

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

HOME RELIEF FOUNDATION, INC,
also d/b/a National Home Retention,

JOHN DICRISTOFALO, individually
and as owner, president, and
director of Home Relief Foundation,
Inc, and

JOSEPHINE AMANDA DICRISTOFALO,
individually and as owner, secretary,
and director of Home Relief
Foundation, Inc,

Defendants.

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Civil Case No. _____

**PLAINTIFF FEDERAL TRADE COMMISSION’S COMPLAINT
FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

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

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the 2009 Omnibus Appropriations Act, Public Law 111-8, Section 626, 123 Stat. 524, 678 (Mar. 11, 2009) (“Omnibus Act”), as clarified by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24, Section 511, 123 Stat. 1734, 1763-64 (May 22, 2009) (“Credit Card Act”), and amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act,

Public Law 111-203, Section 1097, 124 Stat. 1376, 2102-03 (July 21, 2010) (“Dodd-Frank Act”), 12 U.S.C. § 5538, to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Mortgage Assistance Relief Services Rule (“MARS Rule”), 16 C.F.R. Part 322, recodified as Mortgage Assistance Relief Services (“Regulation O”), 12 C.F.R. Part 1015, in connection with the marketing and sale of mortgage assistance relief services.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345; 15 U.S.C. §§ 45(a), 53(b), and 57b; and Section 626 of the Omnibus Act, as clarified by Section 511 of the Credit Card Act, and amended by Section 1097 of the Dodd-Frank Act, 12 U.S.C. § 5538.

3. Venue is proper in this District under 28 U.S.C. § 1391(b)(1)-(2) and (c)(1)-(2), and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. In addition, pursuant to 12 U.S.C. § 5538, the FTC enforces the MARS Rule, which requires mortgage assistance relief services (“MARS”) providers to make certain disclosures, prohibits certain representations, and generally prohibits the collection of an advance fee.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act; the MARS Rule; and Regulation O; and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A)-(B), and 57b; § 626, 123 Stat. at 678, as clarified by § 511, 123 Stat. at 1763-64, and amended by § 1097, 124 Stat. at 2102-03, 12 U.S.C. § 5538.

DEFENDANTS

6. Defendant **Home Relief Foundation, Inc**, also doing business as National Home Retention (collectively “Home Relief Foundation”) is a registered Texas non-profit corporation with its principal place of business at 8200 North Mopac Expressway, Suite 244, Austin, Texas 78759. At all times material to this Complaint, acting alone or in concert with others, Home Relief Foundation has advertised, marketed, provided, offered to provide, or arranged for others to provide MARS, as defined in 16 C.F.R. § 322.2, recodified as 12 C.F.R. § 1015.2. Home Relief Foundation transacts or has transacted business in this District and throughout the United States.

7. Home Relief Foundation has not obtained 501(c)(3) status from the Internal Revenue Service, 26 U.S.C. § 501(c). Home Relief Foundation operated for the economic benefit of for-profit companies and/or private persons and was therefore a “corporation” within the meaning of Sections 4 and 5(a) of the FTC Act, 15 U.S.C. §§ 44 and 45(a).

8. Defendant **John DiCristofalo** is or was an owner, president, and director of Home Relief Foundation, Inc. At all times material to this Complaint, acting alone or in concert with others, he formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Home Relief Foundation, including the acts and practices set forth in

this Complaint. John DiCristofalo resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

9. Defendant **Amanda DiCristofalo** is or was an owner, secretary, and director of Home Relief Foundation. At all times material to this Complaint, acting alone or in concert with others, she formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Home Relief Foundation, including the acts and practices set forth in this Complaint. Amanda DiCristofalo resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

COMMERCE

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

DEFENDANTS’ BUSINESS PRACTICES

Overview

11. From at least October 2010 until at least December 2013, Defendants engaged in a nationwide course of conduct to advertise, market, sell, provide, offer to provide, or arrange for others to provide mortgage assistance relief services, including mortgage loan modification and foreclosure prevention services.

12. Defendants lured consumers into purchasing loan modification services with promises that Defendants would negotiate with lenders to reduce consumers’ mortgage interest rates and/or make their mortgage payments more affordable.

