

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION
(proposed)

FEDERAL TRADE COMMISSION

Plaintiff,

v.

AMERIDEBT, INC. et al.

Defendants.

No: _____¹

[UNDER SEAL]

DO NOT DOCKET/
MOTION TO DELAY ECF PENDING

No: 03-cv-3317-PJM

**FEDERAL TRADE COMMISSION'S MEMORANDUM IN SUPPORT OF ITS MOTION
TO HOLD ANDRIS PUKKE, PETER BAKER, AND JOHN USHER IN CONTEMPT
FOR THEIR DECEPTIVE TELEMARKETING PRACTICES IN VIOLATION OF THE
FINAL ORDER**

¹ Currently pending before the Court is a motion to consolidate this matter with the related *FTC v. Ecological Fox LLC* ("Ecological Fox") matter, pursuant to Rule 42, under the joint case name *In re Sanctuary Belize Litigation*.

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I. INTRODUCTION

Andris Pukke, Peter Baker, and John Usher have orchestrated a massive deceptive scheme in violation of this Court’s explicit order barring them from deceptive telemarketing. Each of them are bound by the Stipulated Final Judgment and Permanent Injunction as to Defendants Debtworks, Inc. and Andris Pukke (the “Final Order”), *see* DE473, and liable for violations of that order.² They have used telemarketers to convince consumers to part with more than \$100 million based on promises that Pukke and his cohorts would shortly complete an extravagant and luxurious real estate development on land in remote, southern Belize. Over the course of 12 years, they have not completed the development that they have variously called “Sanctuary Bay,” “Sanctuary Belize,” and “The Reserve” (the land is referred to as the “Sanctuary Parcel”). Furthermore, they never will complete the development as promised to consumers. Although Pukke is the mastermind, Baker continues to be his henchman and stooge, serving as the front man for the companies Pukke controls. Usher, for his part, provides support in Belize, and is a control person for other parts of the interrelated companies. For simplicity, the maze of interrelated companies will be referred to as the Sanctuary Belize Enterprise, or “SBE.”

The FTC initially sued Pukke in 2003 for operating a deceptive debt settlement scheme. The FTC alleged that Pukke’s company deceptively sold the debt settlement services to consumers as a free service by a nonprofit, but, nonetheless, took unauthorized, compulsory “contributions” from its clients. DE1 ¶¶ 10, 15, 17-19 (complaint allegations); *FTC v. AmeriDebt, Inc.*, 373 F. Supp. 2d 558, 567 (D. Md. 2005) (granting preliminary injunction and finding likelihood of success based on Pukke’s assertion of his 5th Amendment rights and “the exhaustive evidence marshaled by the FTC”). Rather than face trial, Pukke settled, stipulating to

² In this motion the FTC cites to the evidence attached to its temporary restraining order filing in the *Ecological Fox* matter. The citations follow the same format, referencing the exhibit as plaintiff’s exhibit [letter], followed by paragraph [number] and attachment [number]. For example: PX[X] ¶ [X]:[X].

an order with a \$172 million judgment and the creation of a receivership to marshal his assets, wherever they may be. DE473 (the “Final Order”).

The Final Order also bars Pukke “and those persons in active concert or participation with” him from telemarketing any good or service while “making or causing or assisting others to make, expressly or by implication, any false or misleading representation, including but not limited to . . . any aspect of the performance, efficacy, nature, or central characteristics of the goods or services.” DE473, Section II.A. The Final Order further bars the same group of people from “violating the Telemarketing Sales Rule, 16 C.F.R. Part 310.” DE473, Section II.D. In violation of these provisions, Pukke, Baker, and Usher have telemarketed lots in Sanctuary Belize while making at least six misrepresentations: (1) because Sanctuary Belize has “no debt” it is risk free; (2) every dollar they collect from lot sales goes back into the development; (3) they will finish the development quickly—within two to five years; (4) the finished development will boast remarkable amenities ranging from a hotel to an American-caliber hospital; (5) the impressive amenities mean the lots will rapidly appreciate; and (6) there is a robust resale market for consumers to resell their lots. They also assert, whenever asked, that Pukke is either not involved or, if pressed, has minimal involvement and no ownership stake in the SBE. Based on extensive evidence from former insiders, experts, and victimized consumers, Pukke, Baker, and Usher control the enterprise and each of these claims is false.

II. THE LEGAL STANDARD

Clear and convincing evidence establishes each of the elements for civil contempt: “(1) The existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) that the decree was in the movant’s ‘favor’; (3) that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and (4) that the movant suffered harm as a result.” *Schwartz v. Rent-A-Wreck of America*, 261 F. Supp. 3d 607, 612 (D. Md. 2017) (J. Messitte) (citing *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 301 (4th Cir. 2000)); *United v. Ali*, 874 F.3d 825, 831 (4th Cir. 2017). Elements 1 and 2 can be dealt with summarily. Pukke, Baker, and Usher had knowledge of the Final Order.

Pukke signed and stipulated to the Final Order. Baker has once already been held in contempt of the Final Order. DE571. Usher, for his part, signed documents submitted to this Court recounting his knowledge of the Final Order as part of a sham settlement in 2008 that permitted Pukke and Baker to both consolidate and hide their control over Sanctuary Belize. DE682-4 at 2.³ The Final Order was issued in the FTC’s favor, enjoining Pukke and his cohorts from harming consumers and simultaneously creating a mechanism (*i.e.*, contempt proceedings) for the FTC to stop such behavior and compensate victims.

Only the third and fourth contempt elements require elaboration. Here, Pukke, Baker, and Usher’s long history with the Sanctuary Parcel and creation of the entities comprising the SBE establishes their control over the SBE and that they are therefore bound by the Final Order and liable for the SBE’s conduct in violation of the Final Order. *Wilson v. United States*, 211 U.S. 361, 376 (1911); *Colonial Williamsburg Found. v. Kittinger Co.*, 38 F.3d 133, 136-37 (4th Cir. 1994). Under their control, the SBE has made the identified misrepresentations, causing more than a thousand consumers to purchase lots in Sanctuary Belize. Baker and Usher are liable despite not being parties because of their knowledge of the Final Order and their acts in concert or participation with Pukke and the companies he controls. Furthermore, consumers have been harmed, having lost over \$100 million. These consumers deserve compensation.

III. PUKKE, BAKER, AND USHER CONTROL THE SANCTUARY PARCEL AND THE SBE.

A. Pukke and Baker Acquired the Sanctuary Parcel in 2003 and Then Hid It from the Receiver.

The scheme traces back to 2003, when Pukke and Baker (with Baker’s stepparents) formed Dolphin Development LLC (“Dolphin”) and Sittee River Wildlife Reserve (“SRWR”).⁴

³ This transaction is discussed below and is also the subject of a separate contempt motion against Pukke, Baker, and Usher filed concurrently with this motion.

