

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

In re SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

**FTC'S MOTION IN SUPPORT OF THE REDRESS PLAN
AND EXECUTIVE SUMMARY THEREOF**

Following careful analysis and consideration, the FTC proposes a Redress Plan (“Redress Plan”) (Attachment A hereto) designed to maximize consumer recovery from the wrongdoing Andris Pukke, Luke Chadwick, Peter Baker, and their associates perpetrated. Critically, the Redress Plan enjoys the strong support of both the Receiver and the Government of Belize. (Attachment B hereto). The FTC explains the Redress Plan through the five-part Executive Summary below.

First, we outline the Redress Plan’s primary goals, as well as certain key redress limitations that result from the situation Defendants created. Second, the FTC provides general information about the proposed process including the Redress Plan’s several phases (notice and claims submission, election, and implementation). Third, the FTC summarizes additional highlights and considerations. Fourth, the FTC discusses several specific important features the Redress Plan contains that address certain difficult issues. Finally, as discussed below, the Redress Plan properly measures consumer injury based on the total amount a consumer paid rather than the contract price Defendants assigned to a given lot or other arbitrary criteria.

Overall, although there is no perfect solution, the FTC endorses the Redress Plan as a practical and equitable way to redress the consumers Defendants’ malfeasance injured. For the reasons herein, the Court should enter the Redress Plan.¹

¹ Notably, the Court’s “authority to award and fashion equitable relief,” such as the Redress Plan, is “necessarily broad.” *Porter v. Clarke*, 923 F.3d 348, 364 (4th Cir. 2019)

I. The Redress Plan Furthers Several Primary Goals Despite Limitations Defendants Created.

A. The Redress Plan Furthers Several Primary Goals.

Defendants' scheme left the FTC and Receiver with an extraordinarily complicated and messy situation involving more than \$100 million in losses, substantial undeveloped real estate in Belize, incomplete records, and hundreds of understandably desperate lot purchasers²—many of whom have uncertain (and sometimes conflicting) claims and rights. Nevertheless, the Redress Plan achieves important practical and policy objectives:

▪ **Notice and Opportunity.** The Redress Plan contains extensive notice provisions that will ensure all lot purchasers have an opportunity to participate. The Redress Plan far exceeds the weak notice provisions courts sometimes approve in analogous claims-made resolutions. It includes multiple “gold standard” features including, by way of example only, requirements that the Receiver: (i) communicate with prospective participants multiple times to solicit claims, *see, e.g.*, PXA at 21, § II(C); and (ii) where necessary, make additional communications tailored to individual claimants to enable them to cure submissions that may be incomplete, *id.* at 22, § II(G)(1). It also requires multiple clear and conspicuous disclosures regarding deadlines, *see, e.g., id.*, and follow up from the Receiver should it appear likely the claimant may miss certain key deadlines.³

(quoting *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953)). In fact, the FTC Act “gives the federal courts broad authority to fashion appropriate remedies for violations of the Act. *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir.1994) (citations omitted) (internal quotation marks omitted). *See also FTC v. Health Formulas, LLC*, No. 14-cv-01649, 2015 WL 2130504, *5 (D. Nev. May 6, 2015) (“The court’s power to supervise the receivership and determine appropriate remedies is extremely broad.”) (quotation omitted).

² In this memorandum, we use phrases such as “lot purchaser” informally without intending to incorporate precisely the definitions that the Redress Plan contains. The memorandum intends to summarize the Redress Plan and, as such, it is necessarily general. Put differently, this memorandum serves to introduce the Redress Plan, it is not the Redress Plan itself. Consumers or other interested parties **should not rely on this summary and should instead review the Redress Plan**, which contains important caveats and details impractical to discuss here. Although nothing herein is meant to conflict with the Redress Plan, to the extent anything does, or arguably does, the Redress Plan governs. The FTC proposes that the Court enter the Redress Plan (Attachment A hereto), and commentary or description regarding Attachment A does not form part of the order that the FTC proposes the Court enter.

³ *See* PXA at 21-22, § II(F), 28, § III(E); 29, § III(F)(6); 32-33, § III(K); 34, § III(L)(6).

