

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 11-80155-CIV-COHN/SELTZER

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

U.S. MORTGAGE FUNDING, INC.,  
a Florida corporation, et al.,

Defendants.

---

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF AS TO DEFENDANTS DEBT REMEDY  
PARTNERS INC. AND DAVID MAHLER**

**THIS CAUSE** is before the Court upon the filing of a Proposed Stipulated Judgment and Order For Permanent Injunction and other Equitable Relief as to Defendants Debt Remedy Partners Inc. and David Mahler [DE 154-1] (“Stipulation”). The Court has carefully reviewed the Stipulation and is otherwise fully informed in the premises.

On February 7, 2011, Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), commenced this civil action pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108 to obtain preliminary and permanent injunctive and other equitable relief. On July 26, 2011, Plaintiff filed an *Amended* Complaint adding Louis Gendason as a Defendant. The *Amended* Complaint alleges that Defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and the

FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, in connection with the marketing and sale of mortgage assistance relief services.

The FTC and Defendants Debt Remedy Partners, Inc. and David Mahler (herein after "Defendants DRP and Mahler") hereby stipulate to the entry of this Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Order").

### **FINDINGS**

By stipulation of the parties and being advised of the premises, the Court finds:

1. This is an action by the Commission instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310. Pursuant to these Sections of the FTC Act and the Telemarketing Act, the Commission has the authority to seek the relief contained herein.

2. The Complaint states a claim upon which relief may be granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b).

3. This Court has jurisdiction over the subject matter of this case and jurisdiction over the Defendants DRP and Mahler.

4. Venue in the United States District Court for the Southern District of Florida is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

5. The activities of Defendants DRP and Mahler, as alleged in the Complaint, are "in or affecting commerce" as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. The parties stipulate and agree to entry of this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint to the date of entry of this Order. This settlement does not settle or resolve any matters not alleged in the Complaint. Defendants DRP and Mahler do not admit any of the allegations set forth in the Complaint, other than the jurisdictional facts, merely by stipulating and agreeing to the entry of this Order.

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

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

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

### **DEFINITIONS**

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

1. **“Assisting others”** includes, but is not limited to: (A) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (B) formulating or providing, or arranging for the formulation or provision of, any advertising or marketing material, including, but not limited to, any telephone sales

script, direct mail solicitation, or the design, text, or use of images of any Internet website, email, or other electronic communication; (C) formulating or providing, or arranging for the formulation or provision of, any marketing support material or service, including but not limited to, web or Internet Protocol addresses or domain name registration for any Internet websites, affiliate marketing services, or media placement services; (D) providing names of, or assisting in the generation of, potential customers; (E) performing marketing, billing, or payment services of any kind; and (F) acting or serving as an owner, officer, director, manager, or principal of any entity.

2. **“Competent and reliable evidence”** means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. **“Consumer”** means any natural person.

4. **“Customer”** means any person who has paid, or may be required to pay, for products,

5. **“Debt relief product or service”** means any product, service, plan, or program represented, expressly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt or obligation, including but not limited to a tax debt or obligation, between a person and one or more unsecured creditors or debt collectors, including but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

6. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination. **“Corporate Defendants”** means U.S. Mortgage Funding, Inc., Lower My Debts.Com, LLC, Debt Remedy Partners, Inc., and their successors (including Lachs Capital LLC d/b/a Diversified Home Solutions) and assigns, as well as any subsidiaries, and any fictitious business entities or business names created or used by these entities, or any of them.

**“Individual Defendants”** means David Mahler, John Incandela, Jr., Jamen Lachs, Louis Gendason, and by whatever other names each may be known.

7. **“Federal homeowner relief or financial stability program”** means any program (including its sponsoring agencies, telephone numbers, and Internet websites) operated or endorsed by the United States government to provide relief to homeowners or stabilize the economy, including but not limited to: (A) the Making Home Affordable Program; (B) the Financial Stability Plan; (C) the Troubled Asset Relief Program and any other program sponsored or operated by the United States Department of the Treasury; (D) the HOPE for Homeowners program, any program operated or created pursuant to the Helping Families Save Their Homes Act, and any other program sponsored or operated by the Federal Housing Administration; or (E) any program sponsored or operated by the United States Department of Housing and Urban Development (“HUD”), the HOPE NOW Alliance, the Homeownership Preservation Foundation, or any other HUD-approved housing counseling agency.