⁴ PXQQ ¶ 67:71 (Dolphin articles of incorporation, identifying the owners, including Pukke, Baker, and Baker’s stepparents); PXQQ ¶ 68:72 (SRWR articles of incorporation); PXQQ ¶ 70:74 at 95:5-6 (showing that the others associated with the companies include the Medhursts, Baker’s mother and stepfather); PXQQ ¶ 93:98 at 16-17.

Pukke was the majority owner of Dolphin and Chairman of both Dolphin and SRWR.⁵ In this role, he loaned Dolphin and SRWR at least \$3 million to purchase the massive, more than 12,000 acre Sanctuary Parcel.⁶ Although Usher was not originally associated with either Dolphin or SRWR, his role evolved until he became a manager and Director in 2005.⁷

Notwithstanding the Court's April 20, 2005, preliminary injunction transferring all of Pukke's assets to the Receiver, DE122, Pukke and Baker continued their direction of Dolphin and SRWR,⁸ resulting in the initial marketing of the development then known as Sanctuary Bay, with the first lot sales beginning by at least July 2005.⁹ Pukke directed the Sanctuary Bay marketing and development, with Baker's support. For example: Pukke helped develop the "Sanctuary Bay Estates" website, provided specific language to be used on the website,

⁵ PXQQ ¶ 67:71 (Puck Key Investment L-8, LLC ("Puck Key 8") owns 60% interest in Dolphin); PXQQ ¶ 312:336 (Pukke's 2005 bankruptcy schedule asserting Puck Key 8 100% owned by P & P II Family Trusts); PXQQ ¶ 93:98 at 16:10-11 (The Court on 3/14/07: "There's no question that Andris Pukke was the 60% owner of Dolphin Development."); PXQQ ¶ 78:83 (9/21/03 Dolphin board minutes listing Pukke as "Chairman"); *id.* (6/21/03 SRWR board minutes listing Pukke as "Director" and noting his election as "chairman").

⁶ PXQQ ¶ 78:83 at 21 (lands purchased with loans from Pukke and Dolphin); *id.* at 25 (10/7/05 SRWR minutes: lands were purchased with "unsecured loans made by Mr. Andris Pukke"); PXQQ ¶ 68:72 at 9 (Pukke testifying that he lent a total of "three point something million dollars that they were to pay me back as they sold the piece of that land"); PXQQ ¶ 78:83 at 4 (Dolphin board minutes noting that Pukke had loaned Dolphin \$3M); PXO ¶ 4:24 (SRWR history, stating that Pukke and Baker purchased Sanctuary Belize in 2002); PXQQ ¶ 65:69, attachment ¶ 11 (Deputy Receiver Brick Kane explaining the deeds of purchase); PXQQ ¶ 93:98 at 17:2-11 (the Court describing how Pukke acquired the land).

⁷ PXQQ ¶ 312:336 at 6 (in 2003, manager of Triton Mariculture Ltd. ("Triton"), a shrimp farming company owned by Dolphin); PXQQ ¶ 78:83 at 3 (9/21/03 Dolphin board minutes discussing purchase of Triton); PXQQ ¶ 70:74 at 10 (2005 Pukke Deposition identifying Triton, stating he owned Triton and that "Johnnie" Usher was its manager); PXQQ ¶ 78:83 at 8 (5/13/05 Dolphin board minutes, manager); *id.* at 24 (10/7/05 SRWR board minutes, director); PXO ¶ 4:24 at 11.

⁸ PXQQ ¶ 78:83 at 8 (May 2005 Dolphin meeting minutes showing Pukke as Chairman, Baker as Director); *id.* at 13 (July 2005 Dolphin meeting minutes showing Pukke and Baker as Directors); *id.* at 24 (October 2005 SRWR board minutes showing Pukke attending the board meeting and Baker a Director).

⁹ PXQQ ¶ 71:75 (2005 email attaching Sanctuary Bay telemarketing script, claiming the development would have a hotel, marina, health spa, equestrian center, and investment return rates around 500%); PXQQ ¶ 302:325 (September 2005 emails by and among Pukke, Baker, and Baker's stepfather regarding Sanctuary Bay marketing); PXQQ ¶ 313:337 (August 2005 Sanctuary Bay website listing Dolphin as the developer); PXQQ ¶ 72:76 (August 2005 lot sale designating the "vendor" as "Dolphin Development Co., Ltd.; dba Sanctuary Bay"); PXQQ ¶ 325:348 (July 2005 Baker email attaching list of lots indicating many had already been sold).

transferred an additional \$100,000 from a Latvian account to fund the development, and directed land development, usually copying Baker on all related correspondence.¹⁰ To hide the asset, notwithstanding the preliminary injunction, Pukke and Baker engaged in a sham transaction transferring Dolphin's rights to companies purportedly controlled by Baker.

When informed of this first sham transaction, the Court held Pukke and Baker held in contempt for failing to turn over the property and ordered them to turn it over to the Receiver. DE571 (Mar. 30, 2007).¹¹ Undeterred, Pukke and Baker still refused to turn over the asset,¹² forcing the Court to incarcerate them. DE604 (May 4, 2007).¹³ Following incarceration, the FTC and the Receiver believed that Belizeans, including Usher, had in fact claimed control over the enterprise. Pukke and Baker were, therefore, released, and the Receiver negotiated a settlement with Usher, who was at this point SRWR's Chairman.¹⁴ DE682 (motion to approve); DE682-4 (settlement agreement). No party objected to the proposed sale, and the Court approved it without comment. DE686. But, this settlement was a fraud. As disclosed in 2016 during the SRWR board meeting, with Baker once again SRWR's Chairman,¹⁵ Pukke and Baker

¹⁰ See PXQQ ¶ 74:79 (April 2005 email correspondence in which Pukke, writing from both his email address and Baker's email address, describes creation of Sanctuary Bay website, marketing, including lead generation, and the transfer of \$100,000 from a Latvian bank account); PXQQ ¶ 75:80 (May 2005 email seeking Pukke's comments on lot development); PXQQ ¶ 77:82 (July 2005 emails among Pukke and Baker with Pukke approving and directing payments for development).

¹¹ During its oral ruling, the Court described Pukke's and Baker's testimony, stating: "*There's a casualness about Mr. Baker's statements and, indeed, about Mr. Pukke's as if the truth doesn't really matter.*" PXQQ ¶ 93:98 at 25:20-24 (emphasis added).