- **Consumer Choice.** Wherever possible, the Redress Plan furthers consumer choice. Among other features, consumers electing to remain within reorganized Sanctuary Belize (“New Sanctuary”) or Kanantik will receive the same potential cash redress payment as consumers who choose to leave. *See* PXA at 27, § III(C)(1); *id.* at 31, § III(I)(1).
- **Clear Disclosures.** Consumers must necessarily make consequential financial decisions, including whether to elect to remain a lot owner. Over time, that choice could mean a difference of tens of thousands of dollars (or even hundreds of thousands) for individual consumers, with a primary variable being the market for New Sanctuary lots many years in the future—which is promising in some respects yet highly uncertain in others. Before deciding, the Redress Plan requires that consumers acknowledge clear and detailed disclosures about the risks associated with their decision regardless of what they decide. *See* PXA at 28, § III(F)(1)-(2); *id.* at 33, § III(L)(1)-(2).
- **Equitable But Not Perfectly Equal Treatment.** The Redress Plan does emphasize that consumers’ opportunities for recovery correlates with their injury (*i.e.*, larger losses mean larger recoveries), and ensuring that similarly-situated consumers have the opportunity to achieve similar outcomes. However, the Redress Plan does not strive for perfect equality where, in this context, that result is impossible, legally improper, practically unworkable, or would substantially reduce consumer welfare overall.
- **Coordination with Belizean Authorities.** The FTC maintains a cooperative relationship with the Government of Belize, which supports the Redress Plan. PXB. The Redress Plan creates a strong foundation from which all parties involved can continue to coordinate with Belizean officials.

B. Defendants’ Malfeasance Limits Redress Possibilities.

Despite the likelihood that the Redress Plan will achieve these goals, there are significant risks and limitations arising from the circumstance Defendants created. As discussed below, there is no plan that will come anywhere close to compensating lot purchasers fully, nor is there any solution that will leave everyone happy. Specifically, Defendants’ massive real estate deception means unmet obligations to lot purchasers that vastly exceed any amount that the FTC and Receiver have recovered, or plausibly might recover. This “limited fund” exacerbates the problem facing the Court and FTC in many ways; for instance, it means that increasing the recovery of any particular lot purchaser or class of lot purchasers necessarily decreases the recovery another lot purchaser or class of lot purchasers will enjoy. Notably, however, the complexity and competition for resources this “limited fund” scenario involves should not obscure that Defendants—Andris Pukke, Luke Chadwick, Peter Baker, John Usher, and their co-conspirators—are responsible for the massive shortfalls to consumers, not the Redress Plan or the difficult decisions it reflects.

II. The Redress Plan Involves Informational, Election, and Implementation Phases.

A. The Redress Plan Begins With a Notice and Claims Phase To Ensure Comprehensive and Informed Lot Purchaser Participation.

Should the Court enter the proposed Redress Plan, the Receiver will promptly communicate with lot purchasers from both Sanctuary Belize and Kanantik regarding what they should expect regarding the redress process. PXA at 20, § II(A). The Receiver will publicize and hold two or more information sessions for consumers about the Redress Plan. *Id.* at § II(B). The Receiver will then attempt to contact every lot purchaser, provide a claim application, and solicit its return.⁴ *Id.* § II(C). Importantly, the Receiver must make the claim applications

⁴ Unlike many claims-made resolution proposals, including those typical in some class action contexts, the Receiver likely has, or can readily obtain, the name of every potentially eligible consumer and associated contact information. The Receiver must attempt to contact each consumer multiple ways (by email, mail, and phone if necessary). PXA at 20, at § II(C)(1).

deadlines clear, *see id.* at 22, § II(D), and before the deadline, contact every consumer that received but has not returned a claim application, *id.* at II(F).

Through the claim application, consumers will provide the Receiver with information to determine their eligibility, their interest in a particular lot, and the amounts they paid. *See id.* at 2, § I(4). Stated very generally, consumers who purchased lots through the Sanctuary Belize or Kanantik retail sales process are eligible. *See id.* at 3, § I(5). Importantly, if a claim application is incomplete, the Receiver must allow the consumer time to supplement it, and clear instructions regarding how to do so. *See id.* at 22, § II(G)(1). The Receiver will then notify all applicants regarding its eligibility determinations and provide approved applicants with appropriate election form materials. *See id.* at 25 § III(B), 30 § III(H). As with other decisions the Receiver makes pursuant to the Redress Plan, consumers may challenge adverse eligibility determinations before the Court. *See id.* at 42, § VI(B).