8. **“Financial related product or service”** means any product, service, plan, or program represented, expressly or by implication, to: (A) provide any consumer,

arrange for any consumer to receive, or assist any consumer in receiving, credit, debit, or stored value cards; (B) improve, or arrange to improve, any consumer's credit record, credit history, or credit rating; (C) provide advice or assistance to any consumer with regard to any activity or service the purpose of which is to improve a consumer's credit record, credit history, or credit rating; (D) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, a loan or other extension of credit; E) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving a debt relief product or service; or (F) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving any service represented, expressly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of any debt or obligation (other than a debt or obligation secured by a mortgage on a consumer's dwelling), including but not limited to a tax debt or obligation, between a consumer and one or more secured creditors, servicers, or debt collectors.

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

10. **"Mortgage assistance relief product or service"** means any product, service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following: (A) stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling

from foreclosure or repossession; (B) negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees; (C) obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan; (D) negotiating, obtaining, or arranging any extension of the period of time within which the consumer may (i) cure his or her default on a dwelling loan, (ii) reinstate his or her dwelling loan, (iii) redeem a dwelling, or (iv) exercise any right to reinstate a dwelling loan or redeem a dwelling; (E) obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or (F) negotiating, obtaining, or arranging (i) a short sale of a dwelling, (ii) a deed-in-lieu of foreclosure, (iii) or any other disposition of a dwelling loan other than a sale to a third party that is not the dwelling loan holder. The foregoing shall include any manner of claimed assistance, including, but not limited to, auditing or examining a consumer's mortgage or home loan application.

11. **"Net Proceeds"** shall mean any sum remaining after satisfaction of senior recorded liens, and after payment to third parties of reasonable and customary fees, commissions and closing costs.

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

13. **"Receiver"** means Michael I. Goldberg, Esquire.

14. **“Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog, which prompted the customer’s call or in a substantially similar catalog.

**ORDER**

**I. PERMANENT BAN ON MORTGAGE ASSISTANCE  
RELIEF PRODUCTS AND SERVICES**

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

- A. Advertising, marketing, promoting, offering for sale, or selling any mortgage assistance relief product or service; and
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any mortgage assistance relief product or service.

**II. BAN ON DEBT RELIEF PRODUCT AND SERVICES**



**IT IS FURTHER ORDERED** that Defendants DRP and Mahler, whether acting directly or through any other person, are permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any debt relief product or service; and
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any debt relief product or service.

**III. PROHIBITION AGAINST VIOLATING  
THE TELEMARKETING SALES RULE**

**IT IS FURTHER ORDERED** that Defendants DRP and Mahler and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any good or service are hereby permanently restrained and enjoined from violating or assisting others in violating any provision of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, including, but not limited to:

- A. Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii), by misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristic of any good or service;
- B. Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii), by misrepresenting, directly or by implication, affiliation with, or endorsement by, any person or government entity;

- C. Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv), by misrepresenting, directly or by implication, any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;
- D. Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), by initiating or causing others to initiate outbound telephone calls to a person's telephone number on the National Do Not Call Registry; and
- E. Section 310.8 of the TSR, 16 C.F.R. § 310.8, by initiating or causing others to initiate an outbound telephone call to a telephone number within a given area code without Defendants Lachs, either directly or through another person, first paying the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry.

**IV. PROHIBITED REPRESENTATIONS RELATING TO  
FINANCIAL RELATED PRODUCTS OR SERVICES**

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

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

1. The terms or rates that are available for any loan or other extension of credit, including, but not limited to:
  - a. closing costs or other fees;
  - b. the payment schedule, the monthly payment amount(s), or other payment terms, or whether there is a balloon payment; interest rate(s), annual percentage rate(s), or finance charge; the loan amount, the amount of credit, the draw amount, or outstanding balance; the loan term, the draw period, or maturity; or any other term of credit;
  - c. the savings associated with the credit;
  - d. the amount of cash to be disbursed to the borrower out of the proceeds, or the amount of cash to be disbursed on behalf of the borrower to any third parties;
  - e. whether the payment of the minimum amount specified each month covers both interest and principal, and whether the credit has or can result in negative amortization;
  - f. that the credit does not have a prepayment penalty or that no prepayment penalty and/or other fees or costs will be incurred if the consumer subsequently refinances; and
  - g. that the interest rate(s) or annual percentage rate(s) are fixed rather than adjustable or adjustable rather than fixed;
2. Any person's ability to improve or otherwise affect a consumer's

credit record, credit history, or credit rating or ability to obtain credit;

