record, as follows:

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), through its undersigned attorneys, filed a Complaint to Determine Nondischargeability of Debt under Section 523 of the Bankruptcy Code, 11 U.S.C. §523 (the "Complaint") on March 2, 2010. Defendant Derek R. Oberholtzer (the "Debtor" or "Oberholtzer") waives service of the Summons and Complaint, and agrees to the entry of this Stipulated Judgment for Nondischargeability, as further set forth herein.

**Findings**

1. This Court has subject matter jurisdiction over this Stipulated Judgment for

1 2. Venue in the District of Idaho is proper under 28 U.S.C. § 1409(a).

2 3. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

3 4. This Adversary Proceeding relates to *In re Derek R. Oberholtzer*, Case No.09-20727-  
4 TLM (Bankr. D. Idaho) (Chapter 7), now pending before this Court. The FTC is a creditor and  
5 party in interest with a claim against the Debtor pursuant to a Stipulated Judgment and Order for  
6 Permanent Injunction as to Defendant Derek R. Oberholtzer (the "Stipulated Judgment"). The  
7 United States District Court for the District of Idaho (the "District Court") entered the Stipulated  
8 Judgment in the case *Federal Trade Commission v. Apply2Save, Inc., et al.*, Case No. 09-00345-  
9 EJL (the "Enforcement Action").

10 5. The Stipulated Judgment includes equitable monetary relief in favor of the FTC and  
11 against the Debtor in the amount of \$4,061,374.00, the amount of consumer injury claimed by  
12 the FTC pursuant to its Complaint. Based upon financial statements and supporting documents  
13 provided by the Debtor to the FTC, the District Court conditionally suspended the monetary  
14 portion of the Stipulated Judgment. The suspension of the monetary portion of the Stipulated  
15 Judgment may be terminated should the District Court determine, upon motion by the  
16 Commission, that the Debtor failed to disclose any material asset, or made any other material  
17 misrepresentation or omission in certain financial statements and supporting documents provided  
18 to the Commission. A copy of the Stipulated Judgment is attached hereto and incorporated as  
19 Exhibit 1.

20 6. The FTC and the Debtor agree to resolve this Adversary Proceeding without litigation  
21 and they stipulate and agree that the Stipulated Judgment owing to the FTC by the Debtor is  
22 nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

23 **Order**

24 7. Judgment is hereby entered in favor of the Commission and against the  
25 Debtor/Defendant, Derek R. Oberholtzer, determining that the Stipulated Judgment entered in  
26 the Enforcement Action is nondischargeable in the amount of \$4,061,374.00, pursuant to 11  
27 U.S.C. § 523(a)(2)(A). The Stipulated Judgment is conditionally suspended subject to the  
28 Commission's right to file a motion in the District Court for the termination of the suspension of

1 the Stipulated Judgment in accordance with the terms the section of the Stipulated Judgment  
2 titled "Right to Reopen."

3 8. All other provisions of the Stipulated Judgment in the Enforcement Action, including the  
4 injunctive provisions, remain in full force and effect.

5 9. The persons executing this Stipulated Judgment for Nondischargeability acknowledge  
6 they have authority to bind the parties in the Adversary Proceeding.

7  
8 //end of text//

9 **STIPULATED AND AGREED TO:**

10 **DEREK R. OBERHOLTZER**

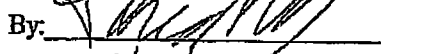
**FEDERAL TRADE COMMISSION**

11  
12 By: 

By: \_\_\_\_\_

13 Date: 3/29/2010  
Derek R. Oberholtzer

Date: \_\_\_\_\_  
Kimberly L. Nelson, Va. Bar. No. 47224  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Mail Drop NJ-2122  
Washington, D.C. 20580  
Telephone: (202) 326-3304  
Facsimile: (202) 326-2558  
[knelson@ftc.gov](mailto:knelson@ftc.gov)

14  
15 By:   
16 Date: 3/30/2010  
**THEODORE F. MONROE**  
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ATTACHMENT C

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ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

APPLY2SAVE, INC., a corporation;  
SLEEPING GIANT MEDIA WORKS, INC.,  
a corporation; and DEREK R.  
OBERHOLTZER, individually and as an  
officer and director of Apply2Save, Inc., and  
Sleeping Giant MediaWorks, Inc.,

Defendants.

Civil Action No. 09-00345-EJL

AFFIDAVIT OF \_\_\_\_\_

[Name of Defendant], being duly sworn, hereby states and affirms as follows:

1. My name is \_\_\_\_\_. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.
2. I am a defendant in *FTC v. Apply2Save, Inc., et al*, Case No. 09-00345-EJL (United

1 States District Court for the District of Idaho).

2 3. My current employer is \_\_\_\_\_. My current business address is  
3 \_\_\_\_\_ My current business telephone number is \_\_\_\_\_  
4 My current residential address is \_\_\_\_\_. My current residential  
5 telephone number is \_\_\_\_\_

6 4. On [date], I received a copy of the Stipulated Final Order for Permanent Injunction and  
7 Other Equitable Relief Against Defendants Apply2save, Inc., Sleeping Giant Media  
8 Works, Inc., and Derek R. Oberholtzer, which was signed by the Honorable [judge's  
9 name] and entered by the Court on [date of entry of the Order]. A true and correct copy  
10 of the Order it received is appended to this Affidavit.

11  
12 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
13 and correct. Executed on [date], at [city and state].  
14  
15

16 \_\_\_\_\_  
17 [Full name of defendant]  
18

19 State of \_\_\_\_\_, City of \_\_\_\_\_  
20

21 Subscribed and sworn to before me  
22 this \_\_\_\_\_ day of \_\_\_\_\_, 2010.  
23

24 \_\_\_\_\_  
25 Notary Public  
26

27 My Commission Expires:  
28 \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on May 12, 2010, I electronically filed the foregoing **STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF AGAINST DEFENDANTS APPLY2SAVE, INC., SLEEPING GIANT MEDIAWORKS, INC., AND DEREK R. OBERHOLTZER**, with the Clerk of the Court using the CM/ECF system. I certify that I served the foregoing on the following parties via electronic mail and overnight delivery:

David P. Gardner  
Winston & Cashatt  
601 W. Riverside  
Spokane, WA 99201  
[dpg@winstoncashatt.com](mailto:dpg@winstoncashatt.com)  
Attorney for Ch.7 Bankruptcy Trustee for Apply2Save, Inc.  
and Sleeping Giant Media Works, Inc.

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Attorney for Defendant Derek R. Oberholtzer

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Chapter 7 Bankruptcy Trustee for Defendant Derek R. Oberholtzer

DATED: May 12, 2010.

/s/ Nadine Samter  
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915 2<sup>nd</sup> Ave., Ste. 2896  
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