B. During the Election Phase, Lot Purchasers Will Have a Clear Choice Between Remedies.

Once the Receiver confirms consumers' eligibility, Sanctuary Belize lot purchasers will receive a pro rata share of Sanctuary Belize assets the Receiver or FTC collect, and Kanantik lot purchasers will receive a pro rata share of Kanantik assets the Receiver or FTC collect.⁵ *See id.* at 25 § III(B), 30 § III(H). In addition to their pro rata share, most Sanctuary Belize consumers will choose between two options: (1) returning their lot to the Receiver (and, thus, to New Sanctuary Inventory), with no obligation to make payments under their contract (regardless of the balance), or other obligations to the Defendants, Receiver, or future developer; or (2) keeping their lot, accepting a reformed contract that will reduce the price from 25%-35%,⁶ and satisfying

⁵ Pro rata distribution means eligible consumers will recover cash proportional to their lot payments relative to other eligible consumers. If, hypothetically, there are three eligible consumers, one (Arthur) who paid \$3.00 to Sanctuary Belize, one (Bertha) who paid \$2.00, and one (Cristobal) who paid \$1.00, then Arthur will receive 50% of any recovery (3/6), Bertha 33% (1/3), and Cristobal 17% (1/6). Thus, given that Arthur paid 50% more than Bertha, his cash recovery will always be 50% greater.

⁶ As discussed below, consumers will receive relatively larger discounts if they agree not to remarket their lot for up to five years, a feature intended to prevent or reduce a potential glut of remarketed lots. Very importantly, the 25%-35% discount is not an estimate of the lots'

any remaining balance with a ten-year, interest-free loan payable to the Receiver or its assignee (a new developer) in equal monthly installments. *See id.* at 25 § III(B). Consumers will then communicate their election to the Receiver and execute the relevant materials including clear and conspicuous disclosures that the FTC must approve. *See id.* at 25 § III(B).

Next, most Kanantik lot purchasers will choose between three options: (1) keeping their Kanantik lot under a reformed contract; (2) returning their lot to the Receiver with no obligation to make payments under their contract (regardless of the balance), or other obligations to the Defendants, Receiver, or future developer; or (3) exchanging their Kanantik lot for one in New Sanctuary, accepting a reformed contract that will reduce the price of the new lot from 35%-45%, and satisfying any balance with a ten-year, interest-free loan payable to the Receiver or its assignee (a new developer) in equal monthly installments.⁷ *See id.* at 25 § III(B). As with Sanctuary Belize lot purchasers, Kanantik lot purchasers will then communicate their election to the Receiver and execute the relevant materials including clear and conspicuous disclosures that the FTC must approve. *See id.* at 25 § III(B).

C. After Lot Purchasers Make Elections, the Receiver Will Transition New Sanctuary to New Ownership.

After eligible consumers make elections, the Receiver will make pro rata distributions (and subsequent distributions if subsequent collections occur). *See id.* at 25 § III(B). The Receiver also will transition the existing Consumer Committee into a New Sanctuary homeowners' association, with New Sanctuary owners voting for new association board members. *See id.* Finally, as soon as practical, the Receiver will sell its interest in Kanantik

value. Rather, the discount reflects the FTC's desire to afford the largest possible discount without impairing New Sanctuary's receivables to the point where the development is no longer attractive to a qualified developer that might acquire the development (the Receiver will distribute proceeds from such an acquisition pro rata to eligible Sanctuary Belize lot purchasers whether or not they elect to maintain lots in New Sanctuary).

⁷ Kanantik has many fewer lot purchasers, no residents, and even less progress than Sanctuary Belize. Development there will also face competitive pressure from New Sanctuary. Some consumers may choose to keep their Kanantik lots; however, the prospects that Kanantik lot purchasers will have a buildable, saleable lot at some point, even in years, are dim.

