

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
Tampa Division**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

VACATION PROPERTY SERVICES, INC., *et al.*,

Defendants.

**Case No. 8:11-cv-00595-JDW-MAP**

**PLAINTIFF FEDERAL TRADE COMMISSION'S MOTION FOR  
SUMMARY JUDGMENT AGAINST DEFENDANTS ALBERT M.  
WILSON AND DAVID S. TAYLOR AND INCORPORATED  
MEMORANDUM OF LAW**

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## I. INTRODUCTION<sup>1</sup>

The Federal Trade Commission (“FTC”) moves the Court to bring a permanent end to a massive timeshare resale scam that has injured tens of thousands of consumers and to order Defendants to provide \$9,550,641.94 in restitution to those they defrauded. The Defendants’ scheme, known as Vacation Property Services, Inc. (“VPS”), was one of numerous timeshare resale scams based in Florida. These scams prey upon American consumers’ desire to end burdensome timeshare maintenance fees and unlock their equity in a time of financial uncertainty. The Florida Attorney General’s Office (“Florida AG”) recently announced that, in 2010, it received over “12,000 complaints about timeshare resale fraud – more than the next four highest complaint categories *combined*.”<sup>2</sup>

Until stopped by this Court in March 2011, VPS<sup>3</sup> and its principals – Albert Wilson and David Taylor (“Defendants”)<sup>4</sup> – tricked consumers into paying large up-front fees by using one of two blatant lies: (i) VPS telemarketers would tell consumers that VPS had buyers or renters lined up and waiting to buy or rent the consumers’ timeshare properties; or (ii) VPS telemarketers would tell consumers that VPS would quickly sell or rent the consumers’ timeshare properties. Regardless of the pitch used, VPS demanded that consumers pay a large

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<sup>1</sup> References to plaintiff exhibits appear as “Px. [number].” Declarations are cited as “([name] Dec.)” References to deposition transcripts appear as “[name] Dep. at [page number]:[line number].”

<sup>2</sup> See, e.g., *Attorney General Bondi Unveils Legislative Initiative to Protect Consumers from Timeshare Resale Fraud*, Oct. 4, 2011, Att. C to Px. 146 (VPS-FTC 15706) (emphasis in original); see also *Legislation Would Crack Down on Time-Share Resale Companies*, Oct. 4, 2011 (“According to Bondi’s office, many companies are cold-calling time-share owners with promises that they have buyers ready to purchase their property if the owner is ready to pay an up-front fee that could be thousands of dollars. Then, the buyer never materializes, or the resale company won’t honor a cancellation policy.”), Att. C to Px. 146.

<sup>3</sup> At its height, VPS’s enterprise spanned ten offices. Px. 152 (VPS Dep.) at 44:10-12. Defendant Perry operated one of those offices – Higher Level Marketing, Inc. d/b/a Vacation Property Services. In 2010, that office began operating as Vacation Property Sellers, Inc. d/b/a Timeshare Experts (collectively, Perry’s offices are referred to as “VPS 31st St.”). The Court previously entered a final order against Perry and VPS 31st St. [D.E. 97].

<sup>4</sup> Wilson owned and operated VPS from its inception. Taylor became owner and President in February 2004.

up-front fee, ranging from a few hundred to more than a thousand dollars, to secure the sale or rental. In many cases, VPS telemarketers would sweeten the promise by falsely telling consumers they would receive a refund of VPS's fees if the sales or rentals fell through. After paying Defendants, consumers ultimately learned that VPS had no buyers or renters lined up to purchase or rent their timeshares and that no such buyers or renters were in the offing.<sup>5</sup>

This brief sets forth irrefutable evidence of VPS's violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a) ("FTC Act") and the Telemarketing Sales Rule, 16 C.F.R. § 310 ("TSR"), as reflected in, among other evidence: 33 consumer declarations;<sup>6</sup> testimony of former VPS officers, managers, and telemarketers; third party declarations; and extensive documentary proof. The Defendants' testimony lays bare the lies VPS used to induce consumers to pay its hefty fees. A VPS telemarketer described one of her fraudulent sales pitches as "a big fat lie" during her deposition.<sup>7</sup> Inquiring about other lies she told consumers, the FTC asked the telemarketer: "Was any of that true?"<sup>8</sup> Her sad reply: "No. I wish it was."<sup>9</sup>

## **II. STATEMENT OF UNDISPUTED MATERIAL FACTS**

### **A. Defendants' Deceptively Marketed Timeshare Resale Services**

#### *1. An Overview of the Fraud*

Defendants called consumers who owned timeshare properties and offered to sell or

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<sup>5</sup> VPS's fraudulent scheme was the subject of several cautionary media stories. *See, e.g., Florida Ratchets Up Scrutiny on Timeshares*, April 23, 2007, Att. E to Px. 146 (VPS-FTC 15710) ("David Taylor and Albert Wilson ... denied any wrongdoing. 'There's nothing to talk about,' Taylor said ... 'We've already worked out everything with the attorney general's office.');" *Web Site Ads Selling Polk and Volusia Swampland*, July 10, 2006, Att. F to Px. 146 (VPS-FTC 15713).

<sup>6</sup> The 33 consumer declarations (Pxs. 7 [D.E. 3-5], 16 [D.E. 3-6], 18-19 [D.E. 3-7], 109-138) referenced here pertain only to VPS – the corporate office located at 7005 4<sup>th</sup> St. in St. Petersburg – and only to the period 2006 through VPS's demise in March 2011. In its motion for a temporary restraining order, the FTC introduced an additional 15 consumer declarations regarding the practices of the VPS satellite office operated by defendant Perry. In total, the FTC has presented to the Court 48 consumer declaration regarding VPS's unlawful practices.

<sup>7</sup> Px. 150 (Murray Dep.) at 87:24-88:3.

<sup>8</sup> *Id.* at 88:4-14.

rent these properties for the consumers.<sup>10</sup> Many of these consumers had registered their phone numbers with the National Do Not Call Registry (the “Registry”) prior to being called by Defendants.<sup>11</sup> And a significant percentage of VPS’s consumer victims were elderly.<sup>12</sup>

Defendants frequently told consumers that they had buyers or renters who were interested in purchasing or renting their timeshares for specified prices or price ranges.<sup>13</sup> In other cases, Defendants told consumers that their timeshares were in high demand and that VPS would sell or rent them quickly.<sup>14</sup> Defendants sometimes told consumers that, in addition to selling or renting their timeshares, VPS would also recoup fees the consumers previously paid to other unscrupulous timeshare resale companies.<sup>15</sup> Furthermore, Defendants often falsely told consumers that VPS would hold an open house or other sales event at their resort in order to attract buyers.<sup>16</sup> And Defendants frequently promised to send consumers a list of buyers or renters as soon as the consumers paid VPS’s fee.<sup>17</sup> Many consumers, especially those struggling with the costs associated with timeshare ownership and maintenance, found

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<sup>9</sup> *Id.*

<sup>10</sup> *See, e.g.*, Px. 7 (Skiba Dec.) [D.E. 3-5], ¶¶ 1-6; Px. 132 (Allen Dec.), ¶ 3.

<sup>11</sup> *See* Section II.C., *infra*.

<sup>12</sup> *See, e.g.*, Px. 150 (Murray Dep.) at 85:20-86:3, 121:19-21; Px. 151 (S. Wilson Dep.) at 63:1-11.; Px. 127 (Barnes Dec.), ¶¶ 3-4; Px. 116 (Blumberg Dec.), ¶ 1; Px. 122 (Bower Dec.), ¶ 1; Px. 118 (F. Brown Dec.), ¶ 1; Px. 131 (Hampton Dec.), ¶ 1; Px. 135 (Hattox Dec.), ¶ 1; Px. 110 (Hensel Dec.), ¶ 1; Px. 119 (Hubbard Dec.), ¶ 1; Px. 117 (Martin Dec.), ¶ 1; Px. 130 (Meade Dec.), ¶ 1; Px. 120 (Taylor Dec.), ¶ 1; Px. 128 (Yancik Dec.), ¶ 1.

<sup>13</sup> *See* Section II.A.2, *infra*.

<sup>14</sup> *See* Section II.A.3, *infra*.

<sup>15</sup> *See* Section II.A.4, *infra*.

<sup>16</sup> *See* Section II.A.4, *infra*.