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

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

5. That a consumer will receive legal representation;

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

**V. PROHIBITED REPRESENTATIONS  
RELATING TO ANY PRODUCTS OR SERVICES**

**IT IS FURTHER ORDERED** that Defendants DRP and Mahler and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any product, service, plan, or program are hereby permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any

material fact, including, but not limited to:

- A. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- B. That any person is affiliated with, endorsed or approved by, or otherwise connected to any other person, government entity, any federal homeowner relief or financial stability program, or public, non-profit, or other non-commercial program, or any other program;
- C. The total costs to purchase, receive, or use, or the quantity of, the product, service, plan, or program;
- D. Any material restriction, limitation, or condition on purchasing, receiving, or using the product, service, plan or program;
- E. Any material aspect of the performance, efficacy, nature, or characteristics of the product, service, plan, or program.

**VI. SUBSTANTIATION FOR BENEFIT,  
PERFORMANCE, AND EFFICACY CLAIMS**

**IT IS FURTHER ORDERED** that Defendants DRP and Mahler and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any

financial related product or service are hereby permanently restrained and enjoined from making any representation or assisting others in making any representation, expressly or by implication, about the benefits, performance, or efficacy of any financial related product or service, unless at the time such representation is made, Defendants DRP and Mahler possess and rely upon competent and reliable evidence that substantiates that the representation is true.

## **VII. MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that:

A. Judgment is entered against Defendants DRP and Mahler, jointly and severally with other the Defendants in this matter, in the amount of \$17,791,085, *provided, however*, that \$17,202,873 shall be suspended upon satisfaction of the following conditions and subject to the conditions set forth in Section titled "Right to Reopen." The remainder \$588,212.00 shall not be suspended.

1. Defendant Mahler shall relinquish and turn over to the Receiver, within seven (7) days of entry of this Order, all dominion and control of the following assets:
  - a. 1996 Rolex Submariner 2-tone, stainless steel and gold;
  - b. 2007 Cadillac DTS, Vehicle Identification Number 1G6KD57927U123111; and
  - c. 1971 53' Hatteras Yacht, Vehicle Identification Number 636538;
2. To ensure compliance with this provision, Defendant Mahler shall

execute all documents and perform any other act necessary to effect the liquidation of assets and shall maintain (including making required monthly payments to any lien holders and current insurance) and take no action to diminish the value of said assets. After all of said assets have been liquidated, the Receiver shall account for the proceeds derived therefrom and transfer all Net Proceeds from the sale of each asset to the Commission or its designated agent, in accordance with instructions provided by a representative of the Commission. *Provided further*, that if the sale of such assets result in a deficiency owed to any lien holder, Defendant Mahler shall be responsible for payment of such deficiency.

B. Defendants DRP and Mahler shall provide full cooperation to the Receiver or representative of the FTC in carrying out his duties pursuant to the Section of this Order, titled "Receivership."

C. Time is of the essence. In the event of any default by Defendants DRP and Mahler to perform any obligation imposed under Section VII.A.1 and 2 and Section VII.B.:

1. The judgment imposed herein will not be suspended, and the full amount of that Judgment SEVENTEEN MILLION SEVEN HUNDRED NINETY-ONE THOUSAND AND EIGHTY-FIVE Dollars (\$17,791,085.00) shall immediately become due and payable, plus interest from the date of

entry of this Order pursuant to 28 U.S.C. § 1961, as amended, less any amounts already paid and

2. The Commission shall be entitled to immediately exercise any and all rights and remedies against Defendants DRP and Mahler to collect the full amount of the judgment and interest thereon, less any amounts already paid.