(with proceeds to eligible lot purchasers), and its interest in New Sanctuary. *See id.* The Receiver must sell its interest in New Sanctuary to a qualified developer that agrees to provide security and complete various infrastructure and maintenance projects including, among other things, sufficient roads and utilities to ensure that every lot purchaser that becomes a New Sanctuary owner has a buildable lot. *See id.*

III. The Redress Plan Provides Lot Purchasers With Clear Choices and the Best Chance To Maximize Recovery Overall.

The Redress Plan is complex, and several additional considerations warrant separate mention because they further illustrate that the Redress Plan represents an appropriate use of the Court's broad equitable authority:

- **Support From the Government of Belize.** As discussed above, the Government of Belize supports the Redress Plan. *See* PXB. The support of the Government of Belize will work to victims' considerable benefit in many respects. Most important, a favorable environment for building, development, and other economic activity associated with the development will make New Sanctuary more attractive to qualified, properly financed developers that might purchase property and development rights. The Receiver will distribute any sale proceeds to Sanctuary Belize lot purchasers regardless of whether they elect to remain in New Sanctuary.⁸ *See* PXA at 27, § III(C)(1).

- **Prohibition on Defendants' Involvement.** As the Court is aware, the Defendants previously refused to relinquish their control over Sanctuary Belize. Most likely, they will attempt to re-assert control over New Sanctuary. Accordingly, the Redress Plan limits Defendants' access to New Sanctuary and prohibits them from any sort of direct or indirect involvement with the development, its HOA, or any new developer. Notably, under the Redress Plan, assignees of the Receiver's rights (including the new HOA, new developer, or their contractors) will face liability if they knowingly or negligently involve the Defendants.

⁸ Similarly, support from the Government of Belize is likely to facilitate the effective disposition of Kanantik to a buyer or buyers. Kanantik lot purchasers will receive the benefit of such a sale or sales. PXA at 46-47, § VIII(F), 48 § VIII(I).

▪ **Everyone Will Have the Choice To Obtain or Retain a New Sanctuary Lot.**

Many eligible consumers will not have straightforward claims to Sanctuary Belize lots for many reasons—as examples, they purchased in Kanantik, Defendants purportedly “foreclosed” on their lot or otherwise claimed to have taken it back, they sold their lot at a loss, or another consumer has a superior claim to their lot.⁹ In such cases, the Receiver will offer the eligible consumer an option to acquire or receive a lot from the Receiver’s New Sanctuary inventory. This is important because it will ensure that all eligible consumers have the opportunity to make an election and become or remain lot owners if they choose.

▪ **Best Chance of Long-Term Recovery.** Many consumers will face an extremely difficult choice regarding whether to remain lot owners, particularly given that the likelihood that any lot purchaser receives a near-term return on his or her investment is remote. In this difficult situation, the FTC is cognizant that the best-case scenario for many consumers could be to remain owners and resell their lot at some point years in the future. However, retaining ownership is risky and could increase losses—perhaps even substantially (many consumers will have to pay additional amounts to retain ownership, and over time, even consumers without balances will pay thousands in HOA fees, property taxes, and other expenses associated with ownership). The FTC developed the Redress Plan with attention to the importance that the development’s long-term success will have for consumers who elect to remain owners.

▪ **No Downside To Participation.** At least in this context, no redress plan should require that consumers participate, and the Redress Plan includes provisions to address the relationship between the receivership, its interests, and non-participating consumers. Importantly, however, the FTC strongly recommends that lot purchasers participate, and the robust notice requirements described above should assure every consumer has that opportunity. Once consumers submit claims (and, therefore, participate), some will fare relatively better given

⁹ Additionally, a very few consumers may have eligible claims without Sanctuary Belize lots because they purchased lots from Defendants elsewhere in Belize, or in Costa Rica, the Dominican Republic, or possibly another country. In general, these few consumers will be treated as Kanantik lot purchasers. *See* PXA at 37, § IV(G).

their particular circumstances, the election they make, or both. Importantly, however, the Redress Plan's design means that participating should not make any lot purchaser worse off. Put differently, the Redress Plan will benefit every eligible lot purchaser who submits a claim.

IV. The Redress Plan Contains Additional Features That Address Certain Difficult Issues.

As discussed above, Defendants are responsible for the difficult situation the consumers face. That situation involves many difficult issues, including several that the Court should note:

- **Competing Claims.** One of the most difficult issues is how the receivership will address situations in which multiple consumers have interests in the same lot. The most common such circumstance occurred because Defendants frequently sold a lot to a buyer, purported to repossess the lot, and then re-sold the lot to a second buyer without properly extinguishing the first buyer's rights to the lot. The Redress Plan awards the lot to the eligible consumer who would suffer the greatest loss if he or she does not receive the lot considering the totality of the circumstances, including whether anyone has built on the lot. *See* PXA at 23-24, § II(K).

- **Who Qualifies as an Eligible Consumer.** Defining who qualifies as an "eligible consumer" is complicated due to the scam's length and complexity as well as Defendants' haphazard and unlawful business practices. The Redress Plan intends to compensate people who one would commonly view as "consumers." Accordingly, and subject to various exceptions, *see* PXA at 3-4, § I(5), the Redress Plan covers parties whose rights derive from purchasing a lot through Defendants' retail sales process, and excludes parties that are provably liable for malfeasance at issue in this matter, *see id.*

- **Constructive Trust.** The Court may recall that, in the original *AmeriDebt* proceedings, the Court recognized "the doctrine of constructive trust which requires that any proceeds of wrongdoing may be properly ordered held in trust for the victims of the wrongdoing." *FTC v. AmeriDebt, Inc.*, 373 F. Supp. 2d 558, 565 (D. Md. 2005). The Court found that a constructive trust protected frozen assets from possible creditors (specifically, the IRS), because the claims would not apply to "property that was wrongfully obtained from

consumers.” *Id.* (“Under the same doctrine of constructive trust previously referred to, even if the IRS has placed liens on Defendants’ assets, those liens would not attach to property that was wrongfully obtained from consumers, precisely what the FTC alleges in this case.”). The same rationale applies here (and, in fact, the Final Order against Pukke, Baker and Chadwick already places most of their assets in constructive trust for victims, *see* ECF No. 1111 (Jan. 11, 2021) at 9).¹⁰ Although theoretically anyone, including Defendants themselves, their salespeople, taxing authorities, or miscellaneous trade creditors could have claims to receivership proceeds, the Redress Plan’s constructive trust will ensure that such claims are deferred until lot purchasers are made whole. *See* PXA at 47, § IX(A).

▪ **Receiver Expenses and Holdback Amount.** The FTC strives to ensure distributions as quickly as possible; however, in this complex matter, it is also necessary to minimize the risk that the Receiver will not be compensated for important work over a potentially significant period. Consequently, the Redress Plan permits the Receiver to defer distributing 10% of receivership collections until the receivership closes. *See* PXA at 10, §I(29); at 18, §(70); at 49, § IX(N).

V. The Redress Plan Properly Prioritizes Actual Loss Over Percentage Paid.

Some consumers that have fully paid for their lots (based on the prices Defendants originally set) have informed the FTC that they object to the Redress Plan. According to these consumers, fully-paid owners are allegedly disadvantaged because discounts on amounts owed will not benefit them, and they will not receive any additional compensation solely because they paid 100% of their original contract price. As discussed below, this viewpoint is understandable, but misguided for multiple reasons.

First, in the context of this case, consumer injury is generally unrelated to the percentage of a contract price the lot purchaser paid. For instance, a consumer who paid \$300,000 of a \$600,000 lot (50% paid) suffered an injury three times what a consumer who paid \$100,000 for a

¹⁰ The Redress Plan is broader because it includes significant additional assets the FTC and Receiver have recovered from other Defendants and Relief Defendants.

\$100,000 lot (100% paid). To further illustrate the point, consider whether the 100% paid consumer is likely to pay an additional \$200,000 to switch positions with his 50% paid neighbor—this is extremely unlikely, and if the fully-paid consumer thought such a swap made economic sense, the Redress Plan permits consumers to make this switch (if both parties consent).

Second, and relatedly, focusing on the benefits discounts provide partially-paid consumers ignores the corresponding and extremely significant risk such consumers may have to assume—many such consumers will have to invest additional money without any guarantee.¹¹

Third, any proposal that links compensation to percentage-paid creates arbitrary results because the fraud tainting Defendants' original contract prices rendered them prices untethered to anything beyond amounts Defendants thought they could collect. Using arbitrarily-derived criteria to determine an investment's worth is inappropriate. *See, e.g., In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229, 235 (2d Cir. 2011) (holding, in Ponzi scheme involving fabricated statements showing investment returns, that investors' claims should be determined based on amounts invested minus amounts withdrawn rather than statement balances because using the latter would mean "treating fictitious and arbitrarily assigned paper profits as real and would give legal effect to Madoff's machinations").

Fourth, although there are theoretical, unlikely scenarios in which a fully-paid consumer will fare worse than a partially-paid neighbor with an identical lot, there are also theoretical scenarios in which the same fully-paid consumer will fare better than a neighbor who owes a balance on an identical lot. It simply depends on how much Defendants charged for the (theoretical) identical lot, which is arbitrary:

- Arthur: Purchased a lot with a \$100,000 original price, paid in full (\$100,000 paid).
- Bertha: Purchased an identical lot¹² with a \$100,000 original price, and paid half (\$50,000 paid).

¹¹ The costliness of risk is demonstrated by the fact that riskier investments, compared to less risky investments, typically sell for a lower price or offer a higher average rate of return.

¹² In reality, what qualifies as an "identical" lot is subjective.

- Cristobal: Purchased an identical lot with a \$200,000 original price, and paid one-quarter (\$50,000 paid).

Assuming that pro rata distribution leads to a 15% recovery, further assuming that all three consumers elect to remain in New Sanctuary, and there are no other factors, they will have paid the following for their lot:

- Arthur will have paid a net of \$85,000 for the lot (\$100,000 original price minus a \$15,000 pro rata distribution).
- Bertha will have paid a net of \$67,500 for the identical lot (\$50,000 plus an additional \$25,000 to acquire the lot at a 25% discount of the original price, minus a \$7,500 pro rata distribution).
- Cristobal will have paid a net of \$142,500 for the identical lot (\$50,000 plus an additional \$100,000 to acquire the lot at a 25% discount of the original price, minus a \$7,500 pro rata distribution).

Arthur might understandably feel aggrieved in this (fairly implausible) hypothetical because Bertha paid less for the same lot. However, Cristobal might have the same sort of grievance with the hypothetical fully-paid consumer (Arthur) because Arthur paid less for the same lot. This helps underscore that the Redress Plan has no systematic bias against fully-paid consumers.¹³

Additionally, the Court could also consider the percentage each hypothetical consumer will recover. Assuming the lots are worthless—which is possible—Arthur will recover 15%. However, because Bertha and Cristobal will have invested additional capital, they will have a smaller percentage recovery than the fully-paid owner (10% for Bertha and 5% for Cristobal). In this regard, the “fully-paid critique” reflects an assumption—namely, that the lots will eventually be worth something significant—that not all consumers may share, and that may not be true.

Finally, even assuming some circumstances exist in which a partly-paid consumer will fare better than a fully-paid neighbor, the fact that someone else might be injured somewhat less is not a valid objection to a necessarily imperfect arrangement. As discussed above, truly perfect equity is not achievable realistically. The Redress Plan properly correlates compensation options

¹³ Importantly, various conceptual ways to reduce this particular theoretical imbalance will necessarily make remaining in New Sanctuary a less attractive option for non-fully paid lot purchasers—which is a result that strongly cuts against lot purchasers’ collective welfare.

with what consumers actually lost rather than their percentage paid (or any other arbitrary metric) and, as such, represents a fair exercise of the Court's equitable authority.

Conclusion

For all the aforementioned reasons, the Court should adopt the Redress Plan, which reflects the FTC's careful consideration and enjoys the strong support of both the Receiver and the Government of Belize.

Dated: January 21, 2021

Respectfully Submitted,

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Certificate of Service

I certify that on January 21, 2021, I caused to be served the foregoing filing, and all related documents, through ECF and otherwise by email or Federal Express to the following people and entities identified below:

Andris Pukke and entities he owns or controls at ekkup@msn.com;

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All persons and parties Appendix A hereto identifies (email or physical address information held and preserved by the FTC).¹⁴

/s/ Jonathan Cohen

¹⁴ The FTC understands that the Receiver will serve this submission, and the Redress Plan itself, on consumers and trade creditors.