

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CASE NO: 8:08-cv-388-T-23EAJ

MORTGAGE FORECLOSURE SOLUTIONS,  
INC., DEBRA BEHRENS, and MICHAEL SIANI,

Defendants.

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**STIPULATED FINAL JUDGMENT AND PERMANENT INJUNCTION**

The Federal Trade Commission (“FTC” or “Commission”) sues the defendants Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani. On January 26, 2008, pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b), the Commission filed a Complaint for Injunctive and Other Equitable Relief (Doc. 1). The Commission charged the defendants with engaging in deceptive acts or practices in connection with the marketing and sale of mortgage foreclosure rescue services, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The Commission and the defendants have agreed to settle all matters of dispute between them without adjudication. Accordingly, the Commission’s unopposed motion (Doc. 42) for entry of the stipulated final judgment and permanent injunction is **GRANTED**, and the stipulated final judgment and permanent injunction (Doc. 42-2) is **APPROVED** as follows:

## **FINDINGS**

1. This court has jurisdiction of the subject matter of this case and the parties hereto pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 15 U.S.C. §§ 45(a) and 53(b).
2. Venue in the Middle District of Florida is proper as to all parties.
3. The activities of defendants Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The complaint states a claim upon which relief may be granted against defendants Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
5. Defendants Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani waive all rights to seek judicial review or otherwise challenge or contest the validity of this Final Order.
6. Defendants Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani further waive any claim, including any claim for attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and any claims they may have against the Commission, its employees, representatives, or agents.
7. Defendants Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani enter into this Stipulated Final Judgment and Permanent Injunction ("Final

Order”) freely and without coercion and acknowledge that they have read, understand, and are prepared to abide by the provisions of this Final Order.

8. This Final Order is addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

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

### **DEFINITIONS**

For the purpose of this Final Order, the following definitions shall apply:

1. “Assisting others” means knowingly providing any of the following goods or services to another business venture: (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 marketing material; (C) providing names of, or assisting in the generation of, potential customers; (D) hiring, recruiting, or training personnel; (E) advising or acting as a consultant to others on the commencement or management of a business venture; or (F) performing marketing services of any kind.

2. “Corporate defendant” means Mortgage Foreclosure Solutions, Inc., and its successors and assigns.

3. “Individual defendants” means Debra Behrens and Michael Siani.

4. “Defendants” means all of the individual defendants and the corporate defendant, individually, collectively, or in any combination.

5. “Document” means writings, drawings, graphs, charts, photographs,

sound recordings, images, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form and is synonymous in meaning and equal in scope to the usage of the term in the Federal Rules of Civil Procedure 34(a). A draft or non-identical copy of a document is a separate document within the meaning of the term.

6. "Mortgage foreclosure rescue service" means any service, product, or program wherein the offeror, expressly or by implication, claims that it can assist a homeowner in any manner to (A) stop, prevent, or postpone any home mortgage foreclosure sale, (B) obtain any forbearance from any beneficiary or mortgagee, (C) exercise any statutory right of reinstatement, (D) obtain any extension of the period within which the owner may reinstate his or her obligation, (E) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in that deed of trust or mortgage, (F) obtain a loan or advance of funds, (G) avoid or repair any credit impairment resulting from mortgage default or foreclosure sale, (H) save the owner's residence from foreclosure, or (I) assist the owner in obtaining any remaining proceeds from the foreclosure sale of the owner's residence. The foregoing shall include any manner of claimed assistance, including, but not limited to, debt, budget, or financial counseling; receiving money for the purpose of distributing it to creditors; contacting creditors on behalf of the homeowner; arranging or attempting to arrange for an extension of the period within which the owner of property sold at foreclosure may cure his or her default; arranging or attempting to arrange for any delay or postponement of

the time of a foreclosure sale; and giving advice of any kind with respect to filing for bankruptcy.