<sup>17</sup> *See, e.g.*, Px. 124 (Peart Dec.), ¶ 8 (“After I paid the fee, I received an email from [VPS] with a list of peoples’ names and phone numbers. I called the people on the list. They were not interested in renting my timeshare and they did not know why they were on the list ....”); Px. 7 (Skiba Dec.) [D.E. 3-5], ¶ 6; Px. 19 (Hinson Dec.) [D.E. 3-7], ¶ 8; Px. 125 (Jolly Dec.), ¶ 4, ¶ 4; Px. 114 (Dunn Dec.), ¶ 4; Px. 133 (Miller Dec.), ¶ 5.

attractive Defendants' offer of a speedy sale or rental.<sup>18</sup> Most consumers would never have paid VPS's high fees if they knew the truth: "VPS[']s service [was] limited to posting an online advertisement." Defendants' Answer [D.E. 61], ¶ 53.<sup>19</sup>

Defendants told consumers that they must pay an up-front fee, ranging from a few hundred to more than a thousand dollars, before the sale or rental could be completed.<sup>20</sup> They provided consumers various justifications for the fee, often stating that it covered sales-related costs.<sup>21</sup> If consumers requested to have the fee deducted from the timeshare sale proceeds, Defendants would refuse, telling consumers that VPS's fee must be paid up-front.<sup>22</sup> Defendants also falsely assured many skeptical consumers that VPS's fee would be refunded if the sale did not close as promised or that VPS would provide a refund if requested within seven days.<sup>23</sup> Many consumers agreed to pay the fee, believing – as they were promised – that Defendants had a buyer or renter for their timeshare property and/or would have it sold or rented quickly, and that VPS's fee must be paid up-front in order to assure that the sale or

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<sup>18</sup> See, e.g., Px. 7 (Skiba Dec.) [D.E. 3-5], ¶ 9 ("My house had recently flooded and I needed money to pay for the repairs ...."); Px. 120 (Taylor Dec.), ¶ 6 ("Because of my husband's death, we decided that it was probably a good time to sell our points."); Px. 116 (Blumberg Dec.), ¶ 6 ("Due to the onset of serious health problems, my husband was finding it difficult to travel and enjoy the timeshare, so we began to consider selling it."); Px. 115 (Waddell Dec.), ¶ 3 ("I told Ms. Murray I did not think we could afford [the VPS up-front fee] since we are on a fixed income, but she told me not to worry since this fee would be refunded to me if our timeshare did not sell within six months."); accord Px. 129 (Morris Dec.), ¶ 5; Px. 126 (Galvin Dec.), ¶ 6; Px. 110 (Hensel Dec.), ¶ 7; Px. 113 (Hullinger Dec.), ¶ 7; Px. 132 (Allen Dec.), ¶ 5; Px. 131 (Hampton Dec.), ¶ 2; Px. 119 (Hubbard Dec.), ¶ 6; Px. 133 (Miller Dec.), ¶ 3; Px. 112 (Strom Dec.), ¶ 4; Px. 122 (Bower Dec.), ¶ 6.

<sup>19</sup> See, e.g., Px. 132 (Allen Dec.), ¶ 9 ("I would never have agreed to give Marie \$400 solely for an online listing of my timeshare, since I could post such an ad myself for free."); accord Px. 120 (Taylor Dec.), ¶ 11; Px. 116 (Blumberg Dec.), ¶ 11; Px. 111 (M. Brown Dec.), ¶ 10; Px. 130 (Meade Dec.), ¶ 5; Px. 135 (Hattox Dec.), ¶ 8; Px. 131 (Hampton Dec.), ¶ 5; Px. 133 (Miller Dec.), ¶ 8; Px. 134 (Nannie Dec.), ¶ 12; see also Px. 150 (Murray Dep.) at 81:20-82:1 ("Q. From your experience as a telemarketer, if people were told that all that they would get is an ad on the website, would they agree to pay \$599, \$612 for VPS's services? ... A. Not if they're smart.");

<sup>20</sup> See, e.g., Px. 7 (Skiba Dec.) [D.E. 3-5], ¶ 10; Px. 147 (A. Wilson Dep.) at 151:14-18 (fees as high as \$1,500).

<sup>21</sup> See, e.g., Px. 28 [D.E. 3-10], FTC-VPS 382:21-383:21; Px. 134 (Nannie Dec.), ¶ 4; Px. 124 (Peart Dec.), ¶ 4; Px. 115 (Waddell Dec.), ¶ 3.

<sup>22</sup> See, e.g., Px. 150 (Murray Dep.) at 113:14-114:15; Px. 124 (Peart Dec.), ¶ 5.

rental would go forward.<sup>24</sup>

2. *Defendants Told Consumers They Had Buyers or Renters for the Consumers' Timeshares*

To convince consumers to pay VPS's fee, Defendants repeatedly told consumers that they already had a buyer or renter identified to purchase or rent the timeshare. For many consumers, the pitch began with an unsolicited call from VPS purporting to deliver great news: *We've found a buyer for your timeshare! No more maintenance fees or loan payments! Plus a sizable check at the closing!* Thousands of consumers paid VPS's large up-front fees, relying upon false statements like these.<sup>25</sup>

VPS's telemarketers admitted that VPS falsely promised to deliver buyers to its customers. For example, as set forth below, VPS telemarketer Lisa Murray testified at length to the lies she told to lock in a customer – candidly admitting that “there’s a lot of times that we did fabricate.”<sup>26</sup> Confronted with her own handwritten call notes that repeatedly referred to fictitious “pre-financed buyers,” Murray admitted that she commonly told potential

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<sup>23</sup> See Section II.A.4, *infra*.

<sup>24</sup> See Px. 7 (Skiba Dec.) [D.E. 3-5], ¶ 11; Px. 16 (Gardner Dec.), ¶¶ 11-12; Px. 18 (Gray Dec.) [D.E. 3-7], ¶ 10.

<sup>25</sup> See, e.g., Px. 7 (Skiba Dec.) [D.E. 3-5], ¶ 6 (“[Georgette Kramer] told me that there were two people waiting to buy my timeshare. She told me to act fast or I would lose the buyers.”); Px. 16 (Gardner Dec.) [D.E. 3-6], ¶ 8 (“[Mike] Wilson told me that the owners of my timeshare resort wanted to buy back various timeshares in order to ‘flip’ them.... Mr. Wilson told me that he could get \$13,900 for my timeshare.”); Px. 124 (Peart Dec.), ¶ 4 (“[Georgette] Kramer told me that she had found renters that wanted to rent my timeshare. She said she could finalize these rentals right away if I signed up with Vacation Property Services”); Px. 111 (M. Brown Dec.), ¶ 4 (“[Carmine] Caparello told me he had a buyer who was interested in purchasing my timeshare for \$18,000, and that they were ready to sign a contract.”); Px. 126 (Galvin Dec.), ¶ 3 (“[Jennifer] Wilson ... told me VPS had buyers waiting to buy my timeshare.”); Px. 113 (Hullinger Dec.), ¶¶ 3, 8 (“[Carmine] Caparello told me he had a buyer who wanted to purchase our 231,000 Wyndham points for \$44,000. Mr. Caparello also told me he had a second buyer who wanted to purchase any unused points we had .... Mr. Caparello told me it would take a few days to pull the paperwork together, but to consider the sale of my timeshare a done deal.”); Px. 110 (Hensel Dec.), ¶ 3 (“Roy told me that he had buyers that would pay \$76,500 for my timeshare, plus \$2,500 for some unused time I had accrued at the resort.”); Px. 118 (F. Brown Dec.), ¶ 2 (“Ms. Gordon told me she had several buyers lined up who wanted to buy my unit ....”); Px. 117 (Martin Dec.), ¶ 6 (“The [VPS] representative insisted that she already had a buyer lined up to purchase my timeshare property.”).

<sup>26</sup> Px. 150 (Murray Dep.) at 55:2-5.

customers that VPS had located a “pre-financed buyer.” This fictitious buyer was a cornerstone of many sales pitches, as revealed during Murray’s testimony:

Q. Do you see towards the bottom where it says, “Financed for [\$]5,000”?

A. Yes.

Q. Is that another case of fabrication, or did you have a buyer financed for [\$]5,000? ....

A. I would say yes. ...

Q. Yes, what?

A. That it was most likely a fabrication.<sup>27</sup>

\* \* \* \*

Q. You see towards the bottom, the next-to-last line says, “Open house finance,” and the next line says, “20K.” Do you see that?

A. Yes.

Q. Is this another fabricated buyer financed for [\$]20,000?

A. Yes....

Q. Do you see towards the bottom where it says, “Have someone inter + financed for 15K”?  
Do you see that?

A. Yes.

Q. Is that another case of a fabricated financed buyer?

A. Yes....

Q. Do you see towards the bottom where it says, “Whites open house Saturday,” below that it says, “Financed 20K.” Do you see that?

A. Yes.

Q. Is that another case of a fabricated financed buyer?

A. I’m thinking so, yes. They weren’t all that way, though, just so you know.

Q. Turn to the next page.... Do you see the line below that says, “Financed for 15K inter realistically probably get 13,500”? Do you see that line?

A. Uh-huh.

Q. Is that another case of a fabricated financed buyer?

A. Yes.<sup>28</sup>

\* \* \* \*

Q. What would you do to try and save a sale?

A. For the most part, convince them that we had somebody very interested in their property, probably financed or use another fictitious name or something.

Q. If you told them that you had a fictitious person financed or a fictitious buyer, would that

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<sup>27</sup> *Id.* at 56:13-24.

<sup>28</sup> *Id.* at 57:7-58:20.

usually save the sale?

A. For the most part, yes ....<sup>29</sup>

\* \* \* \*

Q. Do you see towards the middle where it says, "Meeting Whites"?

A. Yes.

Q. What does that refer to?

A. That would be me ... trying to hold on to a deal and using my fictitious name again, making him think that I had somebody interested in buying his property.<sup>30</sup>

Q. So you were telling your client, to try to save a deal, that you were meeting with a fictitious buyer?

A. I remember this specific person, so, yes, that's exactly what I was telling him.<sup>31</sup>

Ms. Murray's admissions are corroborated by other VPS employees,<sup>32</sup> including former telemarketer April Webb,<sup>33</sup> as well as numerous VPS victims conned by a variety of VPS telemarketers, including Mike Wilson, Carmine Capparello, Jennifer Wilson, Shelly Gordon, and Georgette Kramer, among others.<sup>34, 35</sup>

### 3. *Defendants Told Consumers They Would Quickly Sell or Rent Their Timeshares*

In addition to lying about having buyers and renters in hand, Defendants falsely told consumers that VPS would quickly sell or rent their timeshares, often providing a specific timeframe in which the purported sale or rental was to occur. This "quick sale" lie, like the "buyers in hand" lie, lured thousands of victims to pay VPS's large up-front fees, as recounted

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<sup>29</sup> *Id.* at 84:24-85:6

<sup>30</sup> Murray frequently told consumers that a fictitious family – "the Whites" – wanted to purchase the consumers' timeshares. *Id.* at 60:4-18. When the consumers became suspicious because the sale had not gone forward, Murray would explain away the delay by telling the consumer that "the Whites'" grandson was having open heart surgery. *Id.* at 61:3-7.

