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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FEDERAL TRADE COMMISSION,)
)
)
Plaintiff,)
)
v.)
)
HOPE NOW MODIFICATIONS, LLC,)
)
HOPE NOW FINANCIAL SERVICES)
CORP., also dba Hope Now Modifications,)
)
NICK PUGLIA,)
)

Civil No. 1:09-cv-1204-JBS-JS
**FIRST AMENDED
COMPLAINT FOR
PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

SALVATORE PUGLIA,)
))
KWASNIK, RODIO, KANOWITZ &)
BUCKLEY P.C., and)
))
MICHAEL KWASNIK,)
))
Defendants.)
_____)

Plaintiff, the Federal Trade Commission (“FTC”), for its complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“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 *et seq.*, to obtain temporary, 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), and in violation of the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. § 6101 *et seq.* Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.
5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such equitable relief as may be appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 6102(c), and 6105(b).

DEFENDANTS

6. Defendant Hope Now Modifications LLC (“HNM”) is a New Jersey limited liability company with its principal place of business at 200 Lake Drive East, Suite 200, Cherry Hill, New Jersey. HNM transacts or has transacted

business in the District of New Jersey. At all times material to this Complaint, HNM, acting alone or in concert with others, has advertised, marketed, and/or sold mortgage loan modification services to consumers throughout the United States.

7. Defendant Hope Now Financial Services Corp. (“HNFS”), doing business as Hope Now Modifications, is a New Jersey corporation with its principal place of business at 200 Lake Drive East, Suite 200, Cherry Hill, New Jersey. HNFS transacts or has transacted business in the District of New Jersey. At all times material to this Complaint, HNFS, acting alone or in concert with others, has advertised, marketed, and/or sold mortgage loan modification services to consumers throughout the United States.
8. Defendant Nick Puglia is a manager, officer and/or principal of HNM and HNFS. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of HNM and HNFS, including the acts and practices set forth in this Complaint. Defendant Nick Puglia resides in this District and transacts or has transacted business in this District and throughout the United States.

9. Defendant Salvatore Puglia, Sr. is a manager, officer and/or principal of HNM and HNFS. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of HNM and HNFS, including the acts and practices set forth in this Complaint.

Defendant Salvatore Puglia resides in this District and transacts or has transacted business in this District and throughout the United States.
10. Defendant Kwasnik, Rodio, Kanowitz & Buckley P.C. (“KRKB”) is a New Jersey professional corporation with its principal place of business at 1763 Route 70 East, 2nd Floor, Cherry Hill, New Jersey. KRKB transacts or has transacted business in the District of New Jersey. KRKB, acting alone or in concert with others, has advertised, marketed, and/or sold mortgage loan modification services to consumers throughout the United States.
11. Defendant Michael Kwasnik is the managing partner of KRKB. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of KRKB, including the acts and practices set forth in this Complaint. Defendant Michael Kwasnik resides in this District and

transacts or has transacted business in this District and throughout the United States.

12. Defendants HNM and HNFS have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. Because HNM and HNFS have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below.

COMMERCE

13. At all times relevant to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

BACKGROUND ON THE HOPE NOW ALLIANCE

14. The HOPE NOW Alliance is a private-sector, non-profit alliance formed in October 2007 with the encouragement of then President Bush and the Departments of Treasury and Housing and Urban Development. The HOPE NOW Alliance is a broad-based collaboration between credit and homeownership counselors, lenders, investors, mortgage market participants, and trade associations. The HOPE NOW Alliance offers free assistance to homeowners who may not be able to pay their mortgages and need help working with their mortgage company or loan servicer. The

HOPE NOW Alliance maintains an Internet website, www.hopenow.com, and a toll-free hotline, 888-995-HOPE. Consumers who contact the HOPE NOW Alliance are referred to HUD-approved housing counselors who provide counseling at no cost to consumers.

DEFENDANTS' BUSINESS PRACTICES

15. Defendants have engaged in a course of conduct to advertise, market, offer to sell, and sell to consumers mortgage loan modification and foreclosure relief services.

Defendants' Organizational Structure

16. When Defendants' operation began in or around August 27, 2008, the operations were conducted by defendants HNM, HNFS, Salvatore Puglia, and Nick Puglia. In or around December 2008, defendants HNM, HNFS, Salvatore Puglia, and Nick Puglia began to consult with defendants KRKB and Kwasnik regarding changes to the operation's organization structure. In or around February 2009, Defendants' operational scheme was restructured to include defendants KRKB and Kwasnik. HNM and HNFS were responsible for conducting the telemarketing operations described herein. Consumers entered into agreements for mortgage loan modification services directly with KRKB and sent all monies to KRKB. Pursuant to a service

contract, KRKB engaged HNFS as a contractor to assist KRKB in obtaining purported loan modifications for consumers.

Defendants' Marketing Practices

17. Defendants, using the name Hope Now Modifications, market their services to homeowners who are in danger of losing their homes to foreclosure. They purchase consumer leads from lead generator companies that market mortgage loan modification and foreclosure relief services. Defendants employ outbound telemarketing to call consumers who responded to the lead generator advertisements and to market mortgage loan modification and foreclosure relief services. Defendants also maintain an Internet website, www.hopenowmod.com, through which they market their services.
18. Defendants' website states "STOP FORECLOSURE – GET HELP." At the top left is Defendants' logo: a graphic of a house interspersed with the words "HOPE NOW MODIFICATIONS." To the right is Defendants' toll-free number, "877-HOPE-364."
19. Defendants' website contains statements to induce consumers to purchase their mortgage loan modification and foreclosure relief services, including:
 - a. ARE YOU BEHIND ON YOUR MORTGAGE? Our team of modification professionals are here to help you now!

- b. Are you worried about losing your home due to **missed payments**? Are you worried about **delinquency** damaging your credit? Are you being **harassed** by **bill collectors** over your mortgage? If you said yes to any of these questions, we can help!
 - c. **Hope Now Financial Services Corp.** supports law firms in their efforts to keep borrowers in their homes, but can't afford the payment to adjust upward, or can't quite afford the current mortgage payment.
 - d. Do not put it off any longer but enlist the help of a powerful ally today by filling out the form.
 - e. We are contracted by Full-Service Law Firms that have helped thousands of individuals and businesses triumph in the face of adversity
 - f. **What are typical success rates?**
Our professionals have an excellent track record of negotiating loan modifications. Our network of experienced and well trained negotiators have the legal experience, necessary to get you a loan modification that can help you save your credit and your home, often within 60 to 90 days.
 - g. **What if I don't want to call my lender?**
Call the Homeowners Hotline – 1.877.HOPE.364. This hotline is staffed by independent contractors who can guide you through possible options.
20. Defendants also advertise online through such online classified advertisement services as Craigslist and iList.com. Defendants' online classified advertisements make the following claims to induce consumers to purchase their mortgage loan modification and foreclosure relief services:
- a. **FACING FORECLOSURE? CAN'T REFINANCE? HOPE NOW MODIFICATIONS CAN HELP!!**

- b. **HOPE NOW Loan Modification...Are You behind in mortgage payments?**
. . . Are you behind in mortgage payments, or facing foreclosure on your home? Do you have a higher interest rate or an adjustable rate? Call 1 877-467-3364 ext. 3645 if you want to keep your Home and have a Lower monthly payment with a low fixed interest rate. Hope Now Modifications is what you need to fix you [sic] mortgage payment and what is needed to fix the mortgage crisis.
 - c. *****Don't Lose Your Home To FORECLOSURE!***Hope Now Modifications**
 - d. ****We STOP FORECLOSURE In Its Tracks!**Hope Now Modifications**
 - e. **HOPE NOW MODIFICATIONS***SAVE YOUR HOME FROM FORECLOSURE.** . . . If the underwriter accepts your submission you have a 99% chance for success.
 - f. **Hope Now Modifications LLC** is an alliance between professional counselors, servicers, and underwriters. This alliance will maximize outreach efforts to homeowners in distress to help them stay in their homes and will create a unified, coordinated plan to reach and help as many homeowners as possible.
21. Defendants' website and online advertisements include a toll-free number, 877-HOPE-364 and encourage consumers to call to "Get Help Now!"
- Alternatively, Defendants' website requests consumers to complete a short form and submit the information to Defendants after which a representative calls the consumer. The short form asks consumers for their contact information, lender name, and hardship reason.

22. Consumers speak with Defendants' telemarketers when they call the toll-free number in response to Defendants' Internet advertising or when Defendants call consumers after receiving consumers' information from purchased consumer leads or via the online form.
23. During the telemarketing sales calls, Defendants' representatives collect information from consumers, including details about the consumers' mortgages and income. After consumers provide Defendants with this information, the telemarketers often claim that the consumers are prime candidates for a modification. Defendants' representatives typically promise consumers that Defendants can help modify consumers' mortgage loans and prevent foreclosure.
24. Defendants' telemarketers instruct consumers that they must pay Defendants' fee up-front. The fee is typically in the amount of consumers' monthly mortgage payment. Defendants typically refer to the fee as a mitigation escrow deposit. Consumers who express concern about paying the fee are often told that they can pay the fee instead of their regular mortgage payment, because foreclosure proceedings will be stayed while Defendants negotiate with the lender.

25. In numerous instances, consumers are told that if they are not satisfied with Defendants' service they are entitled to a full refund of the fees paid.
26. In numerous instances, Defendants' telemarketers create a false aura of legitimacy by misrepresenting that they are part of the HOPE NOW Alliance.
27. Defendants, however, are not members of, affiliated with, or part of the HOPE NOW Alliance.
28. In numerous instances, after consumers have paid Defendants' fee, Defendants fail to return consumers' telephone calls or provide updates about the status of Defendants' purported communications with the consumers' lenders. In other instances, Defendants misrepresent to consumers that negotiations are proceeding smoothly.
29. In numerous instances, Defendants fail to obtain mortgage loan modifications. In numerous instances, consumers learn from their lenders that Defendants have not even contacted the lender or that Defendants have made only minimal, non-substantive contacts with the lender. Some consumers are able to obtain mortgage loan modifications and avoid foreclosure only through their own efforts and not because of any service provided by Defendants. Consumers who obtain modifications and stop

foreclosure through their own efforts sometimes learn that their lenders offer the same settlement terms to consumers who negotiate on their own behalf that they offer through third parties such as Defendants; other consumers learn that their lenders will negotiate only with consumers and not with third parties.

30. Because of their reliance on Defendants' promises, numerous consumers lost not only the substantial fees paid to Defendants, but also opportunities for lower payments as a result of concessions offered directly by the lender. Moreover, in numerous instances, Defendants increase the likelihood of foreclosure by encouraging consumers to pay Defendants' fee rather than make mortgage payments, and encouraging consumers not to accept work out options presented by the consumers' lenders.
31. In numerous instances, when Defendants fail to obtain a mortgage loan modification as promised, Defendants deny refund requests from consumers. In some instances, Defendants condition the issuance of refunds on consumers' withdrawing previously filed complaints with law enforcement agencies or consumer reporting entities.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

Count I

34. In numerous instances, Defendants have represented to consumers, expressly or by implication, that Defendants will obtain a mortgage loan modification or stop foreclosure in all or virtually all instances.
35. In truth and in fact, Defendants do not obtain a mortgage loan modification or stop foreclosure in all or virtually all instances.
36. Therefore, Defendants’ representation as set forth in Paragraph 34 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S. C. § 45(a).

Count II

37. In numerous instances, Defendants have represented to consumers, expressly or by implication, that Defendants will give refunds to consumers if Defendants fail to obtain a mortgage loan modification or stop foreclosure.

38. In truth and in fact, in numerous of these instances, Defendants do not give refunds to consumers when Defendants fail to obtain a mortgage loan modification or stop foreclosure.
39. Therefore, Defendants' representation as set forth in Paragraph 37 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S. C. § 45(a).

Count III

40. In numerous instances, Defendants have represented to consumers, expressly or by implication, that Defendants are members of, part of, or affiliated with the HOPE NOW Alliance.
41. In truth and fact, Defendants are not members of, part of, or affiliated with the HOPE NOW Alliance.
42. Therefore, Defendants' representation as set forth in Paragraph 40 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE TELEMARKETING SALES RULE

43. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, in 1994. The FTC adopted the original

Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain sections thereafter.

44. Defendants are “seller[s]” or “telemarketer[s]” engaged in “telemarketing” as those terms are defined in the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).
45. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:
 - a. Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii);
 - b. Any material aspect of the nature or terms of the seller’s refund, cancellation, exchange, or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv); and
 - c. A seller’s or telemarketer’s affiliation with, or endorsement or sponsorship by, any person or government entity. 16 C.F.R. § 310.3(a)(2)(vii).
46. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the

TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

Count IV

47. In numerous instances, in the course of telemarketing mortgage loan modification services, Defendants have misrepresented, directly or by implication, a material aspect of the performance, efficacy, nature, or central characteristic of such services, including that Defendants will obtain a mortgage loan modification or stop foreclosure in all or virtually all instances.
48. Defendants' practice as alleged in Paragraph 47 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

Count V

49. In numerous instances, in the course of telemarketing mortgage loan modification services, Defendants have misrepresented, directly or by implication, a material aspect of the nature or terms of their cancellation policy, including that Defendants will give refunds to consumers if Defendants fail to obtain a mortgage loan modification or stop foreclosure.

50. Defendants' practice as alleged in Paragraph 49 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

Count VI

51. In numerous instances, in the course of telemarketing mortgage loan modification services, Defendants have misrepresented, directly or by implication, their affiliation with, or endorsement or sponsorship by, any person or government entity, including that Defendants are members of, part of, or affiliated with the HOPE NOW Alliance.
52. Defendants' practice as alleged in Paragraph 51 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii).

CONSUMER INJURY

53. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

54. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.
55. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including rescission and reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. § 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective final relief, including but not limited to temporary and preliminary injunctions, an order freezing assets, immediate access, and the appointment of a receiver;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: September 14, 2009

Respectfully submitted,

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