7. The term “and” also means “or,” and the term “or” also means “and.”

## **ORDER**

### **I. PROHIBITED BUSINESS ACTIVITIES**

**IT IS ORDERED** that defendants Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani, and their successors, assigns, agents, employees, officers, servants, and all other persons or entities in active concert or participation with them who receive actual notice of this Final Order by personal service, facsimile, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined from:

A. Falsely representing, or assisting others to falsely represent, expressly or by implication, any material fact in connection with the advertising, marketing, promoting, offering for sale, or sale of any mortgage foreclosure rescue service, including but not limited to misrepresenting:

- (1) that any home mortgage foreclosure can or will be stopped, postponed, or prevented;
- (2) an ability to help all consumers, regardless of their individual circumstances or situations;
- (3) the likelihood that home mortgage foreclosure can or will be stopped, postponed, or prevented;

- (4) the degree of past success of any efforts to stop, postpone, or prevent home mortgage foreclosures;
- (5) the number of satisfied customers or customer complaints;
- (6) the terms of any refund or guarantee;
- (7) the likelihood that a consumer will receive a full or partial refund if a home mortgage foreclosure is not stopped, postponed, or prevented;
- (8) any approval, endorsement, or rating by the Better Business Bureau or any other consumer advocacy or consumer protection association;  
or
- (9) any fact material to a consumer's decision to purchase any mortgage foreclosure rescue service.

B. Falsely representing, or assisting others to falsely represent, expressly or by implication, any material fact in connection with the advertising, marketing, promoting, offering for sale, or sale of any other good or service.

## **II. PROHIBITIONS AGAINST DISTRIBUTION OF CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that defendants Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani, and their successors, assigns, agents, employees, officers, servants, and all other persons or entities in active concert or participation with them who receive actual notice of this Final Order by personal service, facsimile, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are permanently restrained and enjoined from selling, renting,

leasing, transferring or otherwise disclosing the individual name, address, telephone number, email address, credit card number, social security number, bank account number or other identifying information of any person who provided any such information to defendants at any time in connection with the advertising, marketing, promoting, offering for sale, or sale of mortgage foreclosure rescue services; *provided, however,* that defendants may disclose such identifying information to any law enforcement or regulatory agency, or as required by any law, regulation or court order.

### **III. MONETARY JUDGMENT AND CONSUMER REDRESS**

**IT IS FURTHER ORDERED** that:

A. Judgment is hereby entered in favor of the Commission and against defendants, Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani, jointly and severally, in the amount of one million one hundred and seventy eight thousand nine hundred and twenty dollars (\$1,178,920), for the payment of equitable monetary relief – including, but not limited to, consumer redress and/ or disgorgement, and for paying any attendant expenses of administration of any redress fund.

B. Except as provided in Section IV of this Final Order, the judgment shall be suspended upon payment of \$8,320.84:

(1) Upon entry of this Final Order, defendants Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani, and the plaintiff will stipulate to transfer \$59.00 in funds held in Suntrust Bank account ending

5061, \$5,603.33 in funds held in Suntrust Bank account ending 4056, \$353.43 in funds held in Suntrust Bank account ending 4642, and \$5.08 in funds held in Bank of America account ending in 0560, all of which were frozen pursuant to the Temporary Restraining Order (Dkt. #10) entered by the court on February 27, 2008 and the Stipulated Preliminary Injunction (Dkt. #22) entered by the court on March 7, 2008. The defendants shall pay all amounts due to the Commission in cash by electronic funds transfer to the Commission, or to such agent as the Commission may direct, pursuant to instructions provided by the Commission.

(2) Within seven (7) business days after receiving notice of the entry of this Final Order, defendants shall pay to the Commission the sum of \$2,300.00, which may be drawn from Wells Fargo Bank lines of credit or equity account ending 1998, in the form of a certified or cashier's check made payable to the Commission.

C. Funds paid over to the Commission pursuant to this Section and Section IV shall be deposited into a fund administered by the Commission or its designated representative to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. Defendants will cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Final Order. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply funds for any other equitable relief (including consumer information remedies) that it determines to be reasonably related to



defendants' practices alleged in the complaint. Any funds not used for this equitable relief shall be deposited into the U.S. Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section.

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

E. Defendants agree that the facts as alleged in the complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Final Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendants further stipulate and agree that the facts alleged in the complaint establish all elements necessary to sustain an action pursuant to, and that this Final Order shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A).

F. Defendants acknowledge and agree that the judgment entered pursuant to this Section is equitable monetary relief, solely remedial in nature, and is not a fine, penalty, punitive assessment, or forfeiture.

G. Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission defendants' taxpayer identifying numbers (social security number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of defendants' relationship with the government.

