

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

FEDERAL TRADE COMMISSION,)	Case No. 1:12CV2394
)	
Plaintiff,)	JUDGE GWIN
)	
v.)	MAGISTRATE JUDGE McHARGH
)	
E.M.A. NATIONWIDE, INC. ., <i>et al.</i> ,)	
)	
Defendants.)	

STIPULATED PRELIMINARY INJUNCTION BETEWEEN
PLAINTIFF AND DEFENDANT NISSIM OHAYON

On September 25, 2012, Plaintiff Federal Trade Commission (FTC or Commission), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act), 15 U.S.C. § 6101 *et seq.*, and the 2009 Omnibus Appropriations Act, Public Law 111-8, Section 626, 123 Stat. 524, 678 (Mar. 11, 2009) (Omnibus Act), as clarified by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24, Section 511, 123 Stat. 1734-64 (May 22, 2009) (Credit Card Act), and amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, Section 1097, 124 Stat. 1376, 2102-03 (July 21, 2010) (Dodd-Frank Act), 12 U.S.C. § 5538, filed a Complaint for preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing Sales Rule (TSR), 16 C.F.R. Part 310, and the Mortgage Assistance Relief Services Rule, 16 C.F.R. Part 322 (effective December 29, 2010, except for

Section 322.5, which became effective on January 31, 2011), recodified as the Mortgage Assistance Relief Services (Regulation O), 12 C.F.R. Part 1015 (Regulation O) (effective December 30, 2011) (MARS Rule), in connection with the marketing and sale of Debt Relief Services and Mortgage Assistance Relief Services. The Court scheduled a hearing on Preliminary Injunction for October 12, 2012.

The Commission and Defendant Nissim Ohayon agree to entry of this Stipulated Preliminary Injunction (Order). THEREFORE, based on the agreement between the Commission and Ohayon, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The Commission and Defendant Ohayon agree to the terms of this Order.
2. Defendant Ohayon is entering into this Order without in any way waiving any defenses to or admitting liability for any allegations in the Complaint.
3. The Commission is entering into this Order without in any way admitting any of the defenses raised or that may be raised by Defendant Ohayon.
4. No security is required of any agency of the United States for issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).
5. This Order does not prohibit the Court, upon motion of either party and upon good cause shown, from modifying this Order.
6. Entry of this Order is in the public interest.

DEFINITIONS

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

1. “**Asset**” or “**Assets**” means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, “goods,” instruments,” “equipment,”

“fixtures,” “general intangibles,” “inventory,” “checks,” or “notes,” (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

2. “**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, affiliating 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 as an owner, officer, director, manager, or principal of any entity.
3. “**Corporate Defendants**” means E.M.A. Nationwide, Inc., also d/b/a EMA and Expense Management America; New Life Financial Solutions, Inc., also d/b/a New Life Financial, and New Life Financial Services; IUC Inc., also d/b/a 1st United Consultants, and First

United Consultants; 7242701 Canada Inc.; 7242697 Canada Inc.; 7246293 Canada Inc.; and 7246421 Canada Inc.

4. “**Defendants**” means all of the Individual and Corporate Defendants, individually, collectively, or in any combination.
5. “**Debt Relief 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 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. “**Document**” or “**Record**” means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, electronically stored information, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.
7. “**Financial institution**” means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.
8. “**Individual Defendants**” means James Benhaim, a/k/a Jimmy Benhaim; Daniel Michaels, a/k/a Dan Michaels, a/k/a Dan Michles; Phillip Hee Min Kwon, a/k/a Phillip H. Kwon; Joseph Shamolian; and Nissim N. Ohayon.

9. “**Material**” means likely to affect a person’s choice of, or conduct regarding, goods or services.
10. “**Mortgage Assistance Relief 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 payment, 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 loan or home loan application and offering to provide or providing legal services.

- 11. **"Person"** means a natural person, an organization or other legal entity, including corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.
- 12. **"Plaintiff"** means the Federal Trade Commission.
- 13. **"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, whether inbound or outbound.

I.