¹² PXQQ ¶ 320:344, attachment ¶¶ 3-4, 7 (detailing Baker's lack of cooperation); PXQQ ¶ 88:93, attachment ¶ 5 and Exhibits 3 & 4 (Exhibit 4 specifies that SRWR is terminating all "*past and future*" involvement with Dolphin, Starfish, and Peter Baker) (emphasis added).

¹³ In these proceedings, the Court commented: "The mendacity of these two men throughout the history of this receivership is something to behold." PXQQ ¶ 95:100 at 27:7-8.

¹⁴ The settlement was for a discounted valuation, because the Receiver was unsure how effectively he could enforce his rights in Belizean courts against Usher. DE682 at 4.

¹⁵ This, despite the 2007 SRWR letter claiming it was terminating any future relationship with Baker. Also, a "Mark Romeo" was a Director in 2016. As this Court may recall, Pukke has at times used the name Mark (or Marc) Romeo, and testified to this Court in 2015 as part of his supervised release hearing that the real Romeo ceased all connections with the Sanctuary Parcel and its various related corporate entities in 2011. PXQQ ¶ 148:141 at 285:5-14. The FTC's Memorandum supporting its contemporaneously-filed *ex parte* Motion for a Temporary Restraining Order in the related *Ecological Fox* matter provides additional evidence that Pukke used the "Marc Romeo" alias.

arranged the settlement to transfer Pukke’s shares to Baker, notwithstanding that both were obligated to turn over whatever rights they had to the Receiver. PXO ¶ 3:24 at 12. This illicit sale was corroborated during the FTC’s undercover investigation, with Frank Costanzo, an officer of the current corporate entities associated with the Sanctuary Parcel, telling an FTC employee that Baker bought the Sanctuary Parcel for himself and the “original investors.” PXQQ ¶ 48:41 at 15:23-16:10 (emphasis added). Within months of the settlement, they had resumed selling lots and giving tours based on the same representations Pukke and Baker were making in 2005, with Usher as the onsite salesman. PXQ ¶¶ 2-6; PXR ¶¶ 2-5.

B. Pukke, Baker, and Usher Created the Current Corporate Entities that Form the SBE, and Control the SBE to This Day.

After Baker obtained Pukke’s legal interest in the Sanctuary Parcel, they created a new entity, Eco Futures Belize Ltd. (“Eco Futures (BZ)”) that took over Dolphin’s role as developer, PXO ¶ 3:24 at 12, Global Property Alliance Inc. (“GPA”), and various other largely indistinguishable entities to further the lot sale scam. PXO ¶ 2:23 at 8 and ¶ 3:24 at 13; *see also* PXQQ ¶ 148:141 at 197:6-12 (testimony from GPA employee that GPA “is doing business as Eco Futures”); *id.* at 202:10-22 (further testimony that other marketing entities, such as “Buy Belize,” operate from GPA’s offices at GPA’s direction). These various entities share offices, managers, employees, and funds.¹⁶

Ample evidence confirms Pukke’s primary control over the SBE. Although Pukke has avoided being a “paper owner,” multiple former SBE employees confirm that Pukke is and has been the ultimate control person for the entire enterprise. PXEE ¶ 5 (“Pukke was the person who ran everything.”); PXZ ¶¶ 3 & 6 (“Pukke ran everything,” including “Buy Belize, Eco Futures, and Global Property Alliance”); PXBB ¶ 3 (“While I was working there, I saw no distinction between Sanctuary Belize, Buy Belize, Global Property Alliance, Sittee River Wildlife Reserve

¹⁶ PXQQ ¶¶ 215-17 (share location and management); PXNN ¶ 13 (commingle funds); *see also* PXBB ¶ 3 (“While I was working there, I saw no distinction between Sanctuary Belize, Buy Belize, Global Property Alliance, Sittee River Wildlife Reserve and Eco Futures Development.”); PXZ ¶ 6 (“I wasn’t sure what company I worked for.”).

and Eco Futures Development. Everyone who worked for those entities took orders from and reported to Pukke.”). Third-party business partners identify Pukke the same way.¹⁷ Internal SBE documents confirm Pukke’s authority over communications with lot owners about corporate structure,¹⁸ legal affairs,¹⁹ lot ownership structure,²⁰ refunds to consumers,²¹ dissolution of SBE-related entities,²² payments for equipment shipped to Belize,²³ lot sale contracts,²⁴ commissions for telemarketers,²⁵ and negotiations with consumers who want to sell their lots.²⁶ Tellingly, Pukke ran the SBE during his stint in prison for obstruction of justice in this case. *See* PXQQ ¶ 152 (an email showing Pukke’s continued control during his period of incarceration); PXQQ ¶ 105:115 (SBE paying for Pukke’s Wall Street Journal subscription while he was incarcerated); PXQQ ¶ 197:207 (SBE employees arranging for email correspondence with Pukke while he was incarcerated).

Baker continues to serve as Pukke’s front man. As shown above, Baker was an SRWR founder and was the SRWR Chairman as of 2016. Additionally, Baker is the purported owner or officer of several SBE members. PXQQ ¶¶ 187, 217, 219, 231, 233, 236; PXO ¶ 3:24 at 13 (GPA). He even had access to SBE bank accounts, using them for personal purchases. PXQQ ¶ 303. Also as discussed above, another SBE member told the FTC in an undercover call that Baker “owns [the] development.”

¹⁷ PXFF ¶¶ 8-9 (real estate developer met with Pukke, stating: “Pukke characterized himself as the ‘CEO’ and ‘owner’ of Sanctuary Belize. Pukke made a point to emphasize that he not only owned the marketing operation, but that he raised the money to purchase Sanctuary Belize. . . . Pukke was clear that he was the owner of the property.”); PXGG ¶¶ 31-33 (executive of international marina management company stating that it was apparent Pukke was a control person and that Pukke confided in him that he in fact had an equity interest in Sanctuary Belize).

¹⁸ PXQQ ¶ 150:142 (employees relying on Pukke’s advice).

¹⁹ Pukke directing \$20,000 wire to Belizean attorney. PXQQ ¶ 151:143.

²⁰ Pukke directing employees regarding “fractional ownership” of lots. PXQQ ¶ 152:145.

²¹ Pukke directing a \$10,000 check to a dissatisfied lot owner. PXQQ ¶ 153:147.

²² Pukke dissolving the development’s former HOA. PXQQ ¶ 154:149.

²³ Email showing Pukke’s authority to wire a payment. PXQQ ¶ 155.

²⁴ Regarding a lot sale contract, Pukke getting a copy for his “review.” PXQQ ¶ 156:155.

²⁵ PXQQ ¶ 157:156 (email train in which Pukke is decision maker on commissions).

²⁶ Pukke directing subordinate regarding “all emails or requests” about owners who want to sell, including requests sent to apparent SBE executives. PXQQ ¶ 158:159.