<sup>31</sup> *Id.* at 86:10-22.

<sup>32</sup> Px. 151 (S. Wilson Dep.) at 42:1-21.

<sup>33</sup> Px. 139 (Webb Dec.), ¶ 9 ("Some [VPS] telemarketers would tell consumers that they had already lined up buyers or renters for the consumers' timeshares. To the best of my knowledge, none of it was true.").

<sup>34</sup> See Px. 7 (Skiba Dec.) [D.E. 3-5], ¶ 6; Px. 16 (Gardner Dec.) [D.E. 3-6], ¶8; Px. 124 (Peart Dec.), ¶ 4; Px. 111 (M. Brown Dec.), ¶ 4; Px. 126 (Galvin Dec.), ¶ 3; Px. 113 (Hullinger Dec.), ¶ 3; Px. 110 (Hensel Dec.), ¶ 3.

<sup>35</sup> The "buyers in hand" lie was often enhanced during VPS's pretextual verification calls. See Section III.C.2., (continued)

in scores of declarations from VPS's victims.<sup>36</sup>

An undercover call between FTC investigator Martha Vera, posing as a consumer interested in selling a timeshare, and VPS telemarketer Jennifer Wilson substantiates the overwhelming evidence that VPS telemarketers commonly told customers that VPS would quickly sell their timeshare. In a discussion about selling Ms. Vera's purported property, Ms. Wilson stated: "It shouldn't take you long [to sell]. At 16 [thousand dollars], I would say probably one to maybe two months."<sup>37</sup> Ms. Wilson also told Ms. Vera that VPS's fee "pays for us to get the buyer for you."<sup>38</sup>

Defendant Wilson also admitted that it was "common for VPS telemarketers to

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*infra*; see also Px. 145 (Johnston Dec.), Att. C at 4:25-5:4.

<sup>36</sup> See, e.g., Px. 125 (Jolly Dec.), ¶ 4 ("[Jennifer Wilson] told me she would start faxing me offers as soon as our agreement was signed. Ms. Wilson gave me a verbal guarantee that she would complete the sale of my timeshare within a few weeks, since she had at least six qualified buyers ...."); Px. 112 (Strom Dec.), ¶¶ 4, 7 ("[Crystal Stein] told me she could definitely sell my timeshare over the upcoming weekend .... Approximately one month later, I received a call from a man who said he was calling from VPS and wanted to sell my timeshare .... I was stunned speechless. He told me that VPS had several people who wanted to buy a timeshare at my resort ... and that he could sell my timeshare within 24 hours."); Px. 19 (Hinson Dec.) [D.E. 3-7], ¶ 8 ("[Jennifer Wilson] told me she would probably get a buyer within a week and promised me she would get a buyer no later than a month after I agreed to pay for her services."); Px. 18 (Gray Dec.) [D.E. 3-7], ¶ 7 ("[Mike] Wilson told me that if I advertised with his company, he could sell my properties within days. He said he already had buyers interested in my timeshare resorts."); Px. 129 (Morris Dec.), ¶ 3 ("She told me that ... she could sell our timeshare within six months for \$30,000, guaranteed."); Px. 134 (Nannie Dec.), ¶ 4 ("[Monica Reynolds] ... assured me that our property would definitely be sold within six months."); Px. 122 (Bower Dec.), ¶ 4 ("[Tracey] Stephenson told me she could sell my timeshare within 30 days."); Px. 121 (L. Brown Dec.), ¶ 4 ("Tony told me that he would be able to sell my timeshare within six months ...."); Px. 133 (Miller Dec.), ¶ 3 ("Jennifer Wilson told me she could sell our timeshare within six months ..."); Px. 132 (Allen Dec.), ¶ 5 ("Marie told me that ... VPS would sell or rent my timeshare within 12 months."); Px. 131 (Hampton Dec.), ¶ 3 ("[Rod] McCullough told me he could sell my timeshare within three to six months ...."); Px. 130 (Meade Dec.), ¶ 4 ("Mr. Wilson assured me that my timeshare would sell within six months."); Px. 131 (Hampton Dec.), ¶ 2 ("Mr. McCollugh told me he could sell my timeshare within three to six months ...."); Px. 118 (F. Brown Dec.), ¶ 2 ("Ms. Gordon told me ... she would have it sold within sixty days, guaranteed."); Px. 114 (Dunn Dec.), ¶ 5; Px. 115 (Waddell Dec.), ¶ 3; Px. 116 (Blumberg Dec.), ¶ 4; Px. 119 (Hubbard Dec.), ¶ 5; Px. 120 (Taylor Dec.), ¶ 5; Px. 123 (C. Wilson Dec.), ¶ 4; Px. 128 (Yancik Dec.), ¶ 4; Px. 135 (Hattox Dec.), ¶ 2; Px. 137 (Patton Dec.), ¶ 4; Px. 138 (Bergin Dec.), ¶ 4; Px. 136 (Roepers Dec.), ¶ 4.

<sup>37</sup> Px. 27 [D.E. 3-10], FTC-VPS 371:4-5.

<sup>38</sup> Px. 28 [D.E. 3-10], FTC-VPS 383:11-12. Ms. Wilson's statements in the undercover calls repeatedly discuss the supposed impending sale, as well as VPS's supposed intimate involvement in the entire sales process. See, e.g., Px. 27 [D.E. 3-10], FTC-VPS 372:10-14; *accord id.* at 372:3-7; Px. 28 [D.E. 3-10], FTC-VPS 381:11-17; *id.* (continued)

promise prospective customers that they could rent out banked weeks prior to a sale.”<sup>39</sup> And defendant Taylor stated that VPS did not have a problem with telemarketers telling consumers that they could quickly sell or rent their timeshares.<sup>40</sup>

Although Jennifer Wilson, Albert Wilson, and David Taylor all admitted to, or participated in, VPS promising consumers that their timeshares would sell quickly, they each candidly conceded the misleading nature of such a statement. For instance, although Jennifer Wilson told Ms. Vera that her timeshare should sell within “probably one to maybe two months,” she claimed at her deposition that she would not have told another customer that her property would “sell in a month because that’s ridiculous. Most properties take a lot longer.”<sup>41</sup>

Defendant Wilson stated that it is “[v]ery hard to sell timeshares in the resale market,”<sup>42</sup> and admitted that telling a consumer her timeshare will sell quickly is wrong and misleading:

Q. You said you would take information to telemarketers that they would then use to tell clients before they paid VPS that they had a buyer, but you would reprimand employees if they told clients that they could quickly sell their timeshare?

A. Correct.

Q. Why is that?

A. How do they know they can quickly sell it? ...

Q. But in no circumstances would it be okay to tell customers that their timeshare would sell quickly?

A. No circumstances....

Q. So if a telemarketer told the customer that they would quickly sell the timeshare, that was

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at 383:10-18.

<sup>39</sup> Px. 147 (A. Wilson Dep.) at 208:11-14. Mr. Wilson further admitted that he had heard of five or ten instances in which VPS telemarketer Georgette Kramer had promised a quick sale. *Id.* at 207:15-208:10.

<sup>40</sup> Px. 148 (Taylor Dep.) at 74:22-75:5 (“Q. So there were some timeshare properties where it was okay to tell the customer they could sell it quickly, and there were some where it wasn’t okay; is that correct? ... A. Okay. Yes.”); *id.* at 74:8-12.

<sup>41</sup> Px. 149 (J. Wilson Dep.) at 109:21-23.

<sup>42</sup> Px. 152 (VPS Dep.) at 25:9-15; *see also* Px. 148 (Taylor Dep.) at 186:11-18.

wrong, correct?

A. In my opinion, yes.<sup>43</sup>

The record, however, is replete with evidence that VPS promised consumers quick sales or rentals.<sup>44, 45</sup>

4. *Defendants Misrepresented VPS's Refund Policy and Told Other Lies*

Not content to rely on the “buyer in hand” or “quick sale” lies, Defendants made numerous other false statements to ensnare consumers, telling potential customers that:

- VPS would refund its fee to the consumer at the closing of the sale;<sup>46</sup>
- VPS would refund its fee if the timeshare did not sell within a set time frame;<sup>47</sup>
- VPS would provide a refund if requested within seven days;<sup>48</sup>
- VPS had already identified a buyer to purchase the consumers’ timeshares, so the consumer should not seek a refund pursuant to VPS’s seven-day rescission policy;<sup>49</sup>
- VPS would help them obtain refunds of money paid to other timeshare resale companies;<sup>50</sup>
- VPS would host an “open house” for their property;<sup>51</sup>

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<sup>43</sup> Px. 147 (A. Wilson Dep.) at 146:13-147:15; *see also id.* at 185:17-20; *id.* at 186:19-23, 187:15-18, 195:14-17, 207:15-24, 211:2-17.