PROHIBITED REPRESENTATIONS

IT IS THEREFORE ORDERED that in connection with the advertising, marketing, promotion, offering for sale or sale of any Debt Relief Service or Mortgage Assistance Relief Service, Defendant Ohayon and his successors, assigns, agents, servants, and employees, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation,

subsidiary, division or other device, are hereby restrained and enjoined, until further order of this Court, from engaging in, or assisting others in engaging in, the following conduct:

A. Falsely representing, expressly or by implication, any of the following:

1. that any Defendant or any other person generally will obtain for consumers a renegotiation, settlement, modification or other alteration of the terms of any secured or unsecured debt, including, but not limited to, mortgage loan modifications, that will make consumers' payments substantially more affordable;
2. the nature of any Defendant's or any other person's relationship with any mortgage loan holder or servicer, or other secured or unsecured lender;
3. the amount of time it will take or is likely to take to obtain or arrange a renegotiation, settlement, modification, or other alteration of the terms of any secured or unsecured debt, including, but not limited to, the modification of any term of a consumer's home loan, deed of trust, or mortgage, including any recapitalization or reinstatement agreement;
4. that a consumer's payment to any Defendant for a Debt Relief Service or Mortgage Assistance Relief Service will be held in an escrow account for disbursement to the consumer's creditors after a renegotiation, settlement, modification or other alteration of the terms of any secured or unsecured debt, including, but not limited to, the modification of any term of a consumer's home loan, deed of trust, or mortgage, including any recapitalization or reinstatement agreement, is achieved by any Defendant on behalf of the consumer; and

5. any other fact material to a consumer's decision whether to purchase any Debt Relief Service or Mortgage Assistance Relief Service.
- B. Representing, expressly or by implication, that a consumer cannot or should not contact or communicate with his or her mortgage loan holder or servicer, or other secured or unsecured lender. *Provided, however,* that this prohibition shall not apply in cases in which a Defendant: (i) provides Mortgage Assistance Relief Services as part of the authorized practice of law; (ii) is licensed to practice law in the state in which the consumer for whom Defendant is providing Mortgage Assistance Relief Services resides or in which the consumer's dwelling is located; and (iii) complies with state laws and regulations that cover the same type of conduct.
 - C. Asking for or receiving payment before consumers have executed a written agreement between the consumer and the loan holder or servicer that incorporates the offer obtained by Defendants.

II.

RESTRICTIONS ON TELEMARKETING

IT IS FURTHER ORDERED that in connection with the advertising, marketing, promotion, offering for sale or sale of any Debt Relief Service or Mortgage Assistance Relief Service, Defendant Ohayon and his successors, assigns, agents, servants, and employees, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are hereby restrained and enjoined, until further order of this

Court, from violating, or assisting others in violating, any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to:

- A. Section 310.3(a)(2)(i) of the TSR, 16 C.F.R. § 310.3(a)(2)(i), by misrepresenting, directly or by implication, the total costs to purchase, receive, or use Defendants' services;
- B. 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, including, but not limited to, the amount of money or the percentage of debt amount that consumers will save by using Defendants' services;
- C. Section 310.3(a)(2)(x) of the TSR, 16 C.F.R. § 310.3(a)(2)(x), by misrepresenting, directly or by implication, any material aspect of Debt Relief Services, including, but not limited to, the amount of money or the percentage of debt amount that consumers will save by using Defendants' services; and
- D. Section 310.4(a)(5)(i) of the TSR, 16 C.F.R. § 310.4(a)(5)(i), by initiating or causing others to initiate an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(a)(5)(i).

III.

DISCLOSURES REQUIRED BY MARS RULE

IT IS FURTHER ORDERED that in connection with the advertising, marketing, promotion, offering for sale or sale of any Mortgage Assistance Relief Service, Defendant Ohayon and his successors, assigns, agents, servants, and employees, and those persons or entities in active concert or participation with him who receive actual notice of this Order by

personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are hereby restrained and enjoined, until further order of this Court, from engaging in, or assisting others in engaging in, the following conduct:

A. Failing to make the following disclosures in all general commercial communications:

1. “[Name of company] is not associated with the government, and our service is not approved by the government or your lender,” in violation of the MARS Rule, 16 C.F.R. § 322.4(a)(1), and Regulation O, 12 C.F.R. § 1015.4(a)(1); and
2. “Even if you accept this offer and use our service, your lender may not agree to change your loan,” in violation of the MARS Rule, 16 C.F.R. § 322.4(a)(2), and Regulation O, 12 C.F.R. § 1015.4(a)(2).