Similarly, Usher is still present, serving key roles for members of the SBE. Usher is a director of the Sanctuary Belize Property Owner’s Association (“SBPOA”), PXQQ ¶ 201: 213. He is a bank signatory on Eco Futures (BZ)’s U.S. bank account. PXQQ ¶ 204. Furthermore, numerous marketing communications directed to U.S. residents identify Usher as the “chairman,” “owner,” or “principal” of the development. PXQQ ¶ 205.

IV. SBE HAS DECEPTIVELY TELEMARKEDED SANCTUARY BELIZE LOTS IN VIOLATION OF THE FINAL ORDER.

With Pukke, Baker, and Usher in charge, SBE has made more than 1,000 sales so far, PXPP ¶¶ 75-76, taking more than \$100 million from consumers, PXB ¶ 36:18, by selling lots in Sanctuary Belize through “false or misleading representation[s]” in violation of the Final Order. DE473, Section II. The sales process has followed the same pattern for years. Consumers hear or see commercials advertising real estate investment opportunities in Belize, which results in consumers calling the phone number in those advertisements or driving those consumers to the contemnors’ websites.²⁷ At the websites, consumers are induced to leave their personal information, including a phone number. PXQQ ¶ 103. A sales person then calls the consumer and makes the core misrepresentations to induce the consumer to schedule a trip to Sanctuary Belize.²⁸ Usually this call, or a subsequent one, includes a “webinar,” which is a phone call with accompanying slides that the consumer can view. PXQQ ¶ 108; PXW ¶¶ 8, 17; PXI ¶ 8; PXBB ¶ 14.²⁹ The webinars persuade consumers to tour the development in Belize. SBE offers an all-

²⁷ PXQQ ¶ 102; PXI ¶ 1 (consumer saw ad and called number); PXE ¶ 3 (same); PKK ¶¶ 2-3 (consumer saw ad and went to website); PXW ¶¶ 1-4 (found website and entered information); PXD ¶ 2 (same); PXN ¶¶ 2-4 (same); PXR ¶ 3 (same); PXS ¶¶ 3-5.

²⁸ PXQQ ¶ 324; PXGG ¶ 19 (“Kazazi told me that they had a call center in California where Sanctuary Belize used high-pressure sales tactics to convince consumers to visit the development.”); PXBB ¶ 16 (“Salespeople would tell customers whatever they wanted to hear to get them to visit Sanctuary Belize.”); PXZ ¶ 7 (“People at the [SBE] office frequently talked about how Sanctuary Belize was a scam.”).

²⁹ The webinars at times include prominent members of the SBE, including one in which Luke Chadwick, a defendant in the related *FTC v. Ecological Fox*, states: “We are not a fine print organization. **We don’t say a bunch of things and then, after we disappoint you, say, ‘Hey, read the fine print.’** We don’t do that. You know, we say this is going to be what you expect it to be and if it’s not, hey we’ll give you your money back.” PXI ¶ 9:3 (webinar recording) at 1:34:25-1:34:41 (emphasis added).

inclusive package (usually \$999 per couple) that covers lodging at a resort near Sanctuary Belize, transportation within Belize, and meals. *See, e.g.*, PXQQ ¶ 24 (undercover purchase). The webinars also persuade consumers to sign a “non-binding lot reservation agreement.” PXQQ ¶ 111; PXBB ¶ 14. Consumers pay \$2,000 to \$10,000 to obtain a right of first refusal on a particular lot. PXQQ ¶ 111; PXD ¶ 8:3 (attaching lot reservation agreement); PXBB ¶ 18:17 (same); PXI ¶ 21; PXU ¶ 8. At Sanctuary Belize, consumers hear the core misrepresentations again (PXQQ ¶ 117) and are pressured to buy the lots while on an island 40 minutes away from the mainland (PXQQ ¶ 127) either in cash or with in-house financing only (PXE ¶ 28; PXF ¶ 28; PXQQ ¶ 133; PXQQ ¶ 134), thus avoiding third-party involvement.³⁰

A. SBE Makes Seven Misrepresentations.

The false claims SBE makes during this process include: (1) the Sanctuary Belize development is risk free; (2) every dollar consumers pay goes into the development; (3) the development will be complete within a short period of time; (4) the promised amenities (which include a hotel, restaurants, shops, hospital, and airport) will be completed within a short period of time; (5) the lots will rapidly appreciate; and (6) there is a robust resale market for the lots. They also make the frequent claim that Pukke, the mastermind and control person for the whole SBE scheme, has little or no involvement. Each claim is false and violates the Final Order.

1. The Contemnors Falsely Claim that “No Debt” Means Sanctuary Belize Has Little to No Risk.

SBE claims to use a “no debt” business model, making Sanctuary Belize a less risky investment than one in which a developer must make payments to creditors. *See* PXPP ¶¶ 10-18 (identifying over thirty instances in which SBE made this claim to consumers, citing consumer declarations, telemarketer declarations, SBE scripts, webinars, emails, and other marketing communications). Prominent examples include an SBE telemarketer telling the FTC during its undercover investigation that because Sanctuary Belize is “debt free,” “[t]here’s no possible way

³⁰ While at Sanctuary Belize, many consumers indicate they met and interacted with Usher, PXQQ ¶ 118, who takes part in the sales process. *See, e.g.*, PXR ¶¶ 7-9.

for it to go bankrupt,” PXQQ ¶ 24:13 at 25:23-26:1, and “there’s absolutely no way for you to lose your money.” PXQQ ¶ 45:38 at 28:9-29:8; *see also* PXBB ¶ 16 (SBE telemarketer: “Because Sanctuary Belize didn’t owe anyone any money, it was a low-risk investment.”); PXZ ¶ 15 (SBE telemarketer: “We explained that the ‘debt-free’ development model meant much lower risk because owners did not have to worry about Sanctuary Belize defaulting on loans.”). As expected, consumers often identify the “no debt” model as a reason they bought a Sanctuary Belize lot, thus relying on the claim. PXPP ¶ 11 (collecting evidence); PXI ¶ 5 (“The fact that the no debt model made Sanctuary Belize less risky was important to our ultimate decision to purchase a lot there.”); PXS ¶ 5 (“The ‘no debt’ model was impressive and important to me.”); PXU ¶ 6 (“Knowing that the development was not risky and was on a firm financial footing was very important to us.”).