<sup>44</sup> *See* note 36, *supra*. *See also* Px. 145 (Johnston Dec.), Att. B at 4:25-5:16. The VPS verifier then enhances the lie by stating that VPS’s “average [timeshare sale] time is about three to six months.” *Id.* As discussed in Section III.C.3., *infra*, there is no evidence that VPS aided in *any* timeshare sales or rentals.

<sup>45</sup> Defendants’ pretextual verification call often enhanced the “quick sale” lie. For example, a recorded verification call between a VPS verifier and consumer Eddie Eubias includes an explicit promise of a sale. Px. 145 (Johnston Dec.), Att. B at 5:11-16.

<sup>46</sup> *See, e.g.*, Px. 113 (Hullinger Dec.), ¶¶ 3, 7.

<sup>47</sup> *See, e.g.*, Px. 120 (Taylor Dec.), ¶ 5; Px. 121 (L. Brown Dec.), ¶ 4; Px. 115 (Waddell Dec.), ¶ 3.

<sup>48</sup> *See, e.g.*, Px. 112 (Strom Dec.), ¶¶ 6-9.

<sup>49</sup> *See, e.g.*, Px. 150 (Murray Dep.) at 85:10-19 (“Q. Did you use any strategies to try to extend the [consumer’s decision to obtain a refund] beyond their ability to obtain a credit card chargeback? A. Not a credit card, but their seven-day right of rescission, yes. Q. And you would do that by using the fictitious financed buyers, things like that? A. Yes. Q. And most of the time, did that work? A. Yes.”).

<sup>50</sup> *See, e.g.*, Px. 7 (Skiba Dec.) [D.E. 3-5], ¶ 8; Px. 128 (Yancik Dec.), ¶ 4; Px. 114 (Dunn Dec.), ¶ 4; Px. 138 (Bergin Dec.), ¶ 4.

<sup>51</sup> *See, e.g.*, Px. 29 [D.E. 3-10], FTC-VPS 391:21-392:7 (undercover call with J. Wilson) (“We’ve got a few open houses scheduled right outside of Disney ...”); Px. 150 (Murray Dep.) at 67:7-9 (“Q. What was the most effective sales pitch you had? A. ... [T]he open house.”); *id.* at 87:24-88:3 (“Q. Do you see [where] it says, ‘Great turn out open house’? A. Yes. Q. What does that refer to? A. A big fat lie.”); Px. 139 (Webb Dec.), ¶ 7.

- VPS would host a “sales presentation” at their resort;<sup>52</sup>
- VPS would list the timeshare on the resort’s website;<sup>53</sup>
- VPS would affirmatively reach out to individual buyers to broker a sale;<sup>54</sup>
- VPS would handle the financing of the sale;<sup>55</sup> and
- VPS would provide a free “vacation voucher.”<sup>56</sup>

All of these promises were false.<sup>57</sup>

### 5. VPS Operated As a Fraudulent Boiler Room

VPS’s day-to-day operations bolsters the substantial evidence that VPS operated in the fashion of a typical boiler room pedaling the standard timeshare resale fraud lies – “*we have a buyer!*” and “*we’ll sell it quickly!*” Defendants and their former employees admit that VPS:

- took no efforts after March 2008 to follow-up on possible sales and did not keep track of sales in any manner, even though VPS ostensibly operated with the goal of assisting consumers with selling their timeshares;<sup>58</sup>
- routinely ignored client phone calls and refused to return messages from consumers after they paid VPS’s up-front fee;<sup>59</sup>

<sup>52</sup> See, e.g., Px. 19 (Hinson Dec.) [D.E. 3-7], ¶ 8; Px. 134 (Nannie Dec.), ¶ 9; Px. 132 (Allen Dec.), ¶ 5; Px. 116 (Blumberg Dec.), ¶¶ 4, 7; Px. 139 (Webb Dec.), ¶ 7; Px. 28 [D.E. 3-10], FTC-VPS 000383:10-18 (undercover call with J. Wilson) (“Ms. Wilson: [Your timeshare] will also be eligible to start receiving offers from our sales events right out in Orlando and also from people that have went [sic] on the tours.”).

<sup>53</sup> See, e.g., Px. 132 (Allen Dec.), ¶ 5.

<sup>54</sup> See, e.g., Px. 27 [D.E. 3-10], FTC-VPS 370:9 -371:2; Px. 29 [D.E. 3-10], FTC-VPS 391:21-392:7.

<sup>55</sup> See, e.g., Px. 28 [D.E. 3-10], FTC-VPS 383:20-21.

<sup>56</sup> See, e.g., Px. 137 (Patton Dec.), ¶ 4.

<sup>57</sup> See, e.g., Defendants’ Answer [D.E. 61], ¶ 53 (“Admit that ... VPS[’] service is limited to posting an online advertisement.”); A. Wilson Dec. [D.E. 46-1], ¶ 4 (“VPS only advertises its customers’ timeshares and does not handle any of the renting, buying, or selling thereof.”); Px. 150 (Murray Dep.) at 87:24-88:3 (promise of an open house was “a big fat lie”); *id.* at 85:3-19; Px. 139 (Webb Dec.), ¶¶ 7-8 (promised sales events and open houses did not occur); *accord* Px. 151 (S. Wilson Dep.) at 55:7-9, 76:4-19; Px. 149 (J. Wilson Dep.) at 40:5-9; Px. 147 (A. Wilson Dep.) at 108:20-109:1; Px. 148 (Taylor Dep.) 118:1-9; *see also* Px. 19 (Hinson Dec.) [D.E. 3-7], ¶¶ 19-21; Px. 113 (Hullinger Dec.), ¶¶ 8-11; Px. 120 (Taylor Dec.), ¶ 11; Px. 121 (L. Brown Dec.), ¶¶ 11-12; Px. 125 (Jolly Dec.), ¶ 12; Px. 128 (Yancik Dec.), ¶¶ 13-14; Px. 114 (Dunn Dec.), ¶ 11; Px. 137 (Patton Dec.), ¶¶ 7-11; Px. 112 (Strom Dec.), ¶¶ 8-9.

<sup>58</sup> Px. 147 (A. Wilson Dep.) 114:15-118:25.112

<sup>59</sup> See, e.g., Px. 112 (Strom Dec.), ¶ 6; Px. 7 (Skiba Dec.) [D.E. 3-5], ¶ 13; Px. 18 (Gray Dec.) [D.E. 3-7], ¶¶ 19-20; Px. 19 (Hinson Dec.) [D.E. 3-7], ¶ 13; Px. 125 (Jolly Dec.), ¶¶ 6-7; Px. 120 (Taylor Dec.), ¶¶ 7-8; Px. 121 (L. Brown Dec.), ¶ 8; Px. 137 (Patton Dec.), ¶ 11; Px. 124 (Peart Dec.), ¶ 9; Px. 133 (Miller Dec.), ¶ 8; Px. 111 (M. Brown Dec.), ¶¶ 8-9; Px. 135 (Hattox Dec.), ¶ 8; Px. 122 (Bower Dec.), ¶ 9; Px. 115 (Waddell Dec.), ¶ 7; Px. 134 (Nannie Dec.), ¶ 6; Px. 117 (Martin Dec.), ¶ 7.

- employed “unbecoming” employees;<sup>60</sup>
- was aware that its telemarketers drank alcohol and consumed drugs on the job;<sup>61</sup>
- did little or nothing to train its employees or subject them to any formal policies;<sup>62</sup> and
- blatantly disregarded the nation’s Do Not Call laws.<sup>63</sup>

**B. Defendants Have a Lengthy History of Defrauding Consumers**

*1. VPS’s Formation*

VPS rose out of the ashes of another timeshare resale company that was shut down by regulatory action. Wilson began working at Vacation Systems International (“VSI”) in 1996.<sup>64</sup> After regulators shut down VSI in or around 1998, it re-opened as Timeshares Direct.<sup>65</sup> Wilson and VPS co-founder Mark Dann became owners of a Timeshares Direct office in March 1998.<sup>66</sup> In May 1999, Wilson and Dann began operating as VPS.<sup>67</sup> Defendant Frank Perry began working for VPS shortly after it was founded by Wilson and Dann.<sup>68</sup>

*2. Perry Opens His VPS Office*

Frank Perry opened a satellite VPS office – VPS 31<sup>st</sup> St. – in 2003 or 2004.<sup>69</sup>

Overwhelming evidence demonstrates that VPS 31<sup>st</sup> St. operated as a common enterprise with

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<sup>60</sup> Px. 152 (VPS dep.) at 138:2-15 (“Most of them have a criminal record involving theft, drugs, basically behavior that’s not very becoming.”).

<sup>61</sup> Px. 147 (A. Wilson dep.) at 60:23-61:10 (“Q. [D]o you mean being intoxicated and using drugs at work? A. Yes.”); Px. 151 (S. Wilson dep.) at 38:6-23 (discussing employee alcohol and drug use), 49:5-15 (discussing drinking on the job), 77:1-16; Px. 139 (Webb Dec.), ¶ 14 (“drug use and alcohol use occurred frequently at [VPS]”).

<sup>62</sup> See, e.g., Px. 150 (Murray dep.) at 13:10-16, 95:3-10; Px. 139 (Webb Dec.), ¶ 5 (“I was not given any training by Mr. Wilson or anyone else at [VPS]. On my first day on the job, I was simply given very old leads and told to start calling them. I was not given a script. I learned what to do and say by listening to other [VPS] telemarketers and by talking with them.”); Px. 149 (J. Wilson dep.) at 118:1-8 (“Q. Did VPS have any sort of policies ... with respect to what you’re allowed to say or not say on a call? A. No....”).