B. Failing to make the following disclosures in all consumer-specific commercial communications:

1. “You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [insert amount or method for calculating the amount] for our services,” in violation of 16 C.F.R. § 322.4(b)(1), and Regulation O, 12 C.F.R. § 1015.4(b)(1). For the purposes of this section, the amount “you will have to pay” shall consist of the total amount the consumer must pay to purchase, receive, and use all of the Mortgage Assistance Relief Services that are the subject of the sales offer, including, but not limited to, all fees and charges.

2. “[Name of Company] is not associated with the government, and our service is not approved by the government or your lender,” in violation of 16 C.F.R. § 1015.4(b)(2), and Regulation O, 12 C.F.R. § 1015.4(b)(2); and
 3. “Even if you accept this offer and use our service, your lender may not agree to change your loan,” in violation of 16 C.F.R. § 1015.4(b)(3), and Regulation O, 12 C.F.R. § 1015.4(b)(3).
- C. Failing, in all general communications, consumer-specific commercial communications, and other communications in cases where any Defendant or person has represented, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any Mortgage Assistance Relief Service, that the consumer should temporarily or permanently discontinue payments, in whole or in part, on a dwelling loan, to place clearly and permanently, and in close proximity to any such representation the following disclosure: “If you stop paying your mortgage, you could lose your home and damage your credit rating,” in violation of 16 C.F.R. § 1015.4(c), and Regulation O, 12 C.F.R. § 1015.4(c).
- D. This Section III shall not apply in cases in which a Defendant: (i) provides Mortgage Assistance Relief Services as part of the authorized practice of law; (ii) is licensed to practice law in the state in which the consumer for whom Defendant is providing Mortgage Assistance Relief Services resides or in which the consumer’s dwelling is located; and (iii) complies with state laws and regulations that cover the same type of conduct.

IV.

RESTRICTION ON COLLECTION OF ADVANCE FEES

IT IS FURTHER ORDERED that immediately upon entry of this Order, Defendant Ohayon and his successors, assigns, agents, servants, and employees, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are hereby restrained and enjoined, until further order of this Court, from requesting, accepting, or continuing to collect payment, in full or part, of any fee or consideration in advance of performing each and every Debt Relief Service or Mortgage Assistance Relief Service that Defendants contracted to perform or represented would be performed.

V.

SUSPENSION ON COLLECTION OF ACCOUNTS

IT IS FURTHER ORDERED that Defendant Ohayon, and his agents, servants, employees, and all other persons in active concert or participation with any of him, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined, until further order of this Court, from attempting to collect payment for Debt Relief Services, and Mortgage Assistance Relief Services, directly or through any collection agent, on any account.

VI.

DIRECTION TO PAYMENT PROCESSORS

IT IS FURTHER ORDERED that Defendant Ohayon shall immediately direct all of his payment processors, to the extent there are any, to immediately stop transferring any funds to him or any corporation, partnership, affiliate, or other entity directly or indirectly owned, managed, or controlled by, or under common control with him, including but not limited to Debt Source Solutions and First Liberty Consultants, until further order of this Court. Within three (3) days from the date of entry of this Order, Defendants shall provide Plaintiff with a sworn statement that Defendants have complied with this provision of the Order.

Provided, however, that the sworn statement may state, if it is the case, that Defendant Ohayon has no payment processors to issue the direction contemplated by this Section.

VII.

ASSET PRESERVATION AS TO INDIVIDUAL DEFENDANTS

IT IS FURTHER ORDERED that except as set forth below, Defendant Ohayon and his assigns, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are hereby restrained and enjoined, until further order of this Court, from directly or indirectly selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other Assets or any interest therein, wherever located, including any Assets outside the territorial United States, which are owned and controlled by Defendant

Ohayon or held in his possession, except those expenditures or transfers for (1) reasonable, actual, and necessary business operations or expenses that he will reasonably incur and (2) reasonable, actual, and necessary personal expenses that he will reasonably incur, including, but not limited to, expenditures for food, housing, transportation, clothing, insurance, taxes, schooling, medical and dental needs, and legal fees. The funds, property and Assets affected by this Paragraph shall include both existing Assets and Assets acquired after the effective date of this Order, including without limitation, those acquired by loan or gift.