In fact, the opposite is true—the absence of conventional financing means substantially greater risk. According to Richard Peiser, a Professor at Harvard University and leading authority on large-scale real estate development, attempting a large-scale real estate development without a reasonable level of debt is “high-risk,” PXA ¶ 12, because it is normally “hard or impossible” to have sufficient front-end and sustained cash flow to fund infrastructure, construction, and operation of large-scale amenities (such as those contemplated in the Sanctuary Belize development) until the amenities have attained a positive cash flow, without outside financing. PXA ¶ 20; *see also* PXA at 1 (“The ‘no debt’ model risks that funds will not be available for project development to unfold along a time path that will sustain project marketing and ultimately project survival.”).³¹ Furthermore, the “no debt” model poses a greater risk for consumers because the lender in traditionally financed real estate developments provides underwriting, due diligence, and monitoring functions to reduce consumers’ risk, PXA ¶ 28, ensuring the borrower has significant net worth, is reliable (such as not being run by a two-time

³¹ Indeed, an executive at the global marina management company the contemnors wanted to manage their marina told them “on several occasions that having access to capital markets would allow Sanctuary Belize to complete the upland development quicker.” PXGG ¶ 18.

felon), and has real estate development experience. PXA ¶ 31. The lender’s due diligence would also “include extensive assessment of the feasibility of the project,” PXA ¶ 31, which is important here given what Professor Peiser describes as the “mismatch” in amenities being touted with the market feasibility for them in remote, southern Belize. PXA ¶¶ 44-48.

2. SBE Diverts Funds to Pukke and His Family and Buys Various Personal Items for Pukke, Baker, and Other SBE Executives Rather Than Use Those Funds for Development.

SBE also makes a closely-related claim: Because of the “no debt” model, every dollar the developer collects from lot sales goes back into the development. *See* PXPP ¶¶ 20-24 (compiling evidence from twenty sources showing that SBE made this claim, citing consumer declarations, telemarketer declarations, SBE scripts, webinars, emails, and other SBE marketing communications). Consumers relied on this important claim. PXPP ¶ 21 (collecting evidence); PXG ¶ 15 (“The fact that this was a safe investment and that all of the money from sales would go to construction (rather than to pay off debt) was important to my decision to purchase.”). However, the claim is false.

The banking records are replete with personal expenses unrelated to the development, including numerous transfers for Pukke’s personal benefit. For instance, despite the Court’s order prohibiting Pukke from repaying his childhood friend John Vipulis for the “loan” he made to end Pukke’s coercive incarceration, DE622, SBE has transferred more than \$3 million to Vipulis. PXNN ¶ 8.R.³² Similarly, SBE has transferred more than \$1 million to his wife/fiancée, a business his wife/fiancée ostensibly owns, and his deceased father’s estate, through which money is further transferred to other relatives. PXNN ¶¶ 8.c-8.f, 8.v-8.w. Additionally, SBE paid significant amounts to remodel Pukke’s personal residence, which is on sale for \$18.5 million. PXNN ¶ 8(ee); PXPP ¶ 74; PXEE ¶ 8.

SBE also pays numerous other expenses that have nothing to do with completing the Sanctuary Belize development. These include high-priced tickets to sporting events and music

³² These payments are the subject of a separate motion to hold Pukke and Vipulis in contempt of this Court’s order prohibiting these transfers before paying the FTC.

concerts, PXNN ¶ 9, expensive beauty products for Baker and/or his wife, PXNN ¶ 10, PXC ¶ 25, an ██████████ strap apparently for Baker, PXPP ¶ 100, PXNN ¶ 10, and thousands for cosmetic dentistry. PXNN ¶ 8(i); PXPP ¶ 102. Moreover, Pukke, Baker, and others have Sanctuary Belize debit cards they use for groceries, gas, restaurants, personal travel, and cash withdrawals. PXEE ¶ 8 (former SBE bookkeeper, stating “although millions of dollars flowed through Sanctuary Belize accounts . . . relatively little went to construction expenses in Belize”).

3. The Development Was Not Finished Within Two to Five Years, and Will Not Be Finished Within the Next Five.

Since at least 2005, the contemnors have advertised largely the same set of amenities and claimed they will be complete within two to five years. *See* PXPP ¶¶ 26-29 (identifying twenty instances in which SBE made this claim, citing consumer declarations, telemarketer declarations, SBE scripts, webinars, emails, and other SBE marketing communications); PXQQ ¶ 314:338 at 32 (June 2006 timeline claiming all amenities would be complete by November 2008); PXQQ ¶ 29:18 at 43:9-11 (in 2017 call with FTC employee posing as consumer, stating: “[I]n the next year or two, it’s going to be all done.”). The timeline claim is important to consumers and they rely on it when making their decisions to purchase. *See* PXPP ¶ 27. But the claim is false.

Indeed, it is unquestionably false for a large number of consumers who heard this claim more than five years ago. By mid-2013 (more than five years ago), SBE had made hundreds of sales. PXPP ¶ 75. However, the development is nowhere near finished, with few homes, PXMM ¶¶ 8-11, PXPP ¶ 78, and most promised amenities unstarted or incomplete.³³

Furthermore, SBE will not complete the development over the next five years. Professor Peiser opines that the total cost to complete the massive planned community as promised (including the promised hospital, hotel, and commercial core) is \$613 million. PXA ¶ 327. Professor Peiser even created an estimate for a “below promised” development, which still would require an additional \$248 million. *Id.* Although SBE claims it “absolutely” has the

³³ The incomplete nature of the work is detailed in the section below related to the promised amenities.

resources to finish the development, PXQQ ¶ 24:13 at 26:18-27:3, it plainly does not. Erik Lioy, the head of forensic accounting at Grant Thornton LLP, has reviewed SBE’s bank records and internal accounting information (including Quickbooks files), and opines that SBE will have no more than \$116 million to contribute to development over the next five years—far short of the amounts Professor Peiser indicates are necessary to complete even the “below promised” version of the development. PXB ¶ 41.³⁴

4. The Amenities Were Not Finished Within Five Years, and They Will Not Be Completed Within the Next Five.

SBE claims that the completed development will boast remarkable amenities comparable to a small American city. These amenities are crucial because they make living in remote, southern Belize more palatable to sophisticated American consumers looking for retirement or second homes, and the amenities will purportedly cause the lots’ value to skyrocket. PXK ¶ 21; PXZ ¶ 12; PXQQ ¶ 23:10 at 59:12-60:7. One telemarketer explained the breadth of these promised amenities:

We explained [to prospective purchasers] that the property would include world-class dining with restaurants, bars, bistros, cafes, bakeries, a fresh fish market, a farmer’s market, a citrus farm, and bars. It would also include an American-size grocery store. . . . a post office, medical clinic, art galleries, an on-site rental office to rent their unoccupied properties, an international school for children, an outdoor activity center, a spa and fitness center . . . a church . . . a boat dealership, a water taxi service . . . a fuel station at the world-class marina³⁵. . . . [and] an international airport and hospital³⁶ that would be completed within two years near Sanctuary Belize.