<sup>63</sup> See Section II.C., *infra*.

<sup>64</sup> Px. 147 (A. Wilson Dep.) at 11:20-25.

<sup>65</sup> Px. 152 (VPS Dep.) at 22:2-23:7.

<sup>66</sup> *Id.* at 24:4-8.

<sup>67</sup> *Id.* at 24:9-11.

<sup>68</sup> *Id.* at 8:13-9:2.

<sup>69</sup> *Id.* at 9:8-11.

VPS during the relevant period. VPS 31<sup>st</sup> St. comingled funds<sup>70</sup> and shared with VPS an officer and managers,<sup>71</sup> employees,<sup>72</sup> d/b/as and logos,<sup>73</sup> credit card merchant accounts,<sup>74</sup> office locations,<sup>75</sup> corporate telemarketing license,<sup>76</sup> federal taxpayer identification number,<sup>77</sup> and telemarketing scripts.<sup>78</sup> VPS was referred to as “the corporate office.”<sup>79</sup> VPS had Perry sign VPS’s Florida telemarketing license applications as a “Principal” and “Manager” of VPS.<sup>80</sup> VPS also permitted Perry to sign contracts on behalf of VPS.<sup>81</sup> In addition, when

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<sup>70</sup> See, e.g., Px. 56 [D.E. 50-1], Att. E, VPS-FTC 1879-1883 (from 2007 through 2010, the Defendants transferred among themselves at least \$411,855.82); Px. 21 (Vera Dec.) [D.E. 3-9], ¶ 46, Att. G (copies of checks demonstrate regular flow of funds from VPS 31<sup>st</sup> St. to VPS); Px. 152 (VPS Dep.) at 119:18-25 (VPS received a percentage of all sales from other VPS offices); Px. 151 (S. Wilson Dep.) at 22:19-23:14.

<sup>71</sup> Frank Perry is identified as an officer and manager on formal documents for VPS 31<sup>st</sup> St. and VPS. See, e.g., Px. 40 [D.E. 3-16], FTC-VPS 679 (president of VPS 31<sup>st</sup> St.); Px. 146 (Vera Dec.), Att. I (FTC-VPS 15731-32) (May, 4, 2007 VPS Florida telemarketing license renewal application identifying Perry as “manager” and “principal” at VPS); accord Px. 146 (Vera Dec.), Att. J (FTC-VPS 15760, 66) (June 5, 2007 VPS Florida telemarketing license renewal document); see also Px. 140 (Bassett Dec.), ¶ 7 (Perry signed a contract on behalf of VPS).

<sup>72</sup> See, e.g., Px. 140 (Bassett Dec.), ¶¶ 15-16 (VPS 31<sup>st</sup> St. employees were submitted under VPS telemarketing license and employees frequently “bounce[d] back and forth” between VPS and VPS 31<sup>st</sup> St.); Px. 151 (S. Wilson Dep.) at 24:24-25:1 (employees from VPS 31<sup>st</sup> St. also worked at VPS).

<sup>73</sup> For example, confirmation documents that VPS and VPS 31<sup>st</sup> St. sent to consumers carried the same d/b/a and logo. Compare Px. 7 (Skiba Dec.) [D.E. 3-5], Att. A with Px. 4 (Brimhall Dec.) [D.E. 3-1], Att. A.

<sup>74</sup> See, e.g., Px. 21 (Vera Dec.) [D.E. 3-9], ¶¶ 54-55, Att. N (VPS and VPS 31<sup>st</sup> St. shared MasterCard merchant account numbers).

<sup>75</sup> See, e.g., Px. 147, page 35 (Wilson Dep., Ex. 73) (a VPS document titled “office locations” lists VPS as the “corporate office”); Px. 152 (VPS Dep.) at 143:5-12 (Albert Wilson referred to VPS as the “corporate office”).

<sup>76</sup> See, e.g., Px. 21 (Vera Dec.) [D.E. 3-9], ¶ 53, Att. L & M; Px. 140 (Bassett Dec.), ¶¶ 8, 10, 15 (VPS and VPS 31<sup>st</sup> St. used the same corporate telemarketing license); Px. 148 (Taylor Dep.) at 50:8-23, 59:3-19 (VPS 31<sup>st</sup> St. operated under VPS telemarketing license).

<sup>77</sup> See, e.g., Px. 141 (Schaeffer Dec.), ¶¶ 3-7 (VPS and VPS 31<sup>st</sup> St. used the same federal taxpayer identification numbers); accord Px. 142 (Back Dec.), ¶¶ 3-8.

<sup>78</sup> See, e.g., Px. 148 (Taylor Dep.) at 35:15-18 (“Mr. Perry’s office was supposed to use the same scripts”); *id.* at 48:6-50:23, 54:16-55:20 (Taylor would frequently visit VPS 31<sup>st</sup> St. to ensure they were “operating properly” and using the same telemarketing scripts as VPS).

<sup>79</sup> See note 75, *supra*.

<sup>80</sup> Px. 146 (Vera Dec.), Att. I (FTC-VPS 15731-32, 44-45) (May, 4, 2007 VPS Florida telemarketing license renewal application signed by Taylor as President, Wilson as Vice President and Perry as “Principal” and “Manager” and also listing VPS 31<sup>st</sup> St. managers James Caudill, III and Travis Hoffman (see Px. 148, page 63 (Taylor Dep., Ex. 90) (VPS 31<sup>st</sup> St. employee list) as “Principals” and “Managers” at VPS); Px. 146 (Vera Dec.), Att. J (FTC-VPS 15760, 66) (June 5, 2007 VPS Florida telemarketing license renewal “deficiency corrections” document signed by Taylor as President, Wilson as Vice President and Perry as “Principal” and “Manager”).

paying a licensing penalty for another VPS office, David Taylor signed a settlement on behalf of “Vacation Property Services, Inc. d/b/a ... Higher Leve[l] Marketing.”<sup>82, 83</sup> And defendant Taylor testified that he regularly inspected the VPS 31<sup>st</sup> St. office to ensure that it was using the proper scripts and displaying the necessary licenses.<sup>84</sup>

### 3. Defendant Taylor’s Tenure at VPS

David Taylor joined VPS in February 2004 by paying \$100,000 to purchase Mark Dann’s 50% ownership interest in VPS.<sup>85</sup> He served as President of VPS.<sup>86</sup> In that role, Taylor admits that he supervised employees, handled customer complaints, regulatory compliance, employee discipline, employee monitoring, credit card chargeback requests, BBB complaints, drafted scripts, negotiated with the Florida AG, monitored other VPS offices and managed various other day-to-day matters.<sup>87</sup>

Defendant Taylor also opened another VPS office under the auspices of VPS – D&D Vacations, Inc. d/b/a Vacation Property Services d/b/a United States Property Services (“D&D VPS”).<sup>88</sup> In addition to owning an equity stake in D&D VPS, Taylor also served as its Secretary.<sup>89</sup> In 2007, Taylor met with a representative from the Florida AG with respect to

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<sup>81</sup> Px. 140 (Bassett Dec.), ¶ 7 (Perry signed a contract on behalf of VPS in 2007).

<sup>82</sup> Px. 148, page 88, 92 (Taylor Dep., Ex. 98) (Unlicensed Telemarketer Settlement); Px. 148 (Taylor Dep.) at 191:6-19. VPS 31<sup>st</sup> St. was incorporated as Higher Level Marketing, Inc. See note 3, *supra*.

<sup>83</sup> Rule 408 does not bar consideration of this settlement because, *inter alia*, the claim settled in Px. 98 is not at issue in this case. See, e.g., *McClandon v. Heathrow Land Co. Ltd. Partnership*, No. 6:08-cv-35, 2010 WL 336345, \*3 (M.D. Fla. Jan. 22, 2010); *Broadcort Capital Corp. v. Summa Med. Corp.*, 972 F.2d 1183, 1194 (10th Cir. 1992).

<sup>84</sup> Px. 148 (Taylor Dep.) at 48:6-50:23 (Taylor visited various VPS offices, including VPS 31<sup>st</sup> St.).

<sup>85</sup> Px. 148 (Taylor Dep.) at 30:17-18; Px. 147 (A. Wilson Dep.) at 57:2-4, 58:8-17.

<sup>86</sup> Px. 147 (A. Wilson Dep.) at 58:18-21.

<sup>87</sup> *Id.* at 59:6–60:22; Px. 148 (Taylor Dep.) at 50:8–52:12, 54:16 – 55:7, 64:6-24, 66:2-13, 94:5-14, 126:18-21.

<sup>88</sup> Px. 148 (Taylor Dep.) at 137:15–138:13, 142:12–143:25; Px. 152 (VPS Dep.) at 170:5-7.

<sup>89</sup> Px. 148 (Taylor Dep.) at 137:15–138:13.

complaints filed against “[a]ll the Vacation Property Services” offices, including D&D VPS.<sup>90</sup>

In December 2007, Taylor relinquished his day-to-day roles at VPS. Taylor suggested to Wilson that he pay Taylor 50% of all profits VPS received from VPS 31<sup>st</sup> St. to recoup his ownership investment.<sup>91</sup> Wilson agreed. Those payments continued until at least July 2010.<sup>92</sup>

#### 4. *The Assurance of Voluntary Compliance with the Florida AG*

In 2007, in response to consumer complaints, the Florida AG began investigating VPS.<sup>93</sup> The Florida AG’s allegations were virtually identical to the allegations here – namely, that VPS “promised quick sales or rentals of the complainants’ timeshares or that [VPS] stated that [it] had a buyer or renter already identified for the complainants’ timeshare.”<sup>94</sup> During the course of the investigation, Taylor met with Florida AG officials “many times.”<sup>95</sup>

In March 2008, defendant Wilson signed an Assurance of Voluntary Compliance (“AVC”) on behalf of VPS and himself.<sup>96</sup> In the AVC, Wilson and VPS promised to refrain from making sales calls to consumers listed on the Registry and from misrepresenting to consumers that: (i) they have buyers waiting to buy or rent the consumers’ timeshares; (ii) they have experienced a high demand for timeshares in the areas in which the consumers’ timeshares are located; (iii) they will sell or rent the consumers’ timeshares for a high price;

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<sup>90</sup> Px. 148 (Taylor Dep.) at 142:12-25. In 2009, the Florida AG accused D&D VPS of telling timeshare owners that they have “a ready buyer” for the consumers’ properties. *See Two Largo Timeshare Marketers Are Accused of Scamming Property Owners*, April 16, 2009, Att. G to Px. 146. In March 2010, D&D VPS paid restitution to resolve the allegations. *See Attorney General Focuses Consumer Protection Initiative on Timeshare Resale Industry*, March 11, 2010, Att. H to Px. 146.

<sup>91</sup> Px. 147 (A. Wilson Dep.) at 62:9–63:12; Px. 56 (Second Vera Dec.), ¶ 29, Att. F, VPS-FTC 1884-1885.

<sup>92</sup> Px. 56 (Second Vera Dec.) [D.E. 50-1], ¶ 25, Att. B, VPS-FTC 1875.

<sup>93</sup> Px. 148 (Taylor Dep.) 142:12–145:25, 147:14–148:19.

<sup>94</sup> Px. 36 [D.E. 3-16 & 43-1], FTC-VPS 000626, ¶ 1.5.

<sup>95</sup> Px. 148 (Taylor Dep.) at 143:18-21.

<sup>96</sup> Px. 36 [D.E. 3-16 & 43-1], FTC-VPS 638. Rule 408 does not bar consideration of this settlement because, *inter alia*, the claim settled in the AVC is not at issue in this case. *See* note 83, *supra*.

(iv) they will sell or rent the consumers' timeshares within a short period of time; (v) their sales representatives will personally market consumers' timeshares; and (vi) they will be able to obtain refunds if their timeshares are not sold or rented as a result of VPS's advertising.<sup>97</sup>

Defendants ignored the AVC and, until stopped by the Court, VPS continued to operate as if the AVC had never been signed. Indeed, VPS office manager Stacy Wilson (Wilson's wife) admitted that VPS did not inform its telemarketers about the AVC's terms and restrictions.<sup>98</sup>

### C. Defendants Violated the Do Not Call Laws

Defendants called tens of thousands of telephone numbers belonging to consumers who had registered their number with the violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).<sup>99</sup> And Defendants did not pay fees for accessing the Registry in violation of the TSR.<sup>100</sup> In fact, defendant Taylor admitted that VPS did not access the Registry.<sup>101</sup>

## III. ARGUMENT

### A. Defendants Violated the FTC Act

A solicitation is deceptive and violates the FTC Act if it involves a material

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<sup>97</sup> Px. 36 [D.E. 3-16 & 43-1], FTC-VPS 633-33, ¶ 3.2. VPS agreed to pay \$15,000 to the Florida Department of Legal Affairs Revolving Trust Fund and refunded \$12,266.00 to consumers. It further agreed to escrow \$10,000 for any unidentified refund requests made prior to the effective date of the AVC. *Id.*, ¶¶ 4.1, 5.1.

<sup>98</sup> Px. 151 (S. Wilson Dep.) at 31:8-13.

<sup>99</sup> *See* Px. 21 (Vera Dec.) [D.E. 3-8], ¶¶ 37-41; *see also* Px. 7 (Skiba Dec.) [D.E. 3-5], ¶¶ 3-5; Px. 16 (Gardner Dec.) [D.E. 3-6], ¶¶ 3-5; Px. 18 (Gray Dec.) [D.E. 3-7], ¶¶ 3-5; Px. 19 (Hinson Dec.) [D.E. 3-7], ¶¶ 3-5; Px. 131 (Hampton Dec.), ¶¶ 2, 6-7; Px. 125 (Jolly Dec.), ¶¶ 3, 8-9; Px. 120 (Taylor Dec.), ¶¶ 3, 9-10; Px. 129 (Morris Dec.), ¶¶ 3, 6-7; Px. 133 (Miller Dec.), ¶¶ 3, 6-7; Px. 111 (M. Brown Dec.), ¶¶ 3, 6-7; Px. 135 (Hattox Dec.), ¶¶ 2, 6-7; Px. 115 (Waddell Dec.), ¶¶ 3-5; Px. 126 (Galvin Dec.), ¶¶ 3-5; Px. 113 (Hullinger Dec.), ¶¶ 3-5; Px. 132 (Allen Dec.), ¶¶ 3-4; Px. 116 (Blumberg Dec.), ¶¶ 3-5.

<sup>100</sup> Px. 21 (Vera Dec.) [D.E. 3-8], ¶¶ 33-36.

<sup>101</sup> Px. 148 (Taylor Dep.) at 153:4-11. Taylor's attempt to excuse VPS's misconduct by relying on consumers' supposed requests to receive information from VPS is misplaced. Taylor admits that VPS called consumers from its "backlog" which included leads and customers going back to 1999. *Id.* at 152:7-16. To the extent Taylor attempts to claim that this "backlog" permitted VPS to ignore the Do Not Call laws, he is sadly mistaken. Even if consumers had requested information from VPS (and there is no evidence that they did), a consumer's request for information only permits a company to call the consumer without violating the Do Not Call rules if the company calls the consumer within three months of the consumer's inquiry. *See* 16 C.F.R. §§ 310.4 (b)(1)(iii)(B)(ii) & 310.2(o).

misrepresentation that is likely to mislead consumers acting reasonably under the circumstances. *FTC v. RCA Credit Servs., LLC*, 727 F. Supp. 2d 1320, 1329 (M.D. Fla. 2010). “Express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service are presumed to be material.” *Id.* In deciding whether a solicitation is likely to mislead consumers, courts consider the overall “net impression” it creates. *Id.* “A solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.” *Id.*<sup>102</sup>

As demonstrated in the Statement of Undisputed Material Facts, Defendants’ aggressive sales pitch to consumers represented, expressly or by implication, that Defendants had buyers lined up to purchase or rent the consumers’ timeshares and/or that Defendants would sell or rent the consumers’ timeshares within a short period.<sup>103</sup> In addition, Defendants often assured consumers that Defendants’ fee would be refunded if the sale did not close as promised.<sup>104</sup> Such representations are presumed to be material because they are express claims. *RCA*, F. Supp. 2d at 1329 (citing *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003)). The materiality of these claims is also evidenced by the consumer declarations and other evidence cited herein.<sup>105</sup> Further, these claims were false. Defendants had no buyer or renter in hand and did not arrange for quick sales or rentals of consumers’ timeshares. Thus, Defendants’ deceptive marketing practices violated Section 5(a) of the FTC Act.

#### **B. Defendants Violated the TSR**

Defendants similarly violated the TSR in numerous ways:

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<sup>102</sup> Quoting *FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006).

<sup>103</sup> See Section II.A., *supra*.

<sup>104</sup> See *id.*

*First*, Defendants lied about having buyers or renters lined up to purchase or rent consumers' timeshares and by falsely promising quick sales or rentals.<sup>106</sup> Part 310.3(a)(4) of the TSR prohibits Defendants from making such false or misleading statements to induce the purchase of goods or services.

*Second*, Defendants lied about their refund policy when they claimed that the consumer's fee would be refunded if the sale or rental did not close and when they promised to refund consumers that requested a refund within seven days.<sup>107</sup> Part 310.3(a)(2)(iv) of the TSR prohibits sellers and telemarketers from "[m]isrepresenting, directly or by implication ... [a]ny material aspect of the nature or terms of the[ir] refund, cancellation, exchange, or repurchase policies." *See also* 16 C.F.R. Part 310.3(a)(4).

*Third*, Defendants called hundreds of thousands of consumers who had listed their phone numbers on the Registry, in violation of Part 310.4(b)(1)(iii)(B) of the TSR.<sup>108</sup>

And *fourth*, Defendants failed to pay the required fees for access to the Registry, in violation of Part 310.8 of the TSR.<sup>109</sup>

### **C. Defendants' Excuses and Defenses Do Not Save Them From Liability**

#### *1. Defendants' Lies Were Not Mere "Puffing"*

Defendants have suggested that their false statements were mere "puffery."<sup>110</sup> The law, however, does not permit fraudsters to utilize a "puffery" defense where, as here, defendants make demonstrably false claims. *See, e.g., United States v. Martinelli*, 454 F.3d 1300, 1317

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<sup>105</sup> *See, e.g.,* Section II.A., *supra*; *see also* note 19, *supra*.

<sup>106</sup> *See* Section II.A., *supra*.

<sup>107</sup> *Id.*

<sup>108</sup> *See* Section II.C., *supra*.

<sup>109</sup> *Id.*

<sup>110</sup> *See* Defendants' Answer [D.E. 61], ¶ 117.

(11th Cir. 2006) (“Here, the trial judge refused to instruct on the ‘puffing’ defense, noting that the evidence ‘cannot in any stretch be characterized as mere puffery or just a sales pitch.’ We agree. The misrepresentations in this case were not exaggerated opinions or hyped-up sales pitches. Instead, they were factual statements that were verifiably refutable. Thus, the assertion that all buyers would be prequalified was simply untrue.”).<sup>111</sup>

2. *Defendants’ Pretextual, Frequently Doctored “Verification” Calls Do Not Cure Their Material Misrepresentations*

Defendants also have argued that VPS’s recorded “verification” calls cured the false statements their telemarketers made to consumers.<sup>112</sup> During these calls, which occurred after consumers agreed to pay VPS’s fee, consumers were asked to confirm their property and payment information.<sup>113</sup> In some cases, VPS’s “verifiers” also recounted VPS’s seven-day refund policy, stating that VPS would advertise the property “until sold” but could not guarantee how quickly the property would sell. These calls utterly fail to cure the fraud perpetrated during the numerous unrecorded sales calls required to close a deal.<sup>114</sup>

*First*, the “verification” calls were typically preceded by false statements made by VPS telemarketers. And VPS telemarketers frequently informed consumers, prior to the verification call, not to worry if the verifier made statements at odds with promises made by the telemarketer,<sup>115</sup> or told consumers that they must agree with statements made by the

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<sup>111</sup> See also *United States v. Simon*, 839 F.2d 1461, 1468 (11th Cir. 1988) (“[The defendants’] representations are not opinions. They are either true, or they are false. In the instant case, the record makes clear that they are false, and therefore are misrepresentations evidencing an intent to defraud and not mere puffery.”).

<sup>112</sup> See Px. 147 (A. Wilson Dep.) at 219:17-23 (“Q. So is it your position ... that any misstatements or fraudulent statements made during initial sales call are cured during the verification process? ... A. Yes.”).

<sup>113</sup> See, e.g., Px. 16 (Gardner Dec.) [D.E. 3-6], ¶¶ 13-14; Px. 110 (Hensel Dec.), ¶ 9.

<sup>114</sup> See, e.g., Px. 150 (Murray Dep.) at 47:4-9 (“You usually have to talk to them about four or five weeks before you finally make a deal.”); Px. 148 (Taylor Dep.) at 121:13-16 (admitting it took up to 10 calls to close a deal).

<sup>115</sup> See, e.g., Px. 16 (Gardner Dec.) [D.E. 3-6], ¶¶ 13-14.

verifier to ensure that the sale will move forward.<sup>116</sup>

*Second*, many verifiers spoke quickly, making them difficult to understand.<sup>117</sup>

*Third*, many verification tapes were edited to remove incriminating statements.<sup>118</sup>

*Fourth*, many such calls included confirmation of VPS's misrepresentations.<sup>119</sup>

*Fifth*, although the VPS "verification script" included a question asking whether the telemarketer made any statements or promises at odds with the statements made by the verifier, the overwhelming majority of the verification calls did not include this question.<sup>120</sup>

And *sixth*, regardless of the verification calls' numerous shortcomings, such calls are legally insufficient to cure the misrepresentations made during the initial sales calls.

Fraudsters cannot blithely make false statements and promises to consumers and then attempt to cure them by recording a quick "verification call." *See, e.g., FTC v. USA Fin., LLC*, 415 Fed. Appx. 970, 973 (11th Cir. 2011) (affirming summary judgment for the FTC and rejecting the "verification call" defense, holding that "[t]he verification scripts ... failed to dispel the confusion that the defendants' representations created among reasonable consumers."').<sup>121</sup>

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<sup>116</sup> Px. 150 (Murray Dep.) at 70:16-19 ("Q. Did you tell clients that they had to say yes to the questions during the verification call; otherwise, a sale couldn't happen? A. Yes.").

<sup>117</sup> *See, e.g.,* Px. 119 (Hubbard Dec.), ¶ 9; Px. 121 (L. Brown Dec.), ¶ 5; Px. 135 (Hattox Dec.), ¶ 4.

<sup>118</sup> *See, e.g.,* Px. 128 (Yancik Dec.), ¶¶ 7-9; Px. 145 (Johnston Dec.), ¶¶ 19-20.

<sup>119</sup> *See, e.g.,* Px. 114 (Dunn Dec.), ¶¶ 6-7; Px. 151 (S. Wilson Dep.) at 42:1-21; Px. 145 (Johnston Dec.), ¶¶ 18, 20; Px. 145, Att. C (Ferguson Transcript) at 4:25-5:4; Px. 145, Att. B (Eubias Transcript) at 4:21-5:17.

<sup>120</sup> Px. 145 (Johnston Dec.), ¶ 17 & Att. A.

<sup>121</sup> *See also* *FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d 627 (7th Cir. 2005) (finding a violation of the FTC Act for making misrepresentations during sales calls, even though the calls concluded with a recorded "verification"); *accord* *FTC v. Publs. Bus. Servs.*, No. 2:08-CV-00620, 2010 U.S. Dist. LEXIS 34336, \*50 (D. Nev. Apr. 7, 2010); *FTC v. City West Advantage, Inc.*, No. 2:08-CV-00609, 2008 U.S. Dist. LEXIS 71608, \*13-14 (D. Nev. July 22, 2008); *FTC v. Debt Solutions, Inc.*, No. C06-298, 2006 U.S. Dist. LEXIS 34403 (W.D. Wash. Apr. 3, 2006); *FTC v. Grant Connect, LLC*, 2011-2 Trade Cas. (CCH) P77, \*50 (D. Nev. Oct. 25, 2011) ("A defendant violates the Act if its advertisement 'induces the first contact through deception, even if the buyer later becomes fully informed before entering the contract.'") (citation omitted); *FTC v. Med. Billers Network, Inc.*, 543 F. Supp. 2d 283, 304 (S.D.N.Y. 2008) ("The law is violated if the first contact ... is secured by deception ... even though (continued)

### 3. *No Evidence of Sales/Rentals by VPS*

Defendants have attempted to justify their fraud by claiming that VPS was responsible for significant numbers of timeshare sales. While testifying as VPS's 30(b)(6) representative, defendant Wilson claimed that he had evidence of offers for VPS's timeshare properties on his Hotmail account and agreed to share them with the FTC.<sup>122</sup> Nevertheless, when the FTC requested these "offers," Defendants failed to provide any such evidence or information.<sup>123</sup>

Moreover, deposition testimony from Wilson and VPS employees confirms the lack of sales and rentals at VPS during the relevant period.<sup>124</sup> In a "confirmation document" sent to VPS's customers after they had paid the up-front fee, VPS admitted that "the ratio of the number of timeshare interests [sic] listings for sale versus the number of timeshare interests sold by Vacation Property Services is zero for each of the previous two calendar years."<sup>125</sup>

Even assuming, *arguendo*, that admissible evidence existed of some VPS's customers selling or renting their timeshares, such hypothetical evidence would have no bearing on the Defendants' liability. The Complaint alleges that Defendants lied about the existence of

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the true facts are made known to the buyer before he enters into the contract of purchase ....") (citation omitted).

<sup>122</sup> Px. 152 (VPS Dep.) at 86:7-20.

<sup>123</sup> See Px. 154 (FTC's 2nd Reqs. for Prod'n of Docs. to Wilson and VPS), Req. Nos. 2-3; Px. 155 (FTC's 2nd Set of Interrogs. to VPS), Interrogs. 3-5; Px. 156 (Nov. 29, 2011 email from Robert Eckard containing Wilson and VPS's discovery "responses"); see also Px. 157 (FTC's 2nd Set of Reqs. for Prod'n of Docs. to Taylor), Req. No. 2; Px. 158 (Dec. 8, 2011 email from David Taylor containing his discovery "responses").

<sup>124</sup> See, e.g., Px. 152 (VPS Dep.) at 81:10-82:5 ("Q. Do you know if any consumer sold its timeshare through VPS in 2011? A. I don't know. Q. Do you know if any consumer sold its timeshare through VPS in 2010? A. I don't know. Q. Do you know if any consumer sold its timeshare through VPS in 2009? A. I don't know. Q. Do you know if any consumer sold its timeshare through VPS in 2008? A. I don't know. Q. Do you know if any consumer sold its timeshare in 2007 through VPS? A. I don't know. Q. Do you know if any consumer sold its timeshare through VPS in 2006? A. I don't know."). Mr. Wilson had no knowledge of any sales, even though the FTC identified "Timeshares sold and/or rented due to VPS's efforts" as a 30(b)(6) deposition topic. Px. 159, (Am. Notice of Rule 30(b)(6) Dep. of VPS), Att. A, #18. See also Px. 151 (S. Wilson Dep.) at 69:13-22 (no knowledge of sales); Px. 149 (J. Wilson Dep.) at 44:14-25 (cannot recall a single instance of a sale).

<sup>125</sup> See, e.g., Px. 7 (Skiba Dec.) [D.E. 3-5], Att. A, FTC-VPS 000087, ¶ 5; Px. 18 (Gray Dec.) [D.E. 3-7], Att. A, FTC-VPS 000181, Terms #5; Px. 19 (Hinson Dec.) [D.E. 3-7], Att. A., FTC-VPS 000191, Terms #5; Px. 126, (continued)

buyers and the likely speed of sales. The FTC has provided irrefutable evidence of Defendants' liability for these lies. Some VPS customers *may* have sold or rented their timeshares. But, even if there were evidence of sales, there is no evidence that VPS's website led to such sales.

**D. The Individual Defendants Are Personally Liable for the Unlawful Acts**

To obtain equitable and monetary relief against Wilson and Taylor, the FTC must establish that they (1) participated directly in the unlawful acts or practices or had authority to control them; and (2) had some knowledge of these acts or practices.<sup>126</sup> *RCA*, 727 F. Supp. 2d at 1339. "Authority to control a company's practices may be demonstrated by active participation in the corporate affairs, including assuming duties as a corporate officer." *Id.* "The knowledge component does not require proof of a subjective intent to defraud; it may be satisfied by a showing of actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth." *FTC v. FTN Promo., Inc.*, No. 8:07-CV-1279, 2008 WL 821937, \*2 (M.D. Fla. March 26, 2008) (quotations and citation omitted).<sup>127</sup> In addition, "the degree of participation in business is probative of knowledge." *RCA*, 727 F. Supp. at 1340.

The Statement of Undisputed Facts details defendants Wilson and Taylor's key roles in the fraud. Their ownership of, and executive and managerial positions in, VPS, as well as their own deposition testimony, make it plain that they participated in this scam and controlled

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Page 8 (Galvin Dec.) Terms #5; Px. 113, Page 5 (Hullinger Dec.) Terms #5.

<sup>126</sup> The FTC is not required to prove knowledge when seeking only injunctive relief. *See, e.g., FTC v. Garvey*, 383 F.3d 891, 900 (9th Cir. 2004); *accord FTC v. Medlab, Inc.*, 615 F. Supp. 2d 1068, 1081 (N.D. Cal. 2009).

<sup>127</sup> *See also Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1368 (11th Cir. 1988) ("proof of a party's intent has (continued)

the entity through which it was executed. Thus, Wilson and Taylor are liable for the unlawful practices at issue here.<sup>128</sup>

#### **E. VPS and VPS 31<sup>st</sup> St. Operated As a Common Enterprise**

Although Defendants are liable for their conduct specifically with respect to VPS, as demonstrated above, Defendants are also liable for the fraudulent acts and practices of VPS 31<sup>st</sup> St. based on the common enterprise relationship between the two offices. “When determining whether a common enterprise exists, courts look to a variety of factors, including: common control, the sharing of office space and officers, whether business is transacted through ‘a maze of interrelated companies,’ the commingling of corporate funds and failure to maintain separation of companies, unified advertising, and evidence which ‘reveals that no real distinction existed between the Corporate Defendants.’” *FTC v. Wolf*, No. 94-8119, 1996 WL 812940, \*7-8 (S.D. Fla. Jan. 30, 1996).<sup>129</sup>

As set forth in Section II.B.2, above, there is overwhelming evidence of the common enterprise between VPS and VPS 31<sup>st</sup> St. In fact, VPS’s own Florida telemarketing license applications list Perry as a “Principal” and “Manager” at VPS.<sup>130</sup> Accordingly, Defendants are also responsible for the fraud at VPS 31<sup>st</sup> St. – fraud that was extensively documented in the

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no bearing on the question whether a section 5 violation has occurred”).

<sup>128</sup> Taylor remained liable until at least July 2010 – the date of the last known profit payment from VPS to Taylor. See Section II.B.3; see also *FTN Promo.*, 2008 WL 821937 at \*8 (“even if [defendant’s] direct participation were disregarded, his receipt of profits from the telemarketing scheme would support the partial freeze of his assets”). And even if Taylor’s culpability ended in December 2007, the evidence discussed in Section II. includes extensive pre-December 2007 evidence, including numerous consumer declarations. See, e.g., Px. 137 (Patton Dec.), ¶ 3; Px. 124 (Peart Dec.), ¶ 3; Px. 111 (M. Brown Dec.), ¶ 3; Px. 119 (Hubbard Dec.), ¶ 3; Px. 125 (Jolly Dec.), ¶ 3; Px. 112 (Strom Dec.), ¶¶ 2-3; Px. 129 (Morris Dec.), ¶ 3; Px. 114 (Dunn Dec.), ¶ 3; Px. 120 (Taylor Dec.), ¶ 3; Px. 133 (Miller Dec.), ¶ 3; Px. 123 (C. Wilson Dec.), ¶ 3; Px. 116 (Blumberg Dec.), ¶ 3; Px. 135 (Hattox Dec.), ¶ 2; Px. 137 (Patton Dec.), ¶ 3; Px. 138 (Bergin Dec.), ¶ 3.

<sup>129</sup> See also *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1173 & 1175 (1st Cir. 1973); *FTC v. Capital Choice Consumer Credit, Inc.*, No. 02-21050 CIV, 2004 WL 5149998, \*24 (S.D. Fla. Feb. 20, 2004); *FTC v. J.K. Pub., Inc.*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000).

FTC's TRO Motion<sup>131</sup> and, thereafter, admitted by Defendants.<sup>132</sup>

#### **F. Final Order**

In light of the irrefutable, overwhelming evidence of Defendants' callous, long-running fraud, the FTC requests that the Court grant it summary judgment and enter the attached, proposed final order. The attached order contains conduct prohibitions nearly identical to those entered against Perry and VPS 31<sup>st</sup> St. [D.E. 97]. The proposed order includes, *inter alia*, bans on: (1) telemarketing and (2) timeshare resale and rental products and services.<sup>133</sup> These bans are appropriate in light of the long-running nature of Defendants' timeshare-related telemarketing fraud and their failure to abide by the conduct prohibitions in the AVC that should have stopped Defendants' fraud years ago. Moreover, defendant Wilson worked at a timeshare resale company that was shut down by regulatory action prior to starting VPS and, after VPS closed, Wilson began working at another timeshare resale company.<sup>134</sup> And defendant Taylor started another VPS office that paid the Florida AG to settle allegations that it engaged in fraud.<sup>135</sup> The conduct prohibitions in the proposed final order will help ensure that Defendants do not perpetrate similar scams on additional victims in the future.

The monetary provisions of the proposed final order requiring restitution and disgorgement<sup>136</sup> of \$9,550,641.94,<sup>137</sup> are based on Defendants' own financial documents, as

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<sup>130</sup> See note 80, *supra*.

<sup>131</sup> See FTC's Motion for a Temporary Restraining Order [D.E. 3], Section II.A.; see also Px. 22 (transcripts of undercover calls with Audra Howard) and various consumer declarations – Px. 1-6, 8-15, 17 [D.E. 3-1 to 3-7].

<sup>132</sup> See Px. 153 (PI Hearing Transcript) at 58:24–59:1 (Mr. Eckard, representing Defendants after having withdrawn as counsel for Perry and VPS 31<sup>st</sup> St.: “Mr. Perry, rightfully so, entered the stipulated preliminary injunction because of the culpability on his part.”).

<sup>133</sup> See Proposed Order (attached), Sections I-II.

<sup>134</sup> See Section II.B.1, *supra*; Px. 147 (A. Wilson Dep.) at 28:19-25.

<sup>135</sup> See note 90, *supra*.

<sup>136</sup> *Gem Merchandising Corp.*, 87 F.3d at 469 (“Among the equitable powers of a court is the power to grant (continued)

well as those of VPS 31<sup>st</sup> St.<sup>138</sup> The amounts reflected in the attached chart include VPS's gross income, i.e., income less refunds paid to consumers and chargebacks.<sup>139</sup>

Defendants' victims deserve restitution. Many of these victims fell prey to Defendants' deceitful promises of quick money after finding themselves in a precarious financial position or difficult personal situation.<sup>140</sup> They believed Defendants when they were told that their timeshare would be sold or rented quickly, thereby ending burdensome maintenance fees and freeing up much needed equity, if only they would agree to pay Defendants' up-front fee. Defendants preyed upon their victims' need and desire to quickly sell or rent their timeshares, extracting several hundred – even thousands – of dollars from individual victims premised on Defendants' false promises of buyers and renters in the wings or quick sales and rentals. Equity demands that they be ordered to give up *all* of the proceeds of their fraud in the long overdue effort to repay at least some of the money they stole from American consumers during VPS's decades-long scam. VPS was simply “a big fat lie.”

#### IV. CONCLUSION

The FTC respectfully requests that this Court end VPS's decades-long fraud by granting summary judgment to the FTC and entering the proposed final order.

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restitution and disgorgement.”); *id.* at 470 (“[S]ection 13(b) permits a district court to order a defendant to disgorge illegally obtained funds. To hold otherwise would permit a defendant to retain such funds simply by keeping poor records. Such a result would permit unjust enrichment and undermine the deterrence function of section 13(b). Further, ... a court may order the funds paid to the United States Treasury.”).

<sup>137</sup> Plus pre-judgment interest.

<sup>138</sup> Px. 146 (Vera Supp. Dec), ¶¶ 3-4 & Att. A; *see also* Proposed Order (attached), Section V.

<sup>139</sup> *RCA*, 727 F. Supp. 2d at 1336 (“In a Section 13(b) action of this kind, the proper measure of restitution is the purchase price of Defendants' services less any refunds paid to consumers.”).

<sup>140</sup> *See* note 18, *supra*.

Dated: January 6, 2012

Respectfully submitted,

/s/ William T. Maxson

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**Certificate of Service**

I hereby certify that on January 6, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will send a notice of electronic filing to counsel of record. I also served defendants David Taylor, Albert Wilson, and Vacation Property Services, Inc. via e-mail and FedEx.

/s/ William T. Maxson

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