13. In many instances, when marketing their services, Defendants claimed to have an affiliation with attorneys Gordon Hardin or Patrick Long. Mr. Hardin was only licensed to practice law in Texas. After Mr. Hardin's license was suspended in 2012, Defendants started claiming to have an affiliation with Patrick Long. Mr. Long is also only licensed to practice law in Texas.

14. Defendants marketed their loan modification services primarily through Internet websites that they controlled, including www.homerelieffoundation.org, www.ghardinlaw.com, and www.patlonglaw.com.

15. Defendants' website www.homerelieffoundation.org represented that Home Relief Foundation could help "reduce mortgage payments and stop foreclosure." The website also represented that Home Relief Foundation would "negotiate a loan modification on your behalf to reduce mortgage payments (yes, even for an Upside Down Loan) and reduce interest rates." The website further represented that "[e]ven if you are late or behind on mortgage we CAN help." The website then directed consumers to fill out the contact information or call to speak with a "modification specialist."

16. Defendants' websites www.ghardinlaw.com and www.patlonglaw.com represented:

- a. "Has your mortgage payment become more of a burden than you can afford? Are you having to face foreclosure and the possible loss of your home?" Both websites then directed consumers to speak with "loan modification experts" about an option that is available to people that are at risk of losing their homes to foreclosure.

- b. “A Loan Modification is where your current lender modifies the terms of your current mortgage with the goal of providing terms that will work for you. This can include changing the interest rate of the loan, changing the term of the loan, and even forgiving delinquency fees. Since this is a modification of your existing loan, and not a new loan, a new closing will not be required. This option is now available even to those who are delinquent in their payments.”
 - c. Defendants’ operation as being “a collaboration of financial and legal professionals with countless years of professional experience, providing solutions that work for you.”
 - d. “It is possible to do your own modification, but without industry experts on your side, it could become a long, expensive, even futile process. Let our loan modification experts use their industry strength to make your Loan Modification happen.”
17. Defendants’ website www.patlonglaw.com further represented:
- a. “We are continuing our efforts with financial institutions like yours, building and maintaining our relationships with loss mitigation departments to help mitigate the unprecedented number of potential foreclosures. Our success is your success.”
 - b. Defendants could help when lenders had been unwilling to work with consumers, stating: “This is typical of the sort of response borrowers get when contacting a lender directly. They say that you signed the mortgage, so live with it. But when WE CALL, its [*sic*] a different story. Our industry contacts and legal team provide the leverage necessary to get lenders to work with us when borrowers get

the cold shoulder. Let us work on your behalf to work out a solution so you don't hit the 'brick wall.'"

- c. "We can provide you with comprehensive legal support in many areas."

The Sales Pitch

18. Defendants initiated contact with consumers in many ways, including, but not limited to, emails, inbound telephone calls from consumers who had visited Defendants' websites or viewed other marketing materials, and outbound calls to consumers who provided their contact information through Defendants' websites.

19. During telephone calls with consumers, Defendants' representatives offered to help consumers obtain mortgage loan modifications that would reduce consumers' interest rates and/or monthly mortgage payments.

20. In numerous instances, after obtaining information about consumers' financial situations, Defendants' representatives told consumers that Defendants would be able to obtain a loan modification for the consumer. Defendants' representatives made these statements even when consumers stated that they had previously applied for, but been denied, modifications by their lenders.

21. In numerous instances, Defendants' representatives told consumers that Home Relief Foundation would be able to obtain the loan modification because of a government program, their knowledge of the industry, relationships developed with consumers' lenders, or because of the legal representation provided by Gordon Hardin or Patrick Long.

22. In numerous instances, Defendants requested or received payment prior to the consumer executing a written agreement with the consumer's lender or servicer that incorporated the offer of mortgage assistance relief that Defendants obtained from the

consumer's lender or servicer. For their loan modification services, Defendants' representatives told consumers they had to pay an advance fee, ranging from \$500 to \$4,000, with the typical charge appearing to be \$2,550.

23. So that consumers would be able to afford Defendants' fee, Defendants often instructed consumers to stop paying on their current mortgages. In one instance, Defendants told a consumer that he was required to stop paying on his mortgage to obtain a loan modification. In another instance, Defendants told a consumer that it would be difficult to obtain a loan modification if he was paying his loan on time. Defendants failed to disclose that consumers who stopped paying their mortgages could lose their homes or damage their credit ratings.

Post-Sales Pitch Communications

24. Defendants often sent consumers an email informing consumers that they were "pre qualified for the Making Homes Affordable Program."