³⁴ Grant Thornton used assumptions that strongly favor the SBE, including assuming that \$25 million SBE has transferred overseas since 2011 is undissipated and available to complete the development, PXB at 1, and that SBE can replicate its two best sales years (2013 and 2014) for each of the next five years. *Id.*

³⁵ The marina is one of the most prominent claims. The contemnors claim Sanctuary Belize will have a 250 slip state-of-the-art marina, purported to be rated as one of, if not the, best marinas in the Western Caribbean. PXQQ ¶ 23:10 at 13:5-6 ; PXPP ¶ 88; PXS ¶ 14. Given the contemnors’ conduct, it is unsurprising that the marina currently has only 81 slips and is nowhere near world class. PXGG ¶ 40 (81 slips, with many not operational); PXHH ¶ 39 (“It was not a ‘world class’ marina. Rather, it was an expeditionary, outpost destination.”).

³⁶ SBE describes the hospital as 30,000 square feet (or more), PXPP ¶¶ 31-34, 84, and “state of the art,” PXQQ ¶ 20:6 at 58:13-59:5, with vast capabilities including everything from “oncology” to “organ transplantation,” PXPP ¶ 31. Reflecting the development’s size, SBE also claims the downtown “Marina Village” area will have a smaller emergency medical facility. PXPP ¶¶ 31-34 (collecting evidence of claims of both the hospital and medical clinic).

PXBB ¶ 17; *see also* PXZ ¶ 10 (“We told prospective buyers that the Marina Village would have high-end shopping and dining, a hotel, a spa and fitness center, an American-sized grocery store, and a world-class marina with at least 200 slips that Island Global Yachting (“IGY”) would operate.”); PXPP ¶¶ 30-54 (collecting evidence showing consumers heard these claims). As expected, the promised amenities are important to consumers and they rely on these claims when making a decision to purchase.³⁷

But, these claims are false. After thirteen years, most of the promised amenities do not exist. PXPP ¶ 79 (collecting information from consumers who visited regarding the status of advertised amenities). The hospital, hotel,³⁸ airports, entertainment, and “Marina Village” (the commercial core) are unfinished and, in most cases, unstarted. SBE has completed only a pool, a bodega, a two-pump gas station, an open-air bar, restaurant, and a marina less than a third of the size of what it promised. PXPP ¶ 82. As noted above, the cost of the promised amenities far exceeds SBE’s potential income over the next five years. Nor is there any chance the amenities will somehow appear on their own. Professor Peiser explains that the development’s small population, rural location, competition within the development (for instance, two competing coffee shops), and competition from other resort communities makes most of the promised amenities economically unviable. PXA ¶¶44-64. As Professor Peiser opines, “[t]here is essentially a *zero probability* that this development ever would provide a large enough and/or wealthy enough base of customers to support several of the most essential amenities that have been promoted as part of marketing lots at Sanctuary Belize.” PXA ¶ 68 (emphasis added).

³⁷ *See, e.g.*, PXI ¶ 9 (explaining that the fact that Sanctuary Belize would finish the promised amenities “by 2014 or sooner” was important to his decision to purchase); PXE ¶ 14 (“[H]aving specific, short-term timelines for the amenities at Sanctuary Belize was important to our decision to purchase there.”); PXN ¶ 1 (“[W]e purchased based on claims . . . that the promised amenities would be completed in short order”); *id.* ¶ 48 (noting that “our property would have no value” without the promised amenities).

³⁸ An SBE executive told a marina company (IGY) executive that he “wasn’t sure how Sanctuary Belize could build or fund the proposed hotel [.]” PXGG ¶ 18.

5. Contrary to SBE’s Claim, the Lots Do Not Rapidly Appreciate.

SBE further claims that the impressive amenities detailed above mean the lots will appreciate from 200% to 300% (and sometimes 400% or 500%) within two to three years. *See* PXPP ¶¶ 56-60 (identifying fourteen instances in which SBE made this claim). For instance, an SBE telemarketer told FTC employees posing as purchasers that, due to the airport, marina, and other amenities, they could expect “around a 300 to 500 percent increase in three years.” PXQQ ¶ 23:10 at 59:12-18. Another SBE telemarketer told FTC undercover employees their lot would “double[] or triple[] and they’re [projecting] 250 to 300 percent in the next few years.” PXQQ ¶ 20:6 at 54:21-55:1. As recently as June 2018, SBE posted marketing material claiming 400% returns. PXC ¶¶ 67-68:152 at 1. This is an important claim to consumers that they rely on when making a decision to purchase. PXPP ¶ 57 (collecting evidence of reliance); PXE ¶ 22; PXP ¶ 22; PXI ¶ 20.

In reality, there is no appreciation. Indeed, unhappy consumers are usually forced to hold onto their lots indefinitely or sell them back to the contemnors at a loss, PXQQ ¶ 178 (noting that most do not even obtain full refunds), which would not occur if their lots had appreciated. *See also* PXMM ¶¶ 13-16, 27-32 (collecting evidence showing consumers seeing no appreciation after six years); PXQ ¶ 61 (consumer seeing no real appreciation after ten years).

6. There Is No Robust Resale Market.

SBE also claims consumers will realize the rapid appreciation without difficulty because there is already a robust resale market.³⁹ For example, when FTC employees posing as prospective buyers asked “let’s say something comes up and we need an emergency flow of cash . . . what’s the . . . market like for reselling” lots, the SBE telemarketer assured them that lots were “selling like hot cakes,” and “you’re not going to have a problem whatsoever” reselling the lot. PXQQ ¶ 24:13 at 17:17-18:2; PXQQ ¶ 20:6 at 14:14-16 (explaining that a current owner is

³⁹ *See* PXPP ¶¶ 62-67 (summarizing evidence that SBE made this claim, citing consumer declarations, telemarketer declarations, and many instances in which the claim appears in SBE scripts, webinars, emails, or other marketing communications).

“all set” because his lot is “going to be worth so much money, what he could do is turn around and just sell it”). The resale market claim is important to consumers and influences their decision to purchase. PXPP ¶ 63.

But, of course, there is no resale market. If there were, consumers would not pursue the unfavorable buy-back agreements just discussed. Consumers report being entirely unable to resell lots, PXI ¶¶ 63-71, or able to do so only after years of effort (and without any meaningful profit), PXQ ¶ 57-61. Furthermore, SBE actively interferes with resale efforts (likely because such efforts lower prices for lots in SBE’s inventory). SBE directs consumers to realtors that do not genuinely attempt to sell the lots, PXI ¶ 68, tears down “for sale” signs from lots, and prevents or limits prospective purchasers from entering the development. PXT ¶ 27; PXQ ¶ 58.