Provided, however, that Defendant Ohayon shall provide the FTC with a sworn statement providing a monthly accounting that separately states his monthly expenditures for business operations and expenses and personal expenses. The monthly accounting shall be provided on the second Monday of every month and provide a financial accounting for the preceding calendar month, with the first accounting to be provided on November 12, 2012.

VIII.

MAINTAIN RECORDS AND REPORT NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Defendant Ohayon and his agents, servants, employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined, until further order of this Court, from:

- A. Failing to create and maintain books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipt ledgers, cash disbursement ledgers and source documents, documents indicating title to real or personal

property, and any other data which, in reasonable detail, accurately, fairly and completely reflect the incomes, disbursements, transactions, dispositions, and uses of Defendant Ohayon's Assets; *provided* that the duty to maintain as described in this Part refers only to those Documents over which Defendant Ohayon has custody or control;

- B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, Documents over which Defendant Ohayon has custody or control, including electronically-stored materials, that relate in any way to the business practices or business or personal finances of any Defendant; to the business practices or finances of entities directly or indirectly under the control of any Defendant; or to the business practices or finances of entities directly or indirectly under common control with any other Defendant; and
- C. Creating, operating, or exercising any control over any new business entity that advertises, markets, promotes, offers for sale or sells, or assists others in doing so, Debt Relief Services or Mortgage Assistance Relief Services, whether newly formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing Plaintiff with a written statement disclosing: (1) the name of the business entity; (2) the address, telephone number, email address, and web site address of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

IX.

PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant Ohayon, and his agents, servants, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined, until further order of this Court, from:

- A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, birth date, telephone number, email address, Social Security number, Social Insurance number, credit card number, bank account number, or other financial or identifying personal information of any person from whom or about whom any Defendant obtained such information in connection with activities alleged in the FTC's Complaint; and
- B. Benefitting from or using the name, address, birth date, telephone number, email address, Social Security number, Social Insurance number, credit card number, bank account number, or other financial or identifying personal information of any person from whom or about whom any Defendant obtained such information in connection with activities alleged in the FTC's Complaint.

Provided, however, that Defendants may disclose such financial or identifying personal information to a law enforcement agency or as required by any law, regulation, or court order.

X.

MONITORING

IT IS FURTHER ORDERED that agents or representatives of Plaintiff, other than its attorneys, may contact Defendant Ohayon or his agents or representatives directly or indirectly and anonymously for the sole purpose of monitoring compliance with Sections I-IV of this Order, and may tape record any oral communications that occur in the course of such contacts.

XI.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendant Ohayon shall immediately provide a copy of this Order to each of their corporations, subsidiaries, affiliates, divisions, directors, officers, partners, successors, assigns, employees, attorneys, agents, representatives, sales entities, sales persons, telemarketers, independent contractors, and any other persons in active concert or participation with them. Within ten (10) days from the date of entry of this Order, each Defendant shall provide Plaintiff with a sworn statement that each Defendant has complied with this provision of the Order, which statement shall include the name, title, address, telephone number, date of service, and manner of service of each person or entity Defendants served with a copy of this Order in compliance with this provision.

XII.

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, electronic mail, personal or overnight delivery, or by U.S. Mail, by agents and employees of Plaintiff, by any law enforcement agency, or by private

process server, upon any person that may have possession or control of any document of any Defendant, or that may be subject to any provision of this Order.

XIII.

JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of this Order.

SO ORDERED, this 25th day of October, 2012 at _____ a.m./p.m.

s/ James S. Gwin

UNITED STATES DISTRICT COURT JUDGE

SO STIPULATED AND AGREED:

FOR DEFENDANT NISSIM OHAYON:



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NISSIM N. OHAYON, *Individually*

FOR PLAINTIFF FEDERAL TRADE COMMISSION:



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