D. Upon entry of this Order, \$588,212.00, the portion of the monetary judgment that is not suspended shall become immediately due and payable, and interest, computed pursuant to 28 U.S.C. §1961(a), as amended, immediately shall begin to accrue upon any unpaid balance.

E. Defendants DRP and Mahler shall immediately transfer to the Commission any tax refund that they may receive for taxes paid in 2008, 2009 and 2010.

F. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to consumer redress, and any attendant expenses for the administration of such equitable relief. Defendants DRP and Mahler shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion, that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as the FTC determines to be reasonably related to



Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants DRP and Mahler shall have no right to challenge the Commission's choice of remedies under this Section. Defendants DRP and Mahler shall have no right to contest the manner of distribution chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

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

H. Defendants DRP and Mahler agree that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including a proceeding to enforce its rights to any payment or money judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case. Defendants DRP and Mahler further stipulate and agree that the facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such purposes.

I. Unless they have already done so, Defendants DRP and Mahler are

required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission their respective Taxpayer Identifying Numbers (Social Security numbers or Employer Identification Numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants DRP and Mahler's relationship with the government.

J. Pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish a consumer report concerning Defendants DRP and Mahler to the FTC, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

K. To ensure the Order effectuates disgorgement, Defendants DRP and Mahler may not, directly or indirectly, take any deduction, capital loss, or other tax benefit on any federal, state, or local tax return for any payment made toward satisfaction of the judgment. Within 14 days of receipt of a written request from a representative of the Commission, Defendants DRP and Mahler must take all necessary steps, such as filing a completed IRS Form 4506 or 8821, to cause the Internal Revenue Service (IRS) or other tax authority to provide the requested information directly to the Commission. Such information can include amended tax returns and any other filings that the Defendants DRP and Mahler have the authority to release, including those of any business that the Defendants DRP and Mahler, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls.

### **VIII. RIGHT TO REOPEN**

**IT IS FURTHER ORDERED** that:

A. The Commission's agreement to, and the Court's approval of this Order, including, but not limited to the suspension of part of the monetary judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants DRP and Mahler's representations regarding their financial condition, as set forth in: (1) Financial Statement of Individual Defendant David Mahler and attachments (signed by David Mahler and dated June 21, 2011); (2) Financial Statement of Corporate Defendant Debt Remedy Partners, Inc. and attachments (signed by David Mahler and dated respectively March 31, 2011); (3) additional documentation submitted by letter from Defendants' counsel Christopher Meier of Greenspoon Marder to Commission counsel dated June 2, 2011 (attaching 2007 and 2008 Income Tax Returns and 2009 Capital Gains and Losses of Debt Remedy Partners and 2008, 2009, and amended 2009 Federal Income Tax Returns of David Mahler); letter dated June 28, 2011 (attaching 2010 Federal Income Tax Return of David Mahler and 2010 Federal Income Tax Return of Debt Remedy Partners); (4) Profit and Loss Statements of Debt Remedy Partners for the period of January 2011 through July 20, 2011; and (5) Property Appraisal dated November 5, 2011.

B. The partial suspension of the \$17, 791,085.00 judgment shall be lifted as to Defendants DRP and Mahler, if, upon motion of the Commission, the Court finds that Defendants DRP and Mahler failed to disclose any material Asset,

materially misrepresented the value of any Asset, or made any other material misrepresentation in or omission from the financial information provided, the suspended judgment entered in Section VII shall become immediately due and payable (less any amounts already paid). *Provided however* that in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court.

C. If the partial suspension of the judgment is lifted, the judgment shall become immediately payable, and the amount due shall be calculated as follows: the judgment amount specified in Subsection VII.A. above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), minus any payments previously made pursuant to this Section, plus interest computed from the date of entry of this Order pursuant to 28 U.S.C. § 1961. For purposes of this Section, Defendants DRP and Mahler waive any right to contest any of the allegations in the Commission's Complaint.

#### **IX. PROHIBITIONS ON USE OF CUSTOMER INFORMATION**

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

A. Disclosing, using, or benefitting from customer information, including the

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

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

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

#### **X. PROHIBITION ON COLLECTING ACCOUNTS**

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

selling, or assigning, or otherwise transferring any right to collect payment from any consumer relating to the purchase of mortgage loan modification or foreclosure relief services.