25. The prequalification email contained documents for consumers to complete to "start the modification process." The documents typically included: (a) a Borrower's Authorization form; (b) a Notice of Representation form; (c) an Attorney/Client Engagement Agreement; (d) an Auto Pay Credit Card Authorization form; and (e) a Finance Application. Home Relief Foundation directed consumers to fax their completed forms to Home Relief Foundation.

26. These documents failed to contain the following disclosures:

(1) "You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer].

If you reject the offer, you do not have to pay us. If you accept the offer, you will

have to pay us [insert amount or method for calculating the amount] for our services.” and

(2) “[Name of company] is not associated with the government, and our service is not approved by the government or your lender.”

27. Consumers were required to complete and return the documents and pay an advance fee prior to obtaining the promised loan modifications with consumers’ lenders.

Post-Enrollment

28. In numerous instances, after purchasing Defendants’ services, consumers received an email from Defendant Amanda DiCristofalo that confirmed receipt of the consumers’ documents and stated that a representative would be reviewing the consumers’ files.

29. Consumers also received automated status update emails from Defendants. Often, the status update emails requested additional documents or informed consumers that they were waiting on a response from the consumers’ lenders.

30. When consumers called to inquire about the status of their loan modifications, Defendants’ representatives requested additional documents or told consumers that they were waiting on a response from the consumers’ lenders.

31. In numerous instances, after consumers purchased Defendants’ loan modification services and paid the requested advance fees, Defendants failed to obtain a loan modification to reduce consumers’ mortgage interest rate or make consumers’ mortgage payments more affordable.

VIOLATIONS OF THE FTC ACT

32. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

33. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

(Deceptive Representations Regarding Substantially More Affordable Loan Payments, Substantially Lower Interest Rates, or Foreclosure Avoidance)

34. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale or sale of mortgage assistance relief services, Defendants represented, directly or indirectly, expressly or by implication, that Defendants typically would obtain mortgage loan modifications for consumers that would make their payments substantially more affordable, would substantially lower their interest rates, or would help them avoid foreclosure.

35. In truth and in fact, Defendants typically did not obtain mortgage loan modifications for consumers that would make their payments more affordable, would substantially lower their interest rates, or would help them avoid foreclosure.

36. Therefore, Defendants' representations as set forth in Paragraph 34 were false and misleading and constituted a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S. C. § 45(a).

COUNT II

(Deceptive Representations Regarding Loan Modification Services)

37. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale or sale of mortgage assistance relief services, Defendants represented, directly or indirectly, expressly or by implication, that the consumer is not obligated to, or should not, make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan.

38. In truth and in fact, the consumer is obligated to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan.

39. Therefore, Defendants' representation as set forth in Paragraph 37 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE MARS RULE

40. In 2009, Congress directed the FTC to prescribe rules prohibiting unfair or deceptive acts or practices with respect to mortgage loans. Omnibus Act, § 626, 123 Stat. at 678, as clarified by Credit Card Act, § 511, 123 Stat. at 1763-64. Pursuant to that direction, the FTC promulgated the MARS Rule, 16 C.F.R. Part 322, all but one of the provisions of which became effective on December 29, 2010. The remaining provision, Section 322.5, became effective on January 31, 2011.

41. The MARS Rule and Regulation O define "mortgage assistance relief service provider" as "any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service" other than the dwelling loan holder, the servicer of a dwelling loan, or any agent or contractor of such individual or entity. 16 C.F.R. § 322.2, recodified as 12 C.F.R. § 1015.2.

42. Since January 31, 2011, the MARS Rule and Regulation O prohibit any mortgage assistance relief service provider from requesting or receiving payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer's loan holder or servicer that incorporates the offer that the provider obtained from the loan holder or servicer. 16 C.F.R. § 322.5(a), recodified as 12 C.F.R. § 1015.5(a).

43. The MARS Rule and Regulation O prohibit any mortgage assistance relief service provider from misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:

- (a) the likelihood of negotiating, obtaining, or arranging any represented service or result. 16 C.F.R. § 322.3(b)(1), recodified as 12 C.F.R. § 1015.3(b)(1); and
- (b) the consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan. 16 C.F.R. § 322.3(b)(4), recodified as 12 C.F.R. § 1015.3(b)(4).