7. Contrary to Their Repeated Assertions to Consumers, Sanctuary Belize Is Not Pukke Free.

In addition to the six Core Claims, some consumers ask about Pukke during the sales process, and, when they do, SBE denies his involvement. Because the telemarketing process often extends for weeks of lengthy calls and webinars, consumers sometimes perform internet research and locate information about Pukke’s history with *AmeriDebt* and the development. PXI ¶ 20. One such consumer explained that this information “was an enormous red flag for me,” and had he “known Pukke had or would have anything to do with Sanctuary Belize, my wife and I never would have purchased a lot.” *Id.* When the consumer raised his concerns, SBE telemarketer Robert Schafnitz “was completely clear that Pukke was no longer involved with Sanctuary Belize in any way whatsoever.” *Id.* at ¶ 21. This representation “was critically important” to the consumer, who then made a \$10,000 deposit on a lot he later purchased. *See id.* When an FTC employee posing as a potential buyer’s attorney asked about Pukke’s involvement, Frank Costanzo (a defendant in the closely-related *Ecological Fox* action) said that Pukke’s only involvement “is that he runs a marketing company” connected with the development, PXQQ ¶ 48:41 at 8:22-9:7, and emphasized that “Pukke has no relationship or ownership or control of this development or this property.” *Id.* at 8:8-12 (emphasis added).

Costanzo even denied having seen Pukke since December 2016, PXQQ ¶ 48:41 at 24:11-22, despite attending a business lunch with Pukke in Belize in May 2017. PXGG ¶¶ 31:29 and 35; PXL ¶¶ 3-9; PXQQ ¶ 142 (analyzing photos taken of this meeting involving Pukke, Costanzo, and others). As already detailed, Pukke is still very much involved, including claiming to be the “CEO” and having an equity stake in Sanctuary Belize.

B. SBE’s Misrepresentations Violate the Final Order.

The Final Order specifically prohibits Pukke and all those with knowledge of the order acting in concert or participation with him from “making or causing or assisting other to make, expressly or by implication, any false or misleading representation” “in connection with the telemarketing of any good or service,” or otherwise violating the TSR, which also prohibits misrepresentations. DE473 Section II.A and II.D, 16 CFR § 310.3. As detailed above, each of these claims are false, and Pukke, Baker, and Usher—in their roles as SBE control people—participated in the claims and controlled them despite having knowledge of the Final Order. Furthermore, given the prominent role of telemarketers, the misrepresentations are “in connection with telemarketing,” and therefore violate the Court’s explicit restrictions on deceptive telemarketing. As to the Fourth Circuit’s “knowledge” requirement, this does not require intent or willfulness. *Schwartz*, 261 F. Supp. 3d at 612-13 (“Willfulness is not an element of civil contempt.”) (quoting *Redner’s Markets, Inc. v. Joppatown G.P. Ltd. P’ship*, 608 Fed. Appx. 130, 131 (4th Cir. 2015)). While each plainly did act willfully and intend to harm their victims, their knowledge of the Final Order, established at the outset, coupled with their actions in violation of the Final Order detailed above, show that they had “knowledge” of their violations, as that term is construed by the Fourth Circuit. *See Schwartz*, 261 F. Supp. 3d at 614 (violations with “actual or constructive” knowledge of the terms of the order sufficient); *Colonial Williamsburg Found.*, 38 F. 3d at 136-37 (one with knowledge of an order cannot defeat contempt by stating they did not know the terms of the order or by abdicating responsibility to ensure compliance with an order).

Although the Final Order is limited to “goods and services,” this includes the Sanctuary Belize lots. Given the frequent references to the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, in the Final Order, and telemarketing generally, the phrase has the same meaning as it does in the TSR.⁴⁰ The TSR is coextensive with the FTC’s jurisdiction, which includes real estate schemes. *See* S.R. No. 103-80 (June 22, 1993) at 8 (specifying that “the phrase ‘goods or services’ . . . to be broadly construed *so as not to exclude activities currently addressed by the FTC*”) (emphasis added); *Southwest Sunsites, Inc. v. FTC*, 785 F.2d 1431, 1437-39 (9th Cir. 1986) (affirming an administrative order enjoining a seller of lots in West Texas); *AMREP Corp. v. FTC*, 768 F.2d 1171, 1175 (10th Cir. 1985) (affirming the FTC’s “jurisdiction to regulate interstate land sales”); *cf. Lorillard v. Pons*, 434 U.S. 575, 581 (1978) (noting that Congress is “presumed to have had knowledge” about case law when it enacts a statute).

The FTC confirmed the breadth of “goods or services” when it issued the TSR in 1995,⁴¹ explaining that it was “unaware of any reason why the [TSR] should create a special exemption for . . . companies where the FTC Act does not do so,” 60 Fed. Reg. 43842, 43843, and then later specifically rejected exemptions sought by various industries. *Id.* at 43859. In 2003, the FTC again reiterated the breadth of the TSR in refusing to provide an exception for transactions governed by the Real Estate Settlement Procedures Act (“RESPA”), 68 Fed. Reg. 4580, 4606 fn.306, and then refused to provide an exemption for real estate agents while reiterating that “if a real estate agent routinely places outbound calls to solicit potential customers in other states, those calls . . . would be subject to the Rule,” *id.* at 4655. Notably, the contemnors also consider the lots “goods and services,” referring to them as such while collecting the 12.5% Belizean sales tax, which only applies to goods and services. *See, e.g.,* PXQQ ¶ 170.

⁴⁰ Like the Final Order, the TSR bars activities related to the telemarketing of “goods and services.” 16 C.F.R. § 310.3.

⁴¹ The FTC’s interpretation and explanation of its own rule has nearly the same force as the rule’s text. *See, e.g., Decker v. NW Environmental Defense Ctr.*, 133 S. Ct. 1326, 1337 (2013) (“It is well established that an agency’s interpretation need not be the only possible reading of a regulation—or even the best one—to prevail. When an agency interprets its own regulation, the Court, as a general rule, defers to it unless that interpretation is plainly erroneous or inconsistent with the regulation.”) (internal quotes omitted).