#### **XI. COOPERATION WITH COMMISSION COUNSEL**

**IT IS FURTHER ORDERED** that Defendants DRP and Mahler and their successors, assigns, officers, shall, in connection with this action or any subsequent investigation or litigation related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendants DRP and Mahler shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint as it may be amended, without the service of a subpoena.

#### **XII. RECEIVERSHIP**

**IT IS FURTHER ORDERED** that the appointment of Receiver Michael Goldberg, pursuant to the *Ex Parte* Temporary Restraining Order entered on February 9, 2011, and the Preliminary Injunction entered on March 1, 2011, is hereby continued in full force and effect except as modified by this Section. The Receiver and those it employs are entitled to reasonable compensation for the performance of their duties pursuant to this Order and for the costs of actual out-of-pocket expenses incurred by them from the

assets held by or in the possession or control of the Receiver. The Receiver shall complete liquidation of all assets in Section VII.A.1. Upon liquidation of such assets, the Receiver shall submit his final report and application for fees and expenses, and upon approval of the same by the Court, shall pay any remaining funds to the FTC. Upon the Court's approval of the Receiver's final report, and the payment of any remaining funds to the FTC under this Section, the Receivership shall be terminated.

### **XIII. COOPERATION WITH THE RECEIVER**

**IT IS FURTHER ORDERED** that Defendants DRP and Mahler shall cooperate fully with the Receiver in: (A) pursuing any and all claims by the Receiver against other persons or entities; (B) assisting the Receiver in defending any and all actions or claims brought against the Receiver or the receivership estate by other persons or entities; (C) executing any documents necessary to transfer assets or ownership interests to the Receiver pursuant to the terms of this Order; (D) refraining from any act that would interfere or impede the Receiver in execution of the performance of its duties.

*Provided further* that Defendants DRP and Mahler release, discharge and waive all rights against the Receiver, the receivership estate and those persons that the Receiver employed in this matter from any and all claims, demands, actions, causes of actions, or suits that now exist or may hereafter accrue, whether known or unknown that relate to this Order or to the lawsuit that is the subject of this Order.

### **XIV. ORDER ACKNOWLEDGMENTS**

**IT IS FURTHER ORDERED** that Defendants DRP and Mahler obtain acknowledgments of receipt of this Order:

A. Defendants DRP and Mahler, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, Defendant Mahler, for any business that he, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls, and Defendant DRP, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendants DRP or Mahler delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

#### **XV. COMPLIANCE REPORTING**

**IT IS FURTHER ORDERED** that Defendants DRP and Mahler make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact,



which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Defendant Mahler must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, Defendant Mahler must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which Defendant Mahler performs services whether as an employee or otherwise and any entity in which Defendant Mahler has any ownership interest; and (c) describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 20 years following entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; (b) the structure of Defendant DRP or any entity that Defendant Mahler has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, Defendant Mahler must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest, and identify its name, physical address, and Internet address, if any.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. U.S. Mortgage Funding, Inc., et al.*, X110016.

#### **XVI. RECORDKEEPING**

**IT IS FURTHER ORDERED** that Defendants DRP and Mahler must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendants DRP and Mahler for any business in which either, individually or collectively with any other Defendant, is a majority owner or directly or indirectly controls, must maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Customer files obtained after entry of this Order showing the names, addresses, telephone numbers, dollar amounts paid, and the quantity and description of goods or services purchased;

- D. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- F. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- G. Tax records, including copies of the federal, state, and any local tax return filings, complete with all attachments, for each tax year in which payment or other asset transfer required by this Order is made.

#### **XVII. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Defendants DRP and Mahler's compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of written request from a representative of the Commission, Defendants DRP and Mahler must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the Commission is authorized to communicate directly with Defendants DRP and Mahler. Defendants DRP and

Mahler must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants DRP and Mahler or any individual or entity affiliated with them, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**XVIII. RETENTION OF JURISDICTION**

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

**DONE AND ORDERED** in chambers in Fort Lauderdale, Broward County, Florida, this 3rd day of February, 2012.

  
JAMES I. COHN  
United States District Judge

Copies to counsel of record via CM/ECF.