#### IV. RIGHT TO RE-OPEN AS TO MONETARY JUDGMENT

**IT IS FURTHER ORDERED** that:

A. By agreeing to this Final Order, defendants reaffirm and attest to the truthfulness, accuracy, and completeness of defendants' written Financial Statements submitted by defendants to the Commission on February 28, 2008. This Court's Final Order, and the plaintiff's agreement to enter into this Final Order, is expressly premised upon the truthfulness, accuracy, and completeness of defendants' financial conditions, as represented in the Financial Statements referenced above, which contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Final Order.

B. If, upon motion by plaintiff, this Court should find that one or more defendant failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the Financial Statements, the Court shall reinstate the suspended judgment against such defendant, in favor of the Commission, in the amount of \$1,178,920, which the defendants and the Commission stipulate is the amount of consumer injury jointly and severally caused by the defendants, less any payments made to the Commission, plus interest from the entry date of this Final Order, pursuant to 28 U.S.C. § 1961. *Provided, however,* that in all other respects, this Final Order shall remain in full force and effect unless otherwise ordered by the Court.

## **V. ASSET FREEZE**

**IT IS FURTHER ORDERED** that, upon entry of this Final Order and payment of the amounts set forth in Section III, the freeze of the defendants' assets shall be dissolved.

## **VI. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of (i) monitoring and investigating compliance with any provision of this Final Order and (ii) investigating any discrepancies in the accuracy of defendants' financial statements upon which the Commission's agreement to this Final Order is expressly premised:

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

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

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;

2. posing as consumers and suppliers to defendants, their employees, or any other entity managed or controlled in whole or in part by any defendant, without the necessity of identification or prior notice; and

C. Defendants each shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Final Order. The person interviewed may have counsel present. Provided however, that nothing in this Final Order shall limit 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, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

## VII. COMPLIANCE REPORTING

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

- A. For a period of five (5) years from the date of entry of this Final Order,
  1. Each individual defendant shall notify the Commission of the following:
    - a. Any changes in such defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

- b. Any changes in such defendant's employment status (including self-employment), and any change in such defendant's ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that such defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of such defendant's duties and responsibilities in connection with the business or employment; and
  - c. Any changes in such defendant's name or use of any aliases or fictitious names;
2. Defendants shall notify the Commission of any changes in structure of any corporate defendant or any business entity that any defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Final Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final Order; or a change in the business name or address, at least thirty (30) days prior to such change, provided that, with respect to any proposed change in the

business entity about which a defendant learns less than thirty (30) days prior to the date such action is to take place, such defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Final Order and annually thereafter for a period of five (5) years, defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Final Order. This report shall include, but not be limited to:

1. For each individual defendant:
  - a. such defendant's then-current residence address, mailing addresses, and telephone numbers;
  - b. such defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of such defendant's duties and responsibilities in connection with the business or employment; and
  - c. Any other changes required to be reported under Subsection A of this Section.

2. For all defendants:

- a. A copy of each acknowledgment of receipt of this Final Order, obtained pursuant to Section IX; and
- b. Any other changes required to be reported under Subsection A of this Section.

C. Each defendant shall notify the Commission of the filing of a bankruptcy petition by such defendant within fifteen (15) days of filing.

D. For the purposes of this Final Order, defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Final Order to the Commission, to the following address:

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Room NJ-2122  
Washington, D.C. 20580  
RE: FTC v. Mortgage Foreclosure Solutions, Inc.

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

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

### VIII. RECORD KEEPING PROVISIONS

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Final Order, defendants and those businesses where any defendant is the majority owner or otherwise controls the business and their agents, employees, officers, corporations, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service, facsimile, or otherwise, in connection with the advertising, marketing, promoting, offering for sale, or sale of mortgage foreclosure rescue services, are hereby restrained and enjoined from failing to create and/or retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;



E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, including websites and weblogs; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Final Order, including but not limited to, copies of acknowledgments of receipt of this Final Order required by Sections IX and X and all reports submitted to the FTC pursuant to Section VII.

#### **IX. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Final Order, defendants shall deliver copies of the Final Order as directed below:

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

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

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

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

**X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that each defendant, within five (5) business days of receipt of this Final Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Final Order.

**XI. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Final Order. The Clerk is directed to close the case.

ORDERED in Tampa, Florida, on January 5, 2009.



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**STEVEN D. MERRYDAY  
UNITED STATES DISTRICT JUDGE**

cc: U.S. Magistrate Judge