Numerous courts have similarly determined that goods or services includes the sale of lots in a development like Sanctuary Belize. These cases reason that even if the land itself were not a “good” in the strict legal sense, the promises related to the construction of a building or provision of services in the related development render the entire transaction a sale of goods or services because the sale is about more than the mere transfer of land rights. *Polonetsky v. Better Homes Depot, Inc.*, 760 N.E.2d 1274, 1278 (N.Y. 2001) (sale of house was goods and services because the promises of additional construction and financing made it part of an “orchestrated [] system of providing goods and services under which prospective buyers were defrauded or misled every step of the way.”); *Fogelson v. Wallace*, 405 P.3d 1012, 1031 (N.M. 2017) (holding that, although a lot is not a “good or service” under New Mexico’s consumer protection law, selling a lot plus a promise to build a home on the lot brings the transaction within the statute); *Brown v. Liberty Clubs, Inc.*, 543 N.E.2d 783, 786-87 (Ohio 1989) (offering steak knives to consumers who visited development to consider purchasing lots rendered the lot sales subject to Ohio consumer protection law that covers “goods and services”).⁴²

V. BAKER AND USHER ARE BOUND BY THE FINAL ORDER AND LIABLE FOR SBE’S VIOLATIONS.

The Final Order binds nonparties Baker and Usher. Rule 65(d) specifies that all individuals with notice of the order “in active concert or participation” with a party or a party’s agent are bound by the relevant injunction. This is true because otherwise parties could “nullify a decree by carrying out prohibited acts through aiders and abettors.” *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14 (1945); *K.C. ex rel. Africa H. v. Shipman*, 716 F.3d 107, 115 (4th Cir. 2013) (same). Indeed, the FTC is frequently required to pursue nonparties who take steps to

⁴² See also *McKinney v. State*, 693 N.E.2d 65, 71 (Ind. 1998) (distinguishing between the “sale of an existing structure” from a promise to build something for consumer protection purposes; “the promise to build a structure forces consumers to rely on a variety of representations that the builder is far more capable of evaluating”); *State ex rel. Brady v. Wellington Homes, Inc.*, No. Civ. A. 99C-09-168, 2003 WL 22048231, *4 (Del. Super. Ct. Aug. 20, 2003) (holding that a transaction promising to build a house on a lot is potentially a “good or service” because it involves “attendant labor and expertise,” including “plans as approved by the county, building code compliance, and so forth”).

violate court orders entered in the Commission’s favor. *See, e.g., FTC v. Leshin*, 618 F.3d 1221, 1236 (11th Cir. 2010) (holding nonparty businesses controlled by a party in contempt); *FTC v. Neiswonger*, 494 F. Supp. 2d 1067, 1078-79 (D. Mo. 2007), *aff’d*, 500 F.3d 769 (8th Cir. 2009) (nonparty business partner with knowledge of the order subject to contempt sanctions); *FTC v. Gill*, 183 F. Supp. 2d 1171, 1184 (C.D. Cal. 2001) (holding nonparty nonprofit in contempt). Notably, the Court has held Baker in contempt of the Final Order once before. DE571. Because Baker and Usher have been operating the scheme with Pukke, they are bound by the Final Order and subject to this Court’s jurisdiction and, as contemnors, are subject to sanctions for their conduct. *See, e.g., Leshin*, 618 F.3d at 1237 (issuing sanctions against nonparty contemnor).

VI. PUKKE, BAKER, AND USHER SHOULD BE ORDERED TO FULLY COMPENSATE CONSUMERS FOR THEIR LOSSES.

This Court has broad authority to ensure the FTC and consumers are fully compensated for their losses. *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947); *In re Gen. Motors Corp.*, 61 F.3d 256, 259 (4th Cir. 1995) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193-94 (1949)). The FTC is entitled to “full remedial relief,” *McComb*, 336 U.S. at 193, including full refunds for consumers. *FTC v. BlueHippo Funding, LLC*, 762 F.3d 238, 244-45 (2d Cir. 2014) (explaining this is the standard under the FTC Act nationally, as applied by all Courts of Appeal to address the issue, and that it applies when determining contempt sanctions in an FTC action); *McGregor v. Chierico*, 206 F.3d 1378, 1389 (11th Cir. 2000); *FTC v. EDebitPay, LLC*, 695 F.3d 938, 945 (9th Cir. 2012); *FTC v. Ross*, 897 F. Supp. 2d 369, 387-88 (D. Md. 2012) (FTC Act monetary relief based on “gross receipts”), *aff’d*, 743 F.3d 886 (4th Cir. 2014).⁴³ Consumers will be entitled to full refunds notwithstanding any argument by the contemnors that the lots have some value because they tainted the entire transaction with their misrepresentations. *BlueHippo Funding, LLC*, 762 F.3d at 244 (misrepresentations “taint

⁴³ When the misrepresentations are widely disseminated, as they are here, the FTC is entitled to a presumption that all of the sales are tainted. *Ross*, 897 F. Supp. 2d 387-88; *BlueHippo Funding, LLC*, 762 F.3d at 244.

the consumer’s subsequent purchasing decisions”); *McGregor*, 206 F.3d at 1388-89 (explaining that in an FTC contempt action, as in standard FTC cases, a contemnor does not receive any credit for the purported “value” of a product sold based on misrepresentations). Additionally, the FTC need only prove compensatory sanctions by a preponderance of the evidence. *In re General Motors Cop.*, 110 F.3d 1003, 1018 (4th Cir. 1997). Although the FTC has yet to determine the precise amount of consumer harm, it is almost certainly more than \$100 million, given Grant Thornton’s current \$144 million estimate of consumer payments since 2012. Furthermore, this number is likely to grow because it only includes deposits since 2012, PXB ¶ 36:18, and does not include the amounts the contemnors received through their Belizean bank accounts. As Grant Thornton explains, those accounts are significant, PXB ¶¶ 30-31. Therefore, the FTC asks the Court to hold the contemnors in contempt while allowing the FTC to collect additional evidence to prove the full extent of consumer harm.⁴⁴

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⁴⁴ The FTC will be able to use discovery and, if the Court grants the temporary restraining order in *Ecological Fox*, the FTC will have access to the contemnors’ own accounting systems to determine the full financial magnitude of their deceptive scheme.

VII. CONCLUSION

Pukke, Baker, and Usher have operated a massive deceptive telemarketing scheme in contempt of this Court's Final Order. They should, therefore, be held in contempt and ordered to pay monetary relief equal to the amount that they took from consumers, which will be more than \$100 million.

Respectfully submitted,

Dated: 10/31/18



JONATHAN COHEN, D. Md. Bar No. 16776

jcohen2@ftc.gov

BENJAMIN J. THEISMAN, *pro hac vice*

btheisman@ftc.gov

AMANDA B. KOSTNER, *pro hac vice*

akostner@ftc.gov

KHOURYANNA DiPRIMA, *pro hac vice*

kdiprima@ftc.gov

600 Pennsylvania Ave. NW, CC 9528

Washington, DC 20580

Phone: (202) 326-2551 (Cohen), -2223 (Theisman),
-2880 (Kostner), -2029 (DiPrima)

Facsimile: (202) 326-3197

ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION