

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NATIONAL HOMETEAM SOLUTIONS, LLC, *et al.*,

Defendants.

Case No. 4:08-cv-067

**FEDERAL TRADE COMMISSION'S MOTION FOR AN ORDER
TO SHOW CAUSE WHY EVERARD TAYLOR, ELIAS TAYLOR, EBONY
TAYLOR, AND NATIONAL FINANCIAL ASSISTANCE, LLC SHOULD
NOT BE HELD IN CONTEMPT AND MEMORANDUM IN SUPPORT**

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The Federal Trade Commission brings this action to redress consumer harm caused by Everard Taylor, Ebony Taylor, Elias Taylor, and National Financial Assistance's flagrant violation of this Court's Orders. In 2008, in connection with *FTC v. National Hometeam Solutions*, the Court entered three Orders a Preliminary Injunction ("PI")¹ and two Stipulated Permanent Injunctions² prohibiting Defendants Everard Taylor and Elias Taylor, and those in active concert or participation with them, from misrepresenting to consumers that they would stop, postpone, or prevent consumers' mortgage foreclosures and that they would refund consumers' fees if they were unable to assist consumers. Completely disregarding this Court's Orders, shortly after the entry of the PI on March 6, 2008, Everard Taylor and Elias Taylor, in active concert or participation with Ebony Taylor³ and National Financial Assistance, LLC (collectively "Contempt Defendants"), resumed the prohibited conduct by operating another mortgage foreclosure rescue scam.⁴ Contempt Defendants continued their deceptive conduct until at least July 2009, well after the Court entered its Permanent Injunctions on September 8, 2008. When given the opportunity to explain their conduct at depositions in September 2009, Everard Taylor and Ebony Taylor refused and repeatedly asserted their Fifth Amendment privilege against self-incrimination.⁵ Contempt Defendants' contumacious conduct caused consumer injury of at least \$126,131.80.

¹ Dkt # 38.

² Dkt # 52 and Dkt # 54. The Court also entered additional stipulated Permanent Injunctions that are unrelated to this contempt action. *See* Dkt # 51 and Dkt # 53.

³ Ebony Taylor is married to Everard Taylor. App. 511.

⁴ In an attempt to conceal their contumacious conduct, Contempt Defendants used two fictitious business names somewhat similar to National Financial Assistance's name "Nationwide Financial Aid" and "Northern Federal Aid."

⁵ The Commission deposed Everard Taylor and Ebony Taylor in September 2009. Each repeatedly asserted their respective Fifth Amendment privilege against self-incrimination. Accordingly, the Commission requests that the Court draw the adverse inference from Everard Taylor and Ebony Taylor's assertion. *See* discussion *infra* Section IV, entitled Adverse Inferences.

Accordingly, the Federal Trade Commission (“Commission”) moves the Court for an order to show cause why Contempt Defendants should not be held in civil contempt for violating the Court’s PI and Permanent Injunctions. The Commission is concurrently filing a separate motion, under Federal Rule of Civil Procedure 60(b), that asks the Court to modify the Permanent Injunctions to ban Everard Taylor (“Everard”) and Elias Taylor (“Elias”) from advertising, marketing, selling, or offering for sale any mortgage loan modification or foreclosure relief service.⁶

I. INTRODUCTION

On February 26, 2008, the Commission filed a Complaint and an *ex parte* application for TRO against Everard Taylor, Elias Taylor, Emmanuel Taylor, Edwin Taylor, and their respective companies (collectively “the Taylors”), charging the Taylors with scamming unsuspecting consumers faced with losing their homes by selling or offering for sale deceptive mortgage foreclosure rescue services. On March 6, 2008, this Court entered the PI. Undaunted by the Court’s stipulated PI, Everard Taylor and Elias Taylor, in active concert or participation with Ebony Taylor (“Ebony”) and National Financial Assistance,⁷ began operating another mortgage foreclosure rescue service under the fictitious business name “Nationwide Financial Aid.” In November 2008, well after the Court’s entry of its Permanent Injunctions in September 2008, Contempt Defendants began using an additional fictitious business entity name, “Northern

⁶ In support of its motions, the Commission is filing combined exhibits entitled Appendix to Memorandum in Support of Federal Trade Commission’s Motion for an Order to Show Cause Why Contempt Defendants Should Not Be Held in Contempt (“Exhibits to Memorandum”).

⁷ As explained later, Ebony and National Financial Assistance are bound by the Court’s Orders under Federal Rule of Civil Procedure 65(d)(2)(C) based on their participation with Everard and Elias in the operation of the fictitious business entity, Nationwide Financial Aid. As a representative of Evlan Services, LLC, Ebony is also bound by the Court’s Orders under Federal Rule of Civil Procedure 65(d)(2)(B). In addition to being bound under Rule 65(d)(2)(C) for its participation, National Financial Assistance is also bound by the Court’s Orders based on its inclusion within the definition of “Defendant” in Everard’s Permanent Injunction.

Federal Aid.”⁸ All three entities shared the same three initials NFA.⁹ For clarity, the name “Nationwide Financial Aid” will be used to refer to both fictitious entities except where it is relevant to refer to one or the other specifically.

Contempt Defendants operated Nationwide Financial Aid in the same manner as the mortgage foreclosure rescue scam that gave rise to the filing of the Commission’s initial Complaint. Nationwide Financial Aid promised consumers it would stop, postpone, or prevent consumers’ foreclosures, or would provide a refund. Consumers who paid Nationwide Financial Aid’s fees found that it did little or nothing to stop, postpone, or prevent their foreclosures. Contempt Defendants failed to obtain loan modifications or refinancing, and failed to provide refunds as promised. Contempt Defendants violated the PI and Permanent Injunctions. From March 2008 until at least July 2009, Contempt Defendants made false representations about their mortgage foreclosure rescue services in violation of Section I of the Permanent Injunctions and Section I of the PI, which prohibit Everard and Elias, and those in active concert or participation with them (*i.e.*, Ebony and National Financial Assistance), from falsely representing that Contempt Defendants would stop, postpone, or prevent home mortgage foreclosure, and falsely representing that consumers would be provided refunds.

⁸ Much like Nationwide Financial Aid, Northern Federal Aid used the Washington Mutual (“WAMU”) bank account owned by National Financial Assistance. Barnes, App. 189 ¶ 6 and App. 194; Clark, App. 204 ¶ 7 and App. 210. Northern Federal Aid made the same representations about its mortgage foreclosure rescue services as and used the identical contract of Nationwide Financial Aid. *Compare* Barnes, App. 188-89 ¶¶ 3, 4, 7 and App. 195-96, *and* Clark, App. 203-04 ¶¶ 4, 7 and App. 207-08, *with* Fuller, App. 128 ¶ 2 and App. 133-34, *and* Willis, App. 141 ¶ 3 and App. 146-47, *and* Tapia, App. 152 ¶ 3 and App. 160-61.

⁹ By sharing the same initials, Contempt Defendants could direct consumers to pay the fictitious “NFA” entities while receiving the deposits made by Nationwide Financial Aid and Northern Federal Aid customers.

II. STATEMENT OF FACTS

A. The Underlying Action

In the underlying action, *National Hometeam Solutions*, the Taylors used several business entities to market deceptive mortgage foreclosure rescue services to consumers nationwide. Everard and Elias, along with their brother and father, and their companies,¹⁰ engaged in the deceptive sale of mortgage foreclosure rescue services to consumers. On September 8, 2008, the underlying action was resolved by the Court's entry of Stipulated Permanent Injunctions against the Taylors. (Dkt # 51-54).¹¹

The Taylors' defrauded approximately 950 consumers of more than \$617,000 in their previous mortgage foreclosure rescue service scam. From 2005 to 2008, the Taylors misrepresented to consumers facing imminent home foreclosure that they could stop the foreclosure regardless of the amount the consumer owed. The Taylors attracted clients by falsely representing that they had special relationships with lenders, had helped hundreds of consumers avoid foreclosure, and would provide a money-back guarantee if the Taylors could not stop the foreclosure. In most cases, however, the Taylors did nothing or very little to help consumers avoid foreclosure, and failed to issue refunds.

¹⁰ The corporate defendants were National Hometeam Solutions, LLC; National Financial Solutions, LLC; United Financial Solutions, LLC; Nationwide Foreclosure Services, LLC; Evalan Services, LLC; and Elant, LLC.

¹¹ Plaintiff respectfully requests the Court take judicial notice of the filings and orders in the underlying action. On September 9, 2008, Elias received a copy of his Stipulated Permanent Injunction. App. 22 ¶ 5 and App. 41-42. No later than September 24, 2008, Everard received a copy of his Stipulated Permanent Injunction. App. 22 ¶ 5 and App. 25-26.

B. Contempt Defendants' Contumacious Business Practices

Orchestrated by Everard, and shortly after the entry of the PI, Contempt Defendants began to offer mortgage foreclosure rescue services through their Nationwide Financial Aid scheme. Contempt Defendants used Nationwide Financial Aid to make representations about their mortgage foreclosure rescue services. Unfortunately, Nationwide Financial Aid's representations were false. Contempt Defendants' actions caused consumer injury.

1. Contempt Defendants Used Nationwide Financial Aid to Offer Mortgage Foreclosure Rescue Services

Orchestrated by Everard, Contempt Defendants began doing business as Nationwide Financial Aid in March 2008.¹² Contempt Defendants solicited consumers using direct mail¹³ and telemarketing phone calls that referred consumers to their toll-free phone numbers, (866) 495-0579 and (866) 496-7317.¹⁴ Like the Taylors' previous scam, Nationwide Financial Aid used unfair and deceptive acts in a scheme targeting consumers who were losing, or likely to lose, their

¹² On March 6, 2008, in an effort to assist her husband continue his mortgage foreclosure rescue scheme, Ebony opened a Post Office Box for "NFA". App. 328.1 (USPS Mailbox Application for P.O. Box 218886, Houston, Texas 77218); *see also* Gosha, App. 1928-29 ¶ 8 (discussing Nationwide Financial Aid's use of the P.O. Box 218886, Houston, Texas). When asked if she and her husband had access to the P.O. Box used by Nationwide Financial Aid, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 687:13-688:5. When asked if she had operated the company Nationwide Financial Aid since March 6, 2008, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 596:17-21.

¹³ Williams, App. 116 ¶ 2; Gordon, App. 165 ¶ 2; Pippins, App. 245 ¶ 2.

¹⁴ Hand, App. 171 ¶ 2; Morgan, App. 182 ¶ 2; Clark, App. 203 ¶ 2; *see* Fuller, App. 128 ¶ 2; Willis, App. 141 ¶ 2; Tapia, App. 152 ¶ 2; *see also* Gosha, App. 1928-30 ¶¶ 8, 10, 12 (discussing Everard Taylor's payment of the account associated with telephone number (866) 495-0579, and Ebony Taylor's ownership of the account associated with telephone number (866) 496-7317). Ebony's ownership of the account associated with telephone number (866) 496-7317 shows her active participation in Everard's mortgage foreclosure rescue scheme. When asked if he and his wife used telephone (866) 495-0579 in connection Nationwide Financial Aid, Everard refused to answer and invoked his Fifth Amendment privilege against self-incrimination. App. 457:15-458:5. When asked if she and her husband used telephone (866) 495-0579 in connection Nationwide Financial Aid, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 699:21-700:20.

homes in mortgage foreclosure proceedings. When consumers called Nationwide Financial Aid's telephone numbers, consumers were told that Nationwide Financial Aid would stop, postpone, or prevent the consumers' mortgage foreclosure, or it would provide a refund of the consumers' money.¹⁵

2. Contempt Defendants Used Nationwide Financial Aid to Make False Representations about their Mortgage Foreclosure Rescue Services

Nationwide Financial Aid told consumers in its voice messages and marketing materials, and during its initial call, that the consumers' home foreclosures would be stopped, postponed, or prevented, and that the consumers' home loans would be modified or refinanced. For example, to lure consumers, Nationwide Financial Aid made consistent representations, including:

- Nationwide Financial Aid would stop home mortgage foreclosures;¹⁶
- Nationwide Financial Aid would assist in obtaining a loan modification or refinancing, which would result in a lower monthly mortgage payment;¹⁷

¹⁵ Williams, App. 116 ¶ 3; Gordon, App. 165 ¶ 3; Hand, App. 171 ¶ 3; Morgan, App. 182 ¶ 3; Barnes, App. 188 ¶ 3; Clark, App. 203 ¶ 4; Pippins, App. 245 ¶ 3. When asked if Nationwide Financial Aid ever provided a refund, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 733:13-16. When asked if after September 8, 2008, she told customers that they would receive a refund if the customers' foreclosure was not stopped, postponed, or prevented, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 632:18-24.

¹⁶ Williams, App. 116 ¶ 3; Fuller, App. 128 ¶ 2; Willis, App. 141 ¶ 3; Tapia, App. 152 ¶ 3; Gordon, App. 165 ¶ 3; Hand, App. 171 ¶ 3; Morgan, App. 182 ¶ 3; Barnes, App. 188 ¶ 3; Clark, App. 203 ¶ 4; Pippins, App. 245 ¶ 3. When asked if Nationwide Financial Aid represented that it could help consumers stop the foreclosures, Everard refused to answer and invoked his Fifth Amendment privilege against self-incrimination. App. 466:12-20. When asked if she told customers that she could stop, postpone, or prevent foreclosures, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 626:1-5.

¹⁷ Hand, App. 171 ¶ 3 (obtain loan modification that would reduce the amount of his monthly mortgage payment); Morgan, App. 182 ¶ 3 (would contact lender to obtain lower interest rate and lower monthly payment); Barnes, App. 188 ¶ 3 (would lower amount of monthly mortgage payments); Clark, App. 203 ¶ 4 (would lower amount of monthly mortgage payments); *see* Fuller, App. 128 ¶ 2 (would obtain a loan modification in which the delinquent home mortgage payments would be moved to the end of the loan's term).

- Nationwide Financial Aid used a federal program to assist homeowners;¹⁸
- Nationwide Financial Aid would file documents in court and stop home mortgage foreclosures;¹⁹ and
- Nationwide Financial Aid has hundreds of satisfied consumers.²⁰

Nationwide Financial Aid told consumers that it would provide a contract, a payment instruction form, a third party authorization form, a monthly expense form, and a financial information form.²¹ This paperwork was sent to consumers to complete and return.²²

¹⁸ Fuller, App. 128 ¶ 2 (the loan modification would be obtained pursuant to a new law); Willis, App. 141 ¶ 3 (received its funding from the federal government); Tapia, App. 152 ¶ 3 (worked in conjunction with the government to help homeowners save their homes from foreclosure).

¹⁹ Williams, App. 116 ¶ 3 (would file a “TRO” to stop the foreclosure); Willis, App. 141-42 ¶¶ 3-4 (would file an injunction to stop the foreclosure); Tapia, App. 152 ¶ 3 (would file an injunction to stop the foreclosure). When asked if Nationwide Financial Aid represented to consumers that the fee charged would be used to file an injunction to stop the foreclosure, Everard refused to answer and invoked his Fifth Amendment privilege against self-incrimination. App. 467:1-12.

²⁰ Gordon, App. 165 ¶ 3.

²¹ Williams, App. 116 ¶ 4; Fuller, App. 128-29 ¶¶ 3-4; Willis, App. 142 ¶¶ 5-7; Tapia, App. 153 ¶¶ 6-7; Gordon, App. 165-66 ¶ 4; Hand, App. 171-72 ¶¶ 5-6; Morgan, App. 182-83 ¶¶ 4, 6; Barnes, App. 189 ¶¶ 5-6; Clark, App. 204 ¶¶ 5, 7; Pippins, App. 245 ¶ 4; *see also* Gosha, App. 1927 ¶ 6, App. 1931 ¶¶ 13-14. In at least one instance, Nationwide Financial Aid provided a customer with forms virtually identical to the forms National Financial Assistance provided to customers prior to the entry of the Complaint in the underlying litigation. *See Gosha*, App. 1931 ¶ 13 (identifying instance where Nationwide Financial Aid used documents virtually identical to National Financial Assistance’s documents). The use of virtually identical forms shows National Financial Assistance’s active participation in the mortgage foreclosure rescue scheme orchestrated by Everard. When asked if he provided Nationwide Financial Aid with sample form documents to use, Everard refused to answer and invoked his Fifth Amendment privilege against self-incrimination. App. 451:10-14.

²² Williams, App. 116 ¶ 4; Fuller, App. 128 ¶ 3; Willis, App. 142 ¶ 5; Tapia, App. 153 ¶ 6; Gordon, App. 165-66 ¶ 4; Hand, App. 171 ¶ 5; Morgan, App. 182-83 ¶ 4; Barnes, App. 189 ¶ 5; Pippins, App. 245 ¶ 4.

Nationwide Financial Aid typically quoted fees ranging from \$500 to \$900 for its service.²³ In most instances, consumers paid the required fee by following Nationwide Financial Aid's written instructions for depositing funds into one of two National Financial Assistance bank accounts,²⁴ or for obtaining a money order and depositing it into National Financial Assistance's MoneyGram account.²⁵ In some situations, Nationwide Financial Aid required consumers to make a down payment, with the balance paid shortly thereafter.²⁶

In order to extract fees from these financially distressed consumers, Nationwide Financial Aid made a number of representations. Besides representing that Nationwide Financial Aid would stop consumers' home foreclosures,²⁷ Nationwide Financial Aid promised to contact consumers' lenders and negotiate loan modifications²⁸ or refinancing.²⁹ Sometimes, Nationwide

²³ Williams, App. 116 ¶ 4 (\$800); Fuller, App. 128 ¶ 3 (\$700); Willis, App. 141-42 ¶4 (\$700); Tapia, App. 152 ¶ 4 (\$600); Gordon, App. 165-66 ¶ 4 (\$700); Hand, App. 171 ¶ 5 (\$600); Morgan, App. 183 ¶ 5 (\$700); Barnes, App. 189 ¶ 4 (\$600); Clark, App. 204 ¶ 5 (\$500); Pippins, App. 245 ¶ 4 (\$800).

²⁴ Willis, App. 142-43 ¶¶ 5, 8 and App. 151 (Wachovia #8873); Tapia, App. 153 ¶¶ 7-8 and App. 159 (WAMU #8854); Gordon, App. 166 ¶ 5 and App. 168 (WAMU 8854); Hand, App. 172 ¶ 6 and App. 176 (WAMU #8854); Morgan, App. 183 ¶ 7 and App. 187 (WAMU #8854); Barnes, App. 189 ¶¶ 6, 8 and App. 194 (WAMU #8854); Clark, App. 204 ¶¶ 7-8 and App. 210 (WAMU #8854); *see also* Gosha, App. 1931-32 ¶¶ 15-16 (discussing National Financial Assistance's ownership of bank accounts ending 8873 and 8854). The use of National Financial Assistance's bank accounts shows its active participation in the mortgage foreclosure rescue scheme orchestrated by Everard. When asked if Nationwide Financial Aid customers deposited payments into National Financial Assistance's WAMU bank account, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 685:12-686:5.

²⁵ Williams, App. 117 ¶ 7; Pippins, App. 246 ¶ 6; *see also* Gosha, App. 1938-39 ¶ 24.

²⁶ Willis, App. 142 ¶ 5 (\$200); Tapia, App. 153 ¶ 8 (\$100).

²⁷ *See supra* note 16.

²⁸ Tapia, App. 152 ¶ 3; Gordon, App. 165 ¶ 3; Hand, App. 171 ¶ 3; Barnes, App. 188 ¶ 3; Clark, App. 203 ¶ 4; Pippins, App. 245 ¶ 3; *see* Morgan, App. 182 ¶ 3.

²⁹ Williams, App. 116 ¶ 3 and App. 126; Pippins, App. 245 ¶ 3.

Financial Aid represented that it could obtain loan modifications that lowered consumers' monthly payments.³⁰ Sometimes, Nationwide Financial Aid also represented that it could obtain loan modifications with lower interest rates,³¹ or with all delinquent payments moved to the end of the loan's term.³² Nationwide Financial Aid even represented that it would take the lender to court to stop the foreclosure,³³ or seek an injunction to prevent the foreclosure.³⁴ Nationwide Financial Aid claimed it could help consumers because of a federal government program.³⁵ Nationwide Financial Aid represented that consumers would get a refund if not satisfied with Nationwide Financial Aid's services or if Nationwide Financial Aid could not obtain a loan modification.³⁶ This refund guarantee was also stated in Nationwide Financial Aid's contract.³⁷

³⁰ Hand, App. 171 ¶ 3; Morgan, App. 182 ¶ 3; Barnes, App. 188 ¶ 3; Clark, App. 203 ¶ 4.

³¹ Morgan, App. 182 ¶ 3; Barnes, App. 188 ¶ 3; Pippins, App. 245 ¶ 3.

³² Fuller, App. 128 ¶ 2; Tapia, App. 152 ¶ 3; Pippins, App. 245 ¶ 3. Nationwide Financial Aid's contract states, "NFA offers a 100% or full money back guarantee if foreclosure assistance cannot get a payment arraignment [*sic*] of equal to or better than fifty (50%) of the total reinstatement at the end of the loan and/or fifty (50%) percent of the total reinstatement down or spread out through monthly payments." Fuller, App. 133; Willis, App. 146; Tapia, App. 160.

³³ Fuller, App. 128 ¶ 2; *see* Morgan, App. 182-83 ¶¶ 3, 5.

³⁴ Williams, App. 116 ¶ 3 and App. 126; Tapia, App. 152 ¶ 3.

³⁵ Willis, App. 141 ¶ 3; Morgan, App. 182 ¶ 3; Barnes, App. 188 ¶ 3; Clark, App. 203 ¶ 4; *see* Fuller, App. 128 ¶ 2.

³⁶ Gordon, App. 165 ¶ 3.

³⁷ Williams, App. 117 ¶ 5 and App. 120; Fuller, App. 129 ¶ 5 and App. 133; Willis, App. 142 ¶ 7 and App. 146; Tapia, App. 154 ¶ 9 and App. 160; Hand, App. 172 ¶ 8 and App. 178; Barnes, App. 189 ¶ 7 and App. 195; Clark, App. 204 ¶ 7 and App. 207. When asked if her husband had misrepresented to consumers the terms of any refund or guarantee contained in Nationwide Financial Aid's contract, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 648:24-649:4.

3. Nationwide Financial Aid's Representations Were False

Unfortunately, Nationwide Financial Aid's representations were false. After receiving consumers' fees, Nationwide Financial Aid provided little, if any, of the promised assistance. It failed to return consumers' telephone calls and voice mail messages.³⁸ When representatives returned consumers' voice mail messages or when consumers were successful in speaking with a representative, the representatives typically assured consumers that Nationwide Financial Aid was working on the consumers' behalf.³⁹ Ultimately, Nationwide Financial Aid failed to live up to its promises to stop, postpone, or prevent consumers' home foreclosures.⁴⁰ Faced with the imminent loss of their homes, some consumers contacted their lenders directly and successfully achieved on their own what they paid Nationwide Financial Aid to do.⁴¹ Despite Nationwide Financial Aid doing nothing to stop, postpone, or prevent foreclosures, and faced with upset consumers requesting refunds, Nationwide Financial Aid failed to provide consumers with refunds.⁴²

4. Everard, Elias, Ebony, and National Financial Assistance Used Nationwide Financial Aid to Cause Consumer Injury

Contempt Defendants used National Financial Assistance's bank accounts to facilitate the processing of consumer payments for Nationwide Financial Aid's deceptive mortgage foreclosure rescue scheme. Nationwide Financial Aid instructed consumers to deposit Nationwide Financial Aid's required fees payable to "NFA" and into bank accounts ending in the numbers 8854 and

³⁸ Williams, App. 117-18 ¶¶ 9-11; Fuller, App. 129 ¶¶ 6-7; Tapia, App. 154-55 ¶¶ 13-15; Gordon, App. 166 ¶¶ 7, 9; Morgan, App. 184-85 ¶¶ 10-13, 15, 18-20; Barnes, App. 191 ¶ 18; Clark, App. 205-06 ¶¶ 13, 16, 18.

³⁹ See Willis, App. 143 ¶ 9; Tapia, App. 155 ¶ 16; Hand, App. 172-73 ¶¶ 9, 11-13; Morgan, App. 183-84 ¶ 9; Barnes, App. 189-90 ¶ 9; Clark, App. 204-06 ¶¶ 9-12, 14, 17.

⁴⁰ Tapia, App. 156-57 ¶ 20; Hand, App. 173 ¶ 14; Morgan, App. 185 ¶ 21; Pippins, App. 246 ¶ 8; see Williams, App. 118 ¶ 15; Fuller, App. 129-30 ¶ 9; Willis, App. 143 ¶ 10.

⁴¹ See Williams, App. 118 ¶ 15; Fuller, App. 129-30 ¶¶ 9-10; Willis, App. 143 ¶¶ 10-11; Tapia, App. 156-57 ¶ 20; Hand, App. 173 ¶ 14; Morgan, App. 185 ¶ 21.

⁴² Willis, App. 143-44 ¶¶ 12-14; Gordon, App. 166-67 ¶¶ 10-12 and App. 169; Barnes, App. 191 ¶¶ 18-19; Pippins, App. 246-47 ¶¶ 8, 12.

8873.⁴³ National Financial Assistance's WAMU bank account records reveal consumer deposits of at least \$94,406.80 during the period March 6, 2008 to July 2009.⁴⁴ Likewise, records from National Financial Assistance's Wachovia bank account records reveal consumer deposits of at least \$31,725 during the period June 2008 to August 2008.⁴⁵ Accordingly, bank records show that consumers paid at least \$126,131.80 in fees to Contempt Defendants.⁴⁶

C. Parties to the Contempt Action: Contempt Defendants

As discussed below, Everard, in active concert or participation with Ebony, Elias, and National Financial Assistance, orchestrated a new fictitious business entity designed to evade the Court's Orders and continue the deceptive practices that he found extremely profitable. Although the evidence shows otherwise, when asked about his involvement with Nationwide Financial Aid, Everard attempted to pin the whole scheme on his wife. While Ebony was not the mastermind behind the operation, she, along with Elias and National Financial Assistance, actively participated in the Nationwide Financial Aid scheme.

⁴³ Williams, App. 125 (#8854); Fuller, App. 132 (#8873); Tapia, App. 159 (#8854); Gordon, App. 168 (#8854); *see also* Gosha, App. 1931-32 ¶¶ 15-16 (discussing National Financial Assistance, LLC ownership of the bank accounts ending 8854 and 8873).

⁴⁴ *See also* Gosha, App. 10-11 ¶ 33 (discussing an analysis of WAMU bank records).

⁴⁵ *See also* Gosha, App. 11-12 ¶ 35.

⁴⁶ Everard admitted that there were 18 Nationwide Financial Aid clients serviced between September 6, 2008 and June 25, 2009. App. 310 (Everard's compliance report, June 25, 2009).

1. Everard Taylor's Contempt of Court

a. Everard Taylor's Orchestration of the Nationwide Financial Aid Scheme

The Commission filed a complaint against Everard and his firm, Evalan Services, LLC ("Evalan"), on February 26, 2008, alleging that Everard used Evalan to deceive consumers nationwide with false promises of assistance and false representations of refunds.⁴⁷

In March 2008, shortly after entry of this Court's PI, and in direct defiance of it, Contempt Defendant Everard Taylor, in active concert or participation with Ebony, Elias, and National Financial Assistance, began orchestrating a new deceptive mortgage foreclosure rescue service under the name Nationwide Financial Aid.⁴⁸ Everard's orchestration of the fictitious business entity Nationwide Financial Aid is evidenced by the following 12 facts. First, as with his prior scam, Everard continued to use the alias "Edward Henry" to operate Nationwide Financial Aid and communicate with consumers.⁴⁹ Second, Nationwide Financial Aid was operated out of

⁴⁷ See Dkt. # 1.

⁴⁸ Everard admitted that he "acted through some entities regarding foreclosure rescue prior to September 5th, 2008, including National Financial Assistance llc [*sic*] and Evalan Services, llc [*sic*]" App. 307 (Everard's compliance report, June 25, 2009). When asked if he had been involved with Nationwide Financial Aid, Everard refused to answer and invoked his Fifth Amendment privilege against self-incrimination. App. 439:8-25. When asked if he had violated the terms of the Preliminary Injunction, Everard refused to answer and invoked his Fifth Amendment privilege against self-incrimination. App. 496:3-19. When asked if he had violated the terms of his Permanent Injunction, Everard refused to answer and invoked his Fifth Amendment privilege against self-incrimination. App. 497:5-17.

⁴⁹ Compare Robbins, App. 220 ¶ 2 (National Financial Assistance), and Espinoza, App. 230 ¶ 2 (National Financial Assistance), and Hampton, App. 244 ¶ 2 (National Financial Assistance) with Fuller, App. 128 ¶ 2 (Nationwide Financial Aid), and Willis, App. 141 ¶ 2 (Nationwide Financial Aid), and Tapia, App. 152 ¶ 3 (Nationwide Financial Aid), and Gordon, App. 165 ¶ 2 (Nationwide Financial Aid), and Hand, App. 171 ¶ 2 (Nationwide Financial Aid); see also Gosha, App. 1935-36 ¶ 21 (discussing Everard's use of the alias Edward Henry). When asked if he used the alias Edward Henry, Everard refused to answer and invoked his Fifth Amendment privilege against self-incrimination. App. 396:10-21. He also used the name Eric Tate while operating Northern Federal Aid and dealing with consumers. Morgan, App. 182 ¶ 3; Barnes, App. 188 ¶ 2; Clark, App. 203 ¶ 3; see also Gosha, App. 1936 ¶ 22.

Everard and Ebony's home.⁵⁰ Third, he used National Financial Assistance's bank accounts to conduct Nationwide Financial Aid's business.⁵¹ National Financial Assistance's WAMU bank account existed before the underlying lawsuit was filed on February 26, 2008.⁵² Fourth, National Financial Assistance opened a bank account with Wachovia on May 30, 2008.⁵³ Nationwide Financial Aid gave written instructions to deposit fee payments into one of these accounts.⁵⁴ Wachovia bank records show deposits and checks cashed from residents of California and Georgia.⁵⁵ Fifth, Everard transferred funds between the WAMU bank account and the Wachovia bank account.⁵⁶ Sixth, National Financial Assistance's bank account records reflect personal charges by Everard⁵⁷ and charges associated with Nationwide Financial Aid's mortgage

⁵⁰ App. 303, 305 (Everard admitted that his wife performed foreclosure rescue services from their home); App. 303, 312 (Everard admitted Ebony operated Nationwide Financial Aid, a mortgage foreclosure rescue service). When asked if Nationwide Financial Aid operated from his home, Everard refused to answer and invoked his Fifth Amendment privilege against self-incrimination. App. 440:13-15.

⁵¹ App. 951-54 (Efax), 962-64 (Efax), 970-71 (Efax), 977 (Efax and Melissa Data), 980 (Efax and Melissa Data), 983 (Efax and Melissa Data), 985 (Efax), 987 (Efax); App. 1270 (Melissa Data), 1274-75 (Efax and Melissa Data), 1279-80 (Efax and Melissa Data), 1284-87 (Efax and Melissa Data); *see also* Gosha, App. 1927-28 ¶ 7 (discussing Nationwide Financial Aid's use of Melissa Data) and App. 1933-35 ¶¶ 18-19 (discussing Nationwide Financial Aid's use of Efax).

⁵² App. 943 (showing bank account ending 885 was opened on June 13, 2007).

⁵³ App. 1265 (showing bank account ending 8873 was opened on May 30, 2008); *see also* App. 1292 (Wachovia signature card for National Financial Assistance's bank account ending 8873 showing Everard Taylor as an authorized signer on the account).

⁵⁴ *See supra* note 43.

⁵⁵ App. 1330, 1366, 1375 (California); App. 1379 (Georgia).

⁵⁶ App. 1296, 1298 (showing checks from National Financial Assistance's Wachovia bank account ending 8873 that were deposited into National Financial Assistance's WAMU bank account ending 8854).

⁵⁷ *See e.g.*, App. 951-53, 1279, 1286 (The Kroger Company stores); App. 962, 977, 1279, 1286 (Chick-fil-A restaurants); App. 963, 983 (Starbucks Coffee Company); App. 964, 970, 980 (McDonald's restaurants); App. 1313 (lawn care); App. 1315 (homeowners)

foreclosure services, including charges for ordering foreclosure lists.⁵⁸ Seventh, Everard's name appeared as a person authorized to accept mail sent to the P.O. Box that was used by Nationwide Financial Aid.⁵⁹ Eighth, Everard's email address, everard.taylor@gmail.com, was used by Nationwide Financial Aid to obtain foreclosure lists.⁶⁰ Ninth, Everard's other email addresses, etaylor196@sprintpcs.com and etaylor198@sprintpcs.com,⁶¹ are associated with Nationwide Financial Aid's Efax account.⁶² Through this Efax account, Everard was able to view documents that were sent to Nationwide Financial Aid's fax number, (713) 583-9329.⁶³ Tenth, Everard paid

association); *see also* App. 1292 (showing Everard Taylor as the sole signatory on the Wachovia account ending 8873). When asked if Everard used National Financial Assistance's WAMU bank account to pay for his and Ebony's personal finances, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 686:14-687:9.

⁵⁸ *See, e.g.*, App. 953, 963 (Foreclosure Information); App. 962 (Realty Trac Listing); App. 977, 983 (Melissa Data.Com); App. 983, 987 (Ilfls.com); App. 987 (Foreclosure Listing, Addison, Texas); *see* App. 313 (Everard admitted that Nationwide Financial Aid and Ebony Taylor used the service Melissa Data to find foreclosure clients); *see also* Gosha, App. 1927-28 ¶ 7 (discussing Nationwide Financial Aid's use of Melissa Data). When asked if Everard paid for Nationwide Financial Aid's services using National Financial Assistance's WAMU bank account, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 686:1-9.

⁵⁹ *See supra* note 12.

⁶⁰ App. 311 (Everard's written report, June 25, 2009).

⁶¹ App. 848 (Sprint information).

⁶² *Cf.* Fuller, App. 131; Willis, App. 145; Tapia, App. 158 (showing Nationwide Financial Aid's fax number as (713) 583-9329); *with* App. 832 (showing that fax number (713) 583-9329 is associated with an Efax account, and that the email addresses etaylor197@sprintpcs.com and etaylor198@sprintpcs.com are associated with the account); *see also* Gosha, App. 1933-35 ¶¶ 18, 19 (discussing fax number (713) 583-9329, and Everard Taylor's ownership of the email addresses etaylor197@sprintpcs.com and etaylor198@sprintpcs.com).

⁶³ *See* App. 1899 (Efax website stating that the subscriber receives the facsimile as an attachment); *see also* Gosha, App. 1934-35 ¶ 19 (discussing the Efax account for telephone number (713) 583-9329 and its association with Everard Taylor's email addresses). When asked if he and his wife used the fax number (713) 583-9329 in connection with Nationwide Financial Aid, Everard refused to answer and invoked his Fifth Amendment privilege against self-

for the telephone account associated with Nationwide Financial Aid's toll-free telephone number, (866) 495-0579.⁶⁴ Eleventh, Everard responded to Nationwide Financial Aid consumer refund requests made to third-party money processors.⁶⁵ Nationwide Financial Aid instructed customers to deposit their payments into National Financial Assistance's bank accounts.⁶⁶ Twelfth, both of Contempt Defendant National Financial Assistance's bank accounts show payments made to Everard.⁶⁷ The inescapable conclusion of these 12 facts is that Everard orchestrated and was deeply involved in the operation of Nationwide Financial Aid.

b. Everard Taylor's Denial of His Contemptuous Behavior

Although the evidence shows that Everard orchestrated and participated in the scheme,⁶⁸ in a compliance report submitted to the Commission, Everard attempted to pin the whole Nationwide Financial Aid operation on his wife Ebony.⁶⁹ In his compliance report, Everard argued that he assumed his wife was not subject to his Permanent Injunction because she was not

incrimination. App. 457:10-14 (Everard) and App. 458:6-11(Ebony).

⁶⁴ App. 926-27 (Vonage information); App. 305 (Everard Taylor admitted that his wife used their joint credit card for her business); App. 308 (Everard admitted that Ebony used telephone 866-495-0579 for Nationwide Financial Aid's business purposes); App. 311 (Everard admitted that Nationwide Financial Aid used telephones for foreclosure rescue services); *see also* Gosha, App. 1929-30 ¶ 10.

⁶⁵ App. 1465-67:23-25 (MoneyGram's business records noting a conversation with Everard about Robert Pippin's request).

⁶⁶ *See supra* note 43.

⁶⁷ *See, e.g.*, App. 957-60, 968, 1021-23, 1025, 1049 (WAMU bank records showing payments to Everard Taylor); App. 1293, 1299, 1300, 1302-03, 1305, 1307-11 (Wachovia bank records showing payments to, or withdrawals by, Everard Taylor).

⁶⁸ *See supra* notes 49-67 and accompanying text.

⁶⁹ App. 303 (Everard claimed that Nationwide Financial Aid was his wife's company); App. 310 (Everard stated that his wife did some work with the company Nationwide Financial Aid).

an employee or agent of any company that was subject to his Permanent Injunction.⁷⁰ Everard stated that the Commission confirmed his assumption that Ebony was not subject to his Permanent Injunction.⁷¹ Everard's statements give the wrong impression that prior to Everard beginning his deceptive operation, the Commission accepted Everard's explanation that Nationwide Financial Aid was his wife's business and that Everard had no involvement in it. However, this is not the case. While it is true that Everard had a conversation with Evan Rose, an attorney in the Commission's San Francisco office, Everard failed to mention in his compliance report that this conversation occurred more than nine months after the Court entered its Permanent Injunction⁷² and more than fifteen months after Nationwide Financial Aid began scamming consumers.⁷³ In addition, Everard failed to mention in his compliance report that his conversation with Mr. Rose did not occur until *after* Everard received a letter from the Commission's Dallas office requesting information about Everard's involvement with Nationwide Financial Aid. This is important to note because it shows that Everard did not contact Mr. Rose until he received a letter from the Commission alerting him to the Commission's investigation of his Nationwide Financial Aid activities. Thus, it appears that Everard contacted Mr. Rose in an effort to cover his tracks as the mastermind behind the Nationwide Financial Aid operation. He proceeded to pose a hypothetical situation that did not conform to the reality of the Nationwide Financial Aid scheme—a hypothetical situation in which Everard had no involvement in his "wife's" prospective business.⁷⁴ Everard intentionally failed to tell Mr. Rose that: (1)

⁷⁰ App. 303, 306-07.

⁷¹ App. 307.

⁷² Rose, App. 1941-42 ¶¶ 3-4 (stating that on or about June 18, 2009, Mr. Rose received a call from Everard Taylor inquiring about the application of the Final Order to his wife).

⁷³ See *supra* note 12 and accompanying text.

⁷⁴ Rose, App. 1942 ¶ 4 (stating that Everard framed his inquiry as a hypothetical question).

Nationwide Financial Aid used telephone numbers that were associated with accounts paid by Everard; (2) Nationwide Financial Aid used accounts owned by Everard's company, National Financial Assistance; (3) Everard used telephones and other services used by Nationwide Financial Aid; and (4) Everard was able to sign for and accept mail delivered to a Post Office Box used by Nationwide Financial Aid.⁷⁵

In his compliance report, Everard argued that his wife was forced to use National Financial Assistance's WAMU bank account ending 8854 because of a communication error that kept all their other accounts frozen until 2009.⁷⁶ However, the evidence shows that deposits and payments were made, from the period March 17, 2008 through May 29, 2008, on Everard and Ebony's WAMU bank account ending in 3341.⁷⁷ In addition, Everard's claim is contradicted by the opening, on May 30, 2008, of the National Financial Assistance Wachovia bank account ending 8873.⁷⁸ The opening of the Wachovia account ending 8873 shows that Everard knew or should have known that he could have opened a separate bank account for his "wife's" prospective business.⁷⁹

2. Ebony Taylor's Active Concert or Participation in the Nationwide Financial Aid Scheme

Contempt Defendant Ebony Taylor is married to Everard.⁸⁰ Nationwide Financial Aid advertised and marketed mortgage foreclosure rescue services after March 6, 2008. In June 2009, pursuant to Everard's Permanent Injunction, the Commission sent Everard a letter requesting

⁷⁵ Rose, App. 1942 ¶ 6.

⁷⁶ App. 312.

⁷⁷ App. 1953, 1958, 1965 (showing bank account transactions for WAMU account ending 3341).

⁷⁸ See *supra* note 53 and accompanying text.

⁷⁹ See Rose, App. 1943 ¶ 7 (stating that Everard Taylor never sought the permission of the FTC to open a new bank account).

⁸⁰ App. 511.

documents and information to determine his and Evalan's compliance with Everard's Permanent Injunction. In response to the Commission's request, Everard submitted documents and sworn reports. In one sworn statement, Everard admitted that Ebony operated a mortgage foreclosure rescue service from their home.⁸¹ Everard denied his contemptuous behavior by claiming that Nationwide Financial Aid was not his business but was his wife's business that she operated out of their home.⁸² Everard claimed that Ebony was not an employee of any of the companies subject to his Permanent Injunction.⁸³ Nevertheless, a 2009 bankruptcy petition shows that Ebony was employed as a consultant of National Financial Assistance for two years prior to filing the petition.⁸⁴ In addition, Ebony was listed as a manager of Evalan in a July 22, 2005 filing with the Texas Secretary of State.⁸⁵

Ebony's active concert or participation in Everard's orchestrated mortgage foreclosure rescue scheme is evidenced by the following six facts. First, she opened a USPS mailbox in the name of "NFA."⁸⁶ Nationwide Financial Aid gave this mailbox address to its customers.⁸⁷

⁸¹ See *supra* note 50.

⁸² Everard's excuses are contradicted by the significant evidence revealing his true involvement. See *supra* notes 49-67 and accompanying text.

⁸³ App. 303 (Everard denied that Ebony was a successor, assign, agent, or employee of any company subject to his Permanent Injunction); see App. 306 (Everard stating that Ebony was not an employee of any of the companies subject to his Permanent Injunction).

⁸⁴ On May 4, 2009, Everard filed a Chapter 13 bankruptcy petition in the Southern District of Texas. *In re Taylor*, No. 09-33056-H-13 (Bankr. S.D. Tex. filed May 4, 2009). On May 15, 2009, Everard and Ebony filed an amended petition that included Ebony as his spouse. See App. 1477. On Schedule I of the amended petition, Everard and Ebony listed themselves as consultants for National Financial Assistance. The filing shows that Ebony was employed by National Financial Assistance for two years. App. 1499 (spouse employed by National Financial Assistance LLC).

⁸⁵ App. 336-37 (Secretary of State records for Evalan Services, LLC).

⁸⁶ See *supra* note 12.

⁸⁷ Williams, App. 120, 123, 125; Fuller, App. 132; Willis, App. 147; Tapia, App. 159-161; Gordon, App. 168; Hand, App. 176, 178-79 (showing Nationwide Financial Aid's use

Second, Northern Federal Aid used telephone numbers that were registered in Ebony's name.⁸⁸

Third, Ebony's email address, ebonyntaylor@gmail.com,⁸⁹ was associated with Nationwide Financial Aid's Efax account.⁹⁰ Through this Efax account, Ebony was able to view documents that were sent to Nationwide Financial Aid's fax number, (713) 583-9329.⁹¹ Fourth, Ebony signed Nationwide Financial Aid contracts with consumers.⁹² Fifth, she purchased foreclosure

of P.O. Box 218886, Houston, Texas 77218).

⁸⁸ Morgan, App. 183-84 ¶ 9 (Northern Federal Aid representative "Liz" provided telephone number (832) 452-8588 to a consumer); App. 932-33 (AT&T business records show telephone number (832) 452-8588 assigned to Ebony Taylor); Barnes, App. 193 (showing Northern Federal Aid's use of telephone number (866) 496-7317); App. 930 (Vonage telephone records show telephone number (866) 496-7317 assigned to Nourisha Taylor); *see also* Gosha, App. 1930, ¶ 12 (discussing Ebony's use of the middle name Nourisha). At his deposition, Everard admitted that telephone number (832) 452-8588 was his phone number, and that he and his wife used the telephone number. App. 427:23-428:6. When asked if his wife used telephone number (832) 452-8588 in connection with a mortgage foreclosure rescue business, Everard refused to answer and invoked his Fifth Amendment privilege against self-incrimination. App. 429:16-19.

⁸⁹ App. 932-33 (AT&T business records showing Ebony's use of the email address ebonyntaylor@gmail.com); App. 311 (Everard admitted that Ebony used the email address ebonyntaylor@gmail.com); *see also* Gosha, App. 1933-35 ¶¶ 18-19 (discussing Nationwide Financial Aid's Efax account, Ebony's association with the account, and the ability to view facsimiles as an attachment).

⁹⁰ App. 833 (J2 Global Communications business record showing Ebony's email address as associated with fax number (713) 583-9329); Fuller, App. 131 (showing Nationwide Financial Aid's use of fax number (713) 583-9329); App. 313 (Everard admitted that the Efax account was used by Ebony for business purposes). The appearance of Ebony's email address on the account associated with Nationwide Financial Aid's fax number shows her active participation in the mortgage foreclosure rescue service that was orchestrated by Everard.

⁹¹ *See* App. 1899 (Efax website describing their process where the person receives the facsimile as an email attachment); *see also* Gosha, App. 1933-35 ¶¶ 18-19 (discussing the Efax account for telephone number (713) 583-9329 and its association with Ebony's email address).

⁹² App. 317-18 (contract with Michael Hand), 324-25 (contract with James Fornear), 326-27 (contract with Kelton Wright); App. 305 (Everard admitted that contracts for foreclosure services were signed by Ebony).

lists from Everard's and her home computer with a joint credit card.⁹³ Nationwide Financial Aid instructed customers to deposit their payments into National Financial Assistance's bank accounts.⁹⁴ Sixth, both of Contempt Defendant National Financial Assistance's bank accounts show payments made to Ebony.⁹⁵ The inescapable conclusion of these six facts is that Ebony was in active concert or participation with Everard, Elias, and National Financial Assistance in operating the Nationwide Financial Aid scheme.

3. Elias Taylor's Active Concert or Participation in the Nationwide Financial Aid Scheme

Working with Nationwide Financial Aid, Contempt Defendant Elias Taylor, Everard's brother, called himself "Specialist White" when he continued to provide deceptive mortgage foreclosure rescue services to consumers.⁹⁶ Nationwide Financial Aid instructed consumers to contact Specialist White at a toll-free telephone number, (877) 570-5494, to obtain additional information about the progress of their cases.⁹⁷ Telephone records reveal that calls to the toll-free phone number, (877) 570-5494, were routed to Elias' personal cell phone from the day the account was opened in May 2006 until it was closed on September 10, 2009.⁹⁸ Posing as

⁹³ App. 305 (Everard admitted that his wife purchased foreclosure lists from a home computer, and that she purchased the list using a credit card).

⁹⁴ *See supra* note 43.

⁹⁵ App. 1294 (Wachovia bank record showing payment to Ebony Taylor); App. 947-48, 956, 966-67, 1007-08, 1024, 1047-48 (WAMU bank records showing payments to Ebony Taylor).

⁹⁶ *See* Gosha, App. 1935 ¶ 20 (discussing Elias' ownership of the telephone number associated with Specialist White).

⁹⁷ Fuller, App. 129 ¶ 8; *see also* App. 1822 (Antonio King's complaint submitted to the Commission).

⁹⁸ App. 860-913 (uReach Technologies records showing calls made to (877) 570-5494 were routed to telephone number (972) 955-0526); *see* App. 917-22 (Verizon Wireless business records showing Elias Taylor owned telephone number (972) 955-0526); *see also* Gosha, App. 1935 ¶ 20 (discussing the business records associated with toll free telephone

Specialist White, Elias directly communicated with a consumer to inform her that Nationwide Financial Aid could not reach an agreement with the consumer's lender.⁹⁹ In at least one instance, posing as Specialist White, Elias contacted a Nationwide Financial Aid customer and demanded full payment of the remaining balance before Nationwide Financial Aid would render services.¹⁰⁰ Nationwide Financial Aid instructed customers to deposit their payments into bank accounts that were owned National Financial Assistance.¹⁰¹ Both of Contempt Defendant National Financial Assistance's bank accounts show payments made to Elias.¹⁰²

4. National Financial Assistance's Active Concert or Participation in the Nationwide Financial Aid Scheme

According to Texas Secretary of State records, Contempt Defendant National Financial Assistance is a Texas limited liability company that Everard registered on June 12, 2007.¹⁰³ The limited liability company did not have managers, but was governed by its sole member, Contempt

number (877) 570-5494, and telephone number (972) 955-0526).

⁹⁹ Karen Fuller, App. 139 ¶ 2.

¹⁰⁰ Willis, App. 142-43 ¶ 8 (Specialist White told consumer he had to pay the remaining \$500 before Nationwide Financial Aid would file the injunction).

¹⁰¹ *See supra* note 43.

¹⁰² App. 1306 (Wachovia bank records showing payment of \$1280.00 to Elias Taylor on June 16, 2008); App. 949 (WAMU bank records showing payment of \$1230.00 to Elias Taylor that was posted on March 10, 2008).

¹⁰³ App. 329-31 (Secretary of State records for National Financial Assistance LLC).

Defendant Everard Taylor.¹⁰⁴ On August 28, 2009, the Texas Secretary of State forfeited the certification of National Financial Assistance.¹⁰⁵

Contempt Defendant National Financial Assistance violated the terms of the PI and the Permanent Injunctions by, *inter alia*, facilitating the processing of consumers' fees paid to Nationwide Financial Aid for its deceptive mortgage foreclosure rescue scheme.¹⁰⁶ Nationwide Financial Aid instructed consumers to deposit their payments into WAMU bank account ending 8854 or a Wachovia bank account ending 8873.¹⁰⁷ As instructed, consumers deposited their payments into the bank accounts.¹⁰⁸ In an effort to conceal their use of National Financial Assistance's bank accounts, Contempt Defendants used the acronym "NFA."¹⁰⁹ In its payment instruction form, Nationwide Financial Aid instructed consumers to make their deposits payable to "N.F.A." or "NFA Financial Assistance."¹¹⁰ This facilitated Contempt Defendants ability to deposit the checks into National Financial Assistance's bank accounts.

¹⁰⁴ *Id.* (Secretary of State records for National Financial Assistance, LLC showing Everard Taylor as the only member that governed the company). Contempt Defendant National Financial Assistance was not named a defendant in the Complaint in this case. As discussed herein, National Financial Assistance is subject to the Order under Federal Rule of Civil Procedure 65(d)(2)(B) and (C). *See infra* Subsection III.A.3.

¹⁰⁵ App. 332 (Secretary of State records).

¹⁰⁶ *See supra* note 43.

¹⁰⁷ *Id.*

¹⁰⁸ Fuller, App. 129 ¶ 5; Willis, App. 142 ¶ 7, App. 151; Tapia, App.154 ¶ 9; Gordon, App. 166 ¶ 6; Hand, App. 172 ¶ 7; Morgan, App. 183 ¶ 7, App. 187; Barnes, App. 189 ¶ 8; Clark, App. 204 ¶ 8; *see also* App. 1111 (Nancy Gordon check deposited into WAMU account ending #8854), 1121 (Patricia Morgan payment into WAMU account ending #8854), 1198 (Beverly Clark payment deposited into WAMU account ending #8854), 1200 (Theresa Barnes check deposited in WAMU account ending #8854); App. 1332 (Fuller payment deposited into Wachovia account ending #8873), 1362, 1368 (George Willis money orders deposited into Wachovia account ending #8873).

¹⁰⁹ *See supra* note 9 and accompanying text.

¹¹⁰ Williams, App. 125; Fuller, App. 132; Tapia, App. 159; Gordon, App. 168; Hand, App. 176; Barnes, App. 194; Clark, App. 210.

III. ARGUMENT

A. Contempt Defendants Are Bound by the Permanent Injunctions and Were Bound by the PI

Under Federal Rule of Civil Procedure 65(d), every order granting an injunction and every restraining order is binding on a party with actual notice as well as on any person or entity with actual notice that is in “active concert or participation” with a party. Fed. R. Civ. P. 65(d).

1. Contempt Defendants Everard Taylor and Elias Taylor

As parties to the underlying action, Everard and Elias are bound by the Court’s Orders. Under Federal Rule of Civil Procedure 65(d)(2)(A), every order granting an injunction and every restraining order is binding on a party who receives actual notice of the order by personal service or otherwise. Everard and Elias signed and returned affidavits acknowledging receipt of their Permanent Injunctions in September 2008.¹¹¹

2. Contempt Defendant Ebony Taylor

Everard’s wife, Ebony, is bound by the Court’s Orders under Federal Rules of Civil Procedure 65(d)(2)(B) and (C). As a manager of Evalan Services, LLC, Ebony is subject to the Court’s Orders. Under Federal Rule of Civil Procedure 65(d)(2)(B), every order granting an injunction and every restraining order is binding on “the parties’ officers, agents, servants, employees, and attorneys” who receive actual notice of the order by personal service or otherwise. In the context of civil contempt, notice of the court order, whether actual or constructive, is notice of the order’s *existence*, not of its precise terms. *See Cent. States, Se. & Sw. Areas Health & Welfare & Pension Funds v. Transcon Lines*, No. 90 C 1853, 1995 U.S. Dist. LEXIS 11372, at *22 (N.D. Ill. Aug. 4, 1995); *see also Perfect Fit Indus., Inc. v. Acme Quilting Co.*, 646 F.2d 800, 808 (2d Cir. 1981).¹¹² “[A]ctual knowledge of the order is all that is required;

¹¹¹ App. 25-26 (Everard’s affidavit), 41-42 (Elias’ affidavit).

¹¹² “[W]here a corporate officer knows a court order has been entered against the corporation, but fails to inquire, as a reasonable person would, as to the terms of the order, he may properly be held in contempt.” *Cent. States*, 1995 U.S. Dist. LEXIS 11372, at *23. A rule that would allow a corporate officer to remain deliberately ignorant of the particulars of a court

neither formal notice nor personal service is necessary to support a conviction for criminal contempt.” *United States v. Rylander*, 714 F.2d 996, 1003 (9th Cir. 1983). Ebony’s notice of the Court’s Orders can be inferred from the facts. Under the terms of the PI and Everard’s Permanent Injunction, Everard was required to give Ebony a copy of the PI and his Permanent Injunction because she was a manager of Evalan Services, LLC, which was a party to the Court’s Orders. In his compliance report, Everard stated that Ebony assisted him by ensuring that his behavior complied with the terms of his Permanent Injunction. It strains credulity that while married to a defendant, living in the same house with him, and serving as a manager of a company that was sued and entered into a settlement agreement, she did not know about the Court’s Orders.

Ebony Taylor is also bound by the prohibitions of the Court’s Orders because of her participation with Everard, Elias, and National Financial Assistance in violating the Court’s Orders through the operation of the Nationwide Financial Aid mortgage foreclosure rescue scheme orchestrated by Everard. Under Federal Rule of Civil Procedure 65(d)(2)(C), every order granting an injunction and every restraining order is binding on “other persons who are in active concert or participation” with a party and who receive actual notice of the order by personal service or otherwise. In this case, Ebony’s active participation with Everard, Elias, and National Financial Assistance in the operation of Nationwide Financial Aid is evidenced by the following: (1) she created the Post Office Box used by Nationwide Financial Aid; (2) her name appears on the telephone account for the toll-free telephone number used by Northern Federal Aid; (3) her email address was associated with Nationwide Financial Aid’s fax number; (4) she signed Nationwide Financial Aid contracts with consumers; (5) she purchased foreclosure lists from Everard’s and her home computer with a joint credit card; and (6) she received payments from the National Financial Assistance bank accounts.¹¹³ In his sworn statement to the Commission, Everard admitted that Ebony operated the Nationwide Financial Aid mortgage foreclosure rescue

order, and thereby avoid a contempt citation, would defy common sense. *Id.*

¹¹³ See *supra* notes 85-94 and accompanying text.

service from the couple's home.¹¹⁴ Ebony's active participation in the operation of the Nationwide Financial Aid mortgage foreclosure rescue scheme orchestrated by Everard constitutes aiding and abetting of his violations of the PI and Permanent Injunction. Therefore, she may be found in contempt of the Court's Orders. *See Additive Controls & Measurements Sys., Inc. v. Flowdata, Inc.*, 96 F.3d 1390, 1395-96 (Fed. Cir. 1996) ("Having a relationship to an enjoined party of the sort set forth in Rule 65(d) exposes a non-party to contempt for assisting the party to violate the injunction[.]").¹¹⁵ It is clear that Ebony had knowledge of the existence of the PI and Everard's Permanent Injunctions from the following:

- Everard stated in his sworn Compliance Report that Ebony helped him comply with his Permanent Injunction;¹¹⁶
- The mortgage foreclosure rescue services of her husband, as well as her father-in-law and brothers-in-law, were sued by the Commission;
- As a result of the Court's Orders prohibiting misrepresentations, her husband could no longer financially provide for their family by operating his mortgage foreclosure rescue service, a business previously operated out of their home;
- Ebony should have been aware that the Court had frozen her bank accounts under the terms of the TRO, and subsequently had unfrozen an account by provisions of the PI; and

¹¹⁴ Ebony currently resides in the Southern District of Texas. App. 1886 (Showing Everard and Ebony's new address as 1910 Arrow Star Ct., Katy, Texas). However, she is still subject to personal jurisdiction in the Eastern District of Texas. "Nonparties who reside outside the territorial jurisdiction of a district court may be subject to that court's jurisdiction if, with actual notice of the court's order, they actively aid and abet a party in violating that order. This is despite the absence of other contacts with the forum." *Waffenschmidt v. Mackay*, 763 F.2d 711, 714 (5th Cir. 1985). "[T]he injunctive mandate of a federal court runs nationwide, and the issuing court has the authority to deal with defiance of its orders regardless of where that defiance occurs." *SEC v. Homa*, 514 F.3d 661, 674 (7th Cir. 2008).

¹¹⁵ *Power-One, Inc. v. Artesyn Techs., Inc.*, No. 2:05-CV-463, 2008 U.S. Dist. LEXIS 30338, at *9 (E.D. Tex. April 11, 2008); *see also FTC v. Productive Mktg, Inc.*, 136 F. Supp. 2d 1096, 1104 (C.D. Cal. 2001) (citing *Gemco Latino Am., Inc. v. Seiko Time Corp.*, 61 F.3d 94, 98 (1st Cir. 1995) (knowingly aiding and abetting a party in violating the court order subjects non-party to that order)).

¹¹⁶ App. 303 (Everard's compliance report, June 15, 2009).

- Knowing that Everard was prohibited from operating his previous mortgage foreclosure prevention service, she opened a new mailbox for “NFA” after entry of the PI.¹¹⁷ This mailbox was used by Nationwide Financial Aid.¹¹⁸

When considering the facts and circumstances, it is clear that Ebony had actual notice of the existence of the PI and both Permanent Injunctions and still chose to be in active concert or participation with Everard and Elias in operating Nationwide Financial Aid.¹¹⁹

3. Contempt Defendant National Financial Assistance

Contempt Defendant National Financial Assistance’s actual notice is based on notice received by Everard, its sole member. Actual notice of the PI and Everard’s Permanent Injunction is imputed through Everard.¹²⁰ National Financial Assistance was knowingly involved in Nationwide Financial Aid’s operations by processing customer payments through National Financial Assistance’s bank accounts. Notably, Everard was a signatory on National Financial Assistance’s bank accounts and Nationwide Financial Aid used National Financial Assistance’s bank accounts to process Nationwide Financial Aid customers’ payments. National Financial Assistance actively participated in the deceptive Nationwide Financial Aid mortgage foreclosure rescue scheme by processing consumers’ payments. Put simply, National Financial Assistance

¹¹⁷ See *supra* note 12.

¹¹⁸ See *supra* note 87.

¹¹⁹ Contempt is established when the contemnor violates a definite and specific order with knowledge of the court’s order. *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995). When asked if she knew of the Permanent Injunction that was entered on September 8, 2008, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 609:3-15. When asked if she knew of the Preliminary Injunction that was entered on March 6, 2008, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 645:13-646:13.

¹²⁰ The Texas Supreme Court recognizes that notice to an officer or agent is notice to the corporation in the circumstance where the officer or agent in the line of his duty ought, and could reasonably be expected, to act upon or communicate the knowledge to the corporation. *Int’l Bankers Life Ins. Co. v. Holloway*, 368 S.W.2d 567, 580 (Tex. 1963). The Fifth Circuit, relying on *Holloway*, determined that an officer’s or director’s knowledge is imputable to the corporation. *City State Bank in Wellington v. U.S. Fid. & Guar. Co.*, 778 F.2d 1103, 1109-10 (5th Cir. 1985).

provided the vehicle by which Nationwide Financial Aid was able to conduct its financial transactions for its deceptive mortgage foreclosure rescue operation. As a result of its actions and imputed knowledge, National Financial Assistance should be found in contempt of the Court's PI and Permanent Injunctions under Rule 65(d)(2)(B) and (C).

B. This Court Has Authority to Grant the Requested Relief

Obedience to judicial orders is a fundamental expectation of our legal system. Injunctions issued by a court of competent jurisdiction must be obeyed until withdrawn or vacated. *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983). Courts possess the inherent authority to enforce compliance with their orders through civil contempt. *Spallone v. United States*, 493 U.S. 265, 276 (1990); *Shillitani v. United States*, 384 U.S. 364, 370 (1966);¹²¹ 18 U.S.C. § 401.¹²² Injunctive orders are extraordinary writs, enforceable by the court's power of contempt. *Gunn v. Univ. Comm. to End War in Vietnam*, 399 U.S. 383, 389 (1970).

In order to hold a party in civil contempt, it is not necessary to show that he disobeyed a court's order willfully. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949).¹²³

¹²¹ See also *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828 (1994); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-44 (1991); *Waffenschmidt*, 763 F.2d at 716; *SEC v. AmeriFirst Funding, Inc.*, No. 3:07-CV-1188-D, 2008 U.S. Dist. LEXIS 107560, at *16 (N.D. Tex. Dec. 11, 2008); *Acord v. Saenz*, No. H-09-2587, Misc. Case No. H-09-0392, 2009 U.S. Dist. LEXIS 77274, at *19-20 (S.D. Tex. August 28, 2009); *Productive Mktg.*, 136 F.Supp. 2d at 1107; *FTC v. Nat'l Bus. Consultants*, No. 89-1740, 1993 U.S. Dist. Lexis 10512, at *8 (E.D. La. July 23, 1993); *In re Steinbrecher on behalf of Meeks*, 599 F. Supp. 87, 89 (W.D. Tex. 1984).

¹²² "A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as . . . [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command." 18 U.S.C. § 401.

¹²³ See also *American Airlines, Inc. v. Allied Pilots Assn.*, 228 F.3d 574, 581 (5th Cir. 2000); *Petroleos Mexicanos, v. Crawford Enters., Inc.*, 826 F.2d 392, 401 (5th Cir. 1987); *United States v. Crawford Enters., Inc.*, 643 F. Supp. 370, 380 (S.D. Tex. 1986). In fact, acting in good faith is not a defense to civil contempt. *Whitecraft v. Brown*, 570 F. 3d 268, 272 (5th Cir. 2009); *Waffenschmidt*, 763 F.2d at 726; *Tivo v. Dish Network Corp.*, No. 2:04-cv-01, 2009 U.S. Dist. LEXIS 46160, at *27 (E.D. Tex. June 2, 2009); *Burdine v. Johnson*, 87 F. Supp. 2d 711, 714 (S.D. Tex. 2000).

Civil contempt sanctions may be imposed to enforce compliance with a court's order or to compensate for injuries or costs because of contemptuous behavior. *Id.*; *American Airlines*, 228 F.3d at 585; *Petroleos Mexicanos*, 826 F.2d at 400; *In re Dinnan*, 625 F.2d 1146, 1149 (5th Cir. 1980).

In order to hold the contemnor in civil contempt, a district court must find that the movant established by clear and convincing evidence that the contemnor violated the court's order. *Northside Realty Assocs. v. United States*, 605 F.2d 1348, 1352 (5th Cir. 1979); *Crawford Enters.*, 643 F. Supp. at 380.¹²⁴

The movant in a civil contempt proceeding bears the burden of establishing by clear and convincing evidence: (1) that a court order was in effect; (2) that the order required certain conduct by the respondent; and (3) that the respondent failed to comply with the court's order. *Whitecraft*, 570 F.3d at 271; *Test Masters Educ. Servs. Inc. v. Singh*, 428 F.3d 559, 581-82 (5th Cir. 2005); *Martin v. Trinity Indus., Inc.*, 959 F.2d 45, 47 (5th Cir. 1992); *Vanderburg v. Nocona Gen. Hosp.*, Case 7:03-CV-008-KA, 2008 U.S. Dist. LEXIS 1858, at *7-8 (N.D. Tex. Jan.10, 2008).¹²⁵ Each of these elements is clearly present in the instant case.¹²⁶

¹²⁴ Contempt Defendants Ebony and National Financial Assistance were in active concert with Everard and Elias by aiding and abetting their violation of the PI and Permanent Injunctions. Each may be properly found in contempt of this Court as well. *See Additive Controls & Measurements Sys.*, 96 F.3d at 1395-96 (having a relationship to an enjoined party of the sort set forth in Rule 65(d) exposes a non-party to contempt for assisting the party to violate the injunction); *Power-One*, 2008 U.S. Dist. LEXIS 30338, at *9; *see also Productive Mktg.*, 136 F. Supp. 2d at 1104 (citing *Gemco Latino Am., Inc. v. Seiko Time Corp.*, 61 F.3d at 98) (knowingly aiding and abetting party in violating court order subjects nonparty to that order)).

¹²⁵ *See Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 291 (5th Cir. 2002); *American Airlines*, 228 F.3d at 585; *Petroleos Mexicanos*, 826 F.2d at 401; *Tivo*, 2009 U.S. Dist. LEXIS 46160, at *56.

¹²⁶ Typically, civil contempt proceedings that are coercive in nature are mooted when the proceeding out of which the contempt arises is terminated. *See Shillitani*, 384 U.S. at 371; *Howell v. Jones*, 516 F.2d 53, 56 (5th Cir. 1975). However, if, as here, the civil contempt proceeding is compensatory in nature, the termination of the underlying action out of which the contempt hearing arose does not moot the contempt proceeding. *See Backo v. Local 281, United Brotherhood of Carpenters & Joiners*, 438 F.2d 176, 182 (2d Cir. 1970); *see also People's Hous.*

1. There Is Clear and Convincing Evidence that a Court Order Was in Effect

On March 6, 2008, the Court entered its PI.¹²⁷ On September 8, 2008, the Court entered the Permanent Injunctions.¹²⁸ In September 2008, Contempt Defendants Elias and Everard were served with copies of the Permanent Injunctions.¹²⁹ At no time have the Contempt Defendants: (1) questioned the authority of the Court to issue the PI and Permanent Injunction; (2) questioned the existence of the Orders; (3) stated that they were unaware of the Orders; or (4) raised concerns to the Court about their ability to comply with the Orders' terms. Thus, there is clear and convincing evidence that Court orders were in effect.¹³⁰

Dev. Corp. v. City of Poughkeepsie, 425 F. Supp. 482, 495 (S.D.N.Y. 1976) (“There is a vital distinction between coercive contempt proceedings, which do not survive the abatement of the original actions out of which they arise, and compensatory contempt proceedings, which do survive.”). “This distinction rests upon the fact that the harm or injury that gives rise to the need for compensation continues unredressed at the end of the underlying litigation while the need for getting a party to act in the underlying litigation necessarily terminates when that litigation ends.” *Petroleos Mexicanos*, 826 F.2d at 400.

¹²⁷ Dkt # 38. On March 5, 2008, the parties submitted a stipulated proposed preliminary injunction to the Court for entry in this case. Dkt # 28. This stipulated proposed preliminary injunction shows an awareness of the contents of the Preliminary Injunction entered on March 6, 2008. When asked if he received a copy of the Preliminary Injunction, Everard asserted his Fifth Amendment privilege against self-incrimination. App. 490:20-491:4.

¹²⁸ Dkt # 52 and Dkt # 54. On September 4, 2008, the parties submitted a Joint Motion for Entry of Stipulated Permanent Injunctions and Final Orders as to All Defendants in this case. Dkt # 50. This Joint Motion shows an awareness by Everard and Elias of the contents of the proposed Permanent Injunctions. In his deposition, Everard admitted that he received a copy of his Permanent Injunction. App. 488:14-18.

¹²⁹ *See supra* note 111 and accompanying text.

¹³⁰ A person who violates an injunction or temporary restraining order during its pendency is subject to a compensatory civil contempt judgment, even if the injunction or restraining order later terminates due to passage of time or mootness. *See Reliance Ins. Co. v. Mast Constr. Co.*, 84 F.3d 372, 376 (10th Cir. 1996); *In re General Motors Corp.*, 61 F.3d 256, 259 n.3 (4th Cir. 1995); *Coleman v. Espy*, 986 F.2d 1184, 1190 (8th Cir. 1993); *Petroleos Mexicanos*, 826 F.2d at 400; *In re Keene Corp.*, 168 B.R. 285, 289 (Bankr. S.D.N.Y. 1994).

2. There Is Clear and Convincing Evidence that the Orders Require Certain Conduct by the Contempt Defendants

There is also clear and convincing evidence that the PI and the Permanent Injunction required Contempt Defendants to abide by certain injunctive provisions:

- Section I of the PI required that Everard and Elias, and those persons or entities in active concert or participation with any of them, not falsely represent, or assist others to falsely represent: 1) that Defendants “will stop foreclosure in all or virtually all instances”; and 2) that Defendants “will refund most or all of the client’s fees in all instances where foreclosure cannot be stopped”; and
- Section I of the Permanent Injunctions require that Everard and Elias, and those persons or entities in active concert or participation with any of them, be permanently restrained and enjoined from falsely representing, or assisting others to falsely represent: 1) “that home mortgage foreclosure can or will be stopped, postponed, or prevented in all or virtually all instances”; and 2) “the terms of any refund or guarantee.”

The language of these Order provisions is clear and unambiguous, and the Contempt Defendants have not raised any concerns about their ability to comply with the provisions.

3. There Is Clear and Convincing Evidence that Defendants Have Ignored the Injunctive Provisions of the Court’s PI and Permanent Injunctions

By refusing to abide by the injunctive provisions of the PI and the Permanent Injunctions, and continuing to operate a mortgage foreclosure rescue scheme, albeit under a different but similar name, Contempt Defendants have demonstrated a blatant disregard for and arrogant defiance of the Court’s PI and Permanent Injunctions. Faced with the clear and unambiguous language of the PI and Permanent Injunctions requiring obedience to the injunctive provisions, Defendants chose to ignore the requirements of the Court’s PI and Permanent Injunctions. *See* discussion *supra* Subsection III.A.

Contempt Defendants continued to market mortgage foreclosure rescue services in which they made false and misleading representations. Contempt Defendants can have no justification for ignoring the clear and unambiguous language of Section I. of the PI and Section I. of the

Permanent Injunctions. Contempt Defendants should therefore be ordered to make their victims whole by paying compensatory contempt sanctions.

C. Contempt Defendants Should Pay Compensatory Sanctions

To determine an appropriate sanction for contempt, courts consider the character and magnitude of harm threatened by continued contumacy and the probable effectiveness of the sanction in bringing about compliance. *United States v. United Mine Workers of America*, 330 U.S. 258, 304 (1947); *Bademyan v. The Receivable Mgmt. Servs. Corp.*, Case No. CV 08-00519, 2009 U.S. Dist. LEXIS 21923, at *10 (C.D. Cal. Mar. 9, 2009); *FTC v. Gill*, 183 F. Supp. 2d 1171, 1186 (C.D. Cal. 2001). “The measure of the court’s power in civil contempt proceedings is determined by the requirements of full remedial relief.” *FTC v. Kuykendall*, 371 F.3d 745, 765 (10th Cir. 2004) (quoting *McComb*, 336 U.S. at 193); *Marshall v. Sureway Cleaners*, No. S-1231, 1978 U.S. Dist. LEXIS 20348, at *26 n.21 (E.D. Cal. Jan. 4, 1978); *In re Russo*, 53 F.R.D. 564, 573 (C.D. Cal. 1971); *see also SEC v. Hickey*, No. 01-17027, 2003 U.S. App. LEXIS 13563, at *9 (9th Cir. Mar. 7, 2003).

Sanctions for civil contempt can serve two purposes: to coerce the defendant into compliance or to compensate victims for losses sustained by the contempt. *United Mine Workers*, 330 U.S. at 303-304; *see also Kuykendall*, 371 F.3d at 764 (Commission may seek contempt sanctions in an amount reflecting the defendants’ gross receipts).

In a civil contempt action, “[t]he measure of the court’s power . . . is determined by the requirements of full remedial relief.” *McComb*, 336 U.S. at 193-94. Accordingly, the Court may award compensatory damages in an amount sufficient “to make reparation to the injured party and restore the parties to the position they would have held had the injunction been obeyed.” *Vuitton et Fils, S.A. v. Carousel Handbags*, 592 F.2d 126, 130 (2d Cir. 1979).

Between March 2008 and at least July 2009, Contempt Defendants charged an unknown number of consumers between \$600 and \$900 in consumer loss. Deposits from the known bank accounts for the period of March 2008 through July 2009, show that the Contempt Defendants

may have caused at least \$126,131.80 of consumer injury.¹³¹ The Commission does not currently possess information about the full extent of Contempt Defendants' revenues.¹³² The Commission seeks an order finding Contempt Defendants in contempt of Court and issuing a judgment against them, jointly and severally, of at least \$126,131.80.

After appropriate contempt proceedings, Contempt Defendants should be ordered to compensate consumers victimized by their contumacious acts. Here, Contempt Defendants have defrauded consumers out of thousands of dollars by falsely promising to stop, postpone, or prevent consumers' foreclosures. Contempt Defendants' must be forced to compensate consumers for the monetary harm caused by their contumacious behavior.¹³³

¹³¹ Although it is possible that a small number of consumers may have received refunds, Everard admitted in his compliance report that there are no records showing refunds to consumers. App. 310 (Everard Taylor Compliance Report, June 25, 2009).

¹³² To the extent it becomes impracticable to calculate or distribute consumer restitution because of Contempt Defendants' lack of sufficient records, Plaintiff asks for disgorgement. "[W]here a harm amount is difficult to calculate, a court is wholly justified in requiring the party in contempt to disgorge any profits it may have received that resulted in whole or in part from the contemptuous conduct." *In re General Motors Corp.*, 110 F.3d 1003, 1018-19 n.16 (4th Cir. 1997); *see also SEC v. Patel*, 61 F.3d 137, 140 (2d Cir. 1995) (stating "any risk of uncertainty [in calculating disgorgement] should fall on the wrongdoer whose illegal conduct created that uncertainty") (brackets in original).

¹³³ As noted above, the Commission is concurrently filing, under Federal Rule of Civil Procedure 60(b), a motion to modify Everard's and Elias' Permanent Injunctions to ban Everard and Elias from marketing or selling any mortgage loan modification or foreclosure relief service.

IV. ADVERSE INFERENCES

It is well settled that, in a civil matter, courts may draw adverse inferences from a party's refusal to answer questions based on the Fifth Amendment privilege against self-incrimination if there is independent corroboration of the inference. *In re Powers*, 261 Fed. Appx. 719, 723 (5th Cir. 2008); *Curtis v. M&S Petroleum, Inc.*, 174 F.3d 661, 673-74 (5th Cir. 1999); *F.D.I.C. v. Fidelity & Deposit Co. of Md.*, 45 F.3d 969, 977 (5th Cir. 1995); *State Farm Life Ins. Co. v. Gutterman*, 896 F.2d 116, 119 (5th Cir. 1990); *Cousin v. Small*, No. 00-0069, 2001 U.S. Dist. LEXIS 5423, at *3-4 (E.D. La. Apr. 23, 2001); *5-Star Premium Fin., Inc. v. Wood*, No. 99-3705, 2000 U.S. Dist. LEXIS 15582, at *8-11 (E.D. La. Oct. 16, 2000). In connection with its compliance monitoring, the Commission deposed Everard and Ebony to examine them about their contemptuous conduct described in this Motion. Both Everard and Ebony repeatedly pled "the Fifth" to an array of critical questions. In fact, Ebony asserted her Fifth Amendment privilege against self-incrimination to *virtually every question* asked of her in her deposition.

For instance, Everard asserted his Fifth Amendment privilege against self-incrimination when asked:

- Whether Everard ever used an alias to sell mortgage foreclosure rescue services, including the alias "Edward Henry." Everard Depo. App. 393:10-394:2, App. 395:23-396:15, App. 396:10-21.
- The extent of his wife's involvement in National Financial Assistance, LLC. Everard Depo. App. 403:20-24, App. 441:17-442:22.
- Whether Ebony used Everard's computer to operate a mortgage foreclosure rescue service after entry of the Stipulated Permanent Injunction. Everard Depo. App. 417:4-6.
- Any d/b/a's used by National Financial Assistance. Everard Depo. App. 436:18-20.
- National Financial Assistance's relationship to Nationwide Financial Aid. Everard Depo. App. 450:14-25.
- Whether Everard has ever performed any services for Nationwide Financial Aid. Everard Depo. App. 473:16-474:11.

Similarly, Ebony answered almost all questions in her deposition by pleading the Fifth, including:

- Whether she operated Nationwide Financial Aid. Ebony Depo. App. 596:9-21.
- Whether she assisted Everard in the operation of a mortgage foreclosure rescue service after entry of the Stipulated Permanent Injunction. Ebony Depo. App. 601:19-23.
- Whether anyone besides Ebony and Everard were employed by Nationwide Financial Aid. Ebony Depo. App. 603:12-15, App. 677:13-15.
- Who employed Ebony at the time of the deposition. Ebony Depo. App. 595:12-13.
- Whether Ebony had actual notice of the Stipulated Final Order. Ebony Depo. App. 609:13-15.
- Whether, after entry of the Stipulated Final Order, Everard represented to consumers that he could stop, postpone, or prevent a home mortgage foreclosure. Ebony Depo. App. 633:13-18.
- Whether Everard used the alias “Edward Henry.” Ebony Depo. App. 661:11-14, 661:19-672:22.

The unavoidable conclusion from their repeated Fifth Amendment assertions is that, after entry of the PI and Stipulated Final Order, Everard and Ebony continued scamming desperate consumers facing imminent foreclosure out of thousands of dollars by selling them worthless mortgage foreclosure relief services. They are now hiding behind their Fifth Amendment privilege against self-incrimination and are unwilling to answer for their contumacious conduct. This Court is permitted to draw a negative inference due to their assertion of the Fifth to questions about their conduct. Plaintiff submits independent corroborating evidence to support the inferences.¹³⁴ Therefore, in each instance where Plaintiff cites in this Motion that Everard or Ebony Taylor refused to answer and invoked the Fifth Amendment privilege against self-incrimination, Plaintiff

¹³⁴ *Id.*

asks the Court to draw the adverse inferences.¹³⁵ The negative inferences further bolster entry of a show cause order and a finding of contempt.

V. EXPEDITED DISCOVERY

To locate assets wrongfully obtained from consumers and to preserve documentary evidence, the FTC also seeks leave of the Court to conduct limited expedited discovery. Through the attached proposed Order, the FTC seeks permission to conduct depositions upon three calendar days' notice. This expedited discovery will enable the FTC to adequately prepare for the show cause hearing and locate assets for eventual recovery. District courts are authorized to depart from normal discovery procedures to meet particular needs. Fed. R. Civ. P. 26(b), 34(b). Such a discovery order reflects the Court's broad and flexible authority in equity to grant preliminary emergency relief in cases involving the public interest. *See Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *FSLIC v. Dixon*, 835 F.2d 554, 562 (5th Cir. 1987).

VI. CONCLUSION

Plaintiff respectfully moves the Court for an order to show cause why Contempt Defendants Everard Taylor, Elias Taylor, Ebony Taylor, and National Financial Assistance should not be held in contempt for intentional violations of the Court's PI and its Permanent Injunctions. Plaintiff also requests an order granting expedited discovery. Plaintiff moves, after appropriate hearing by the Court and a finding and order of civil contempt, for an order to compensate consumers victimized by Contempt Defendants' contumacious acts.

¹³⁵ *See supra* notes 12, 14-16, 19, 21, 24, 37, 48-50, 57-59, 65, 92, 120 and accompanying text.

Respectfully submitted,

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Regional Director

Dated: August 27, 2010

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FEDERAL TRADE COMMISSION

CERTIFICATE OF CONFERENCE

Neither the “meet and confer” nor the certificate of conference requirements are applicable to the instant motion because the contempt defendants are *pro se* litigants.

CERTIFICATE OF SERVICE

I certify that Plaintiff, Federal Trade Commission, will serve a true and correct copy of the foregoing document on those listed below by personal service after the Court has entered an Order to Show Cause scheduling a hearing on why the Contempt Defendants should not be held in contempt of Court:

Elias H. Taylor,
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1513 Kimberly Ct.
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The Federal Trade Commission will serve a true and correct copy of the foregoing document on those listed below by U.S. Postal Service after the Court has entered an Order to Show Cause scheduling a hearing on why the Contempt Defendants should not be held in contempt of Court:

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Dated: August 27, 2010
Dallas, Texas

/s/ Luis H. Gallegos
Luis H. Gallegos, Attorney for Plaintiff