44. The MARS Rule and Regulation O prohibit any mortgage assistance relief service provider from failing to place a statement in every general commercial communication disclosing that (i) the provider is not associated with the government and its service is not approved by the government or any lender, and (ii) in certain cases, a statement disclosing that the lender may not agree to modify a loan, even if the consumer uses the provider's service. 16 C.F.R. §§ 322.4(a)(1)-(2), recodified as 12 C.F.R. §§ 1015.4(a)(1)-(2).

45. The MARS Rule and Regulation O prohibit any mortgage assistance relief service provider from failing to place a statement in every consumer-specific commercial communication (i) confirming that the consumer may stop doing business with the provider or reject an offer of mortgage assistance without having to pay for the services, (ii) disclosing that the provider is not associated with the government and its service is not approved by the government or any lender, and (iii) in certain cases, a statement disclosing that the lender may not agree to modify a loan, even if the consumer uses the provider's service, and (iv) in certain cases, a statement disclosing that if they stop paying their mortgage, consumers may lose their

home or damage their credit. 16 C.F.R. §§ 322.4(b)(1)-(3) and (c), recodified as 12 C.F.R. §§ 1015.4(b)(1)-(3) and (c).

46. Pursuant to the Omnibus Act, § 626, 123 Stat. at 678, as clarified by the Credit Card Act, § 511, 123 Stat. at 1763-64 and amended by the Dodd-Frank Act, § 1097, 124 Stat. at 2102-03, 12 U.S.C. § 5538, and pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the MARS Rule or Regulation O constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

(Collection of Advance Payments)

47. In numerous instances, in the course of providing, offering to provide, or arranging for others to provide mortgage assistance relief services, Defendants asked for or received payment before consumers had executed a written agreement between the consumer and the loan holder or servicer that incorporated the offer obtained by Defendants, in violation of the MARS Rule, 16 C.F.R. § 322.5(a), and Regulation O, 12 C.F.R. § 1015.5(a).

COUNT IV

(Material Misrepresentations)

48. In numerous instances, in the course of providing, offering to provide, or arranging for others to provide mortgage assistance relief services, Defendants, in violation of the MARS Rule, 16 C.F.R. § 322.3(b)(1) and (4), and Regulation O, 12 C.F.R. § 1015.3(b)(1) and (4), have misrepresented, expressly or by implication, material aspects of their services, including, but not limited to:

- (a) Defendants' likelihood of obtaining mortgage loan modifications for consumers that will make their payments substantially more affordable; and
- (b) The consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan.

COUNT V

(Failure to Disclose)

49. In numerous instances, in the course of providing, offering to provide, or arranging for others to provide mortgage assistance relief services, Defendants failed to make the following disclosures in all consumer-specific commercial communications:

- (a) "You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [insert amount or method for calculating the amount] for our services," in violation of the MARS Rule, 16 C.F.R. § 322.4(b)(1), and Regulation O, 12 C.F.R. § 1015.4(b)(1);
- (b) "[Name of company] is not associated with the government, and our service is not approved by the government or your lender," in violation of the MARS Rule, 16 C.F.R. § 322.4(b)(2), and Regulation O, 12 C.F.R. § 1015.4(b)(2); and
- (c) "If you stop paying your mortgage, you could lose your home and damage your credit," in violation of the MARS Rule, 16 C.F.R. § 322.4(c), and Regulation O, 12 C.F.R. § 1015.4(c).

CONSUMER INJURY

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

THIS COURT'S POWER TO GRANT RELIEF

51. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

52. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 626 of the Omnibus Act authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the MARS Rule, including rescission and reformation of contracts and the refund of money.

PRAYER FOR RELIEF

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

- A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this

action, and to preserve the possibility of effective final relief, including, but not limited to, a preliminary injunction, an order freezing assets, immediate access, and appointment of a receiver;

- B. Enter a permanent injunction to prevent future violations of the FTC Act and the MARS Rule and Regulation O by Defendants;
- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the MARS Rule and Regulation O, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: July 14, 2014

Respectfully submitted,

JONATHAN E. NUECHTERLEIN
General Counsel

/s/ Luis H. Gallegos
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Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

CERTIFICATE OF SERVICE

I certify that Plaintiff, Federal Trade Commission will serve contemporaneously a true and correct copy of the foregoing document to each defendant by process server.

Dated: July 14, 2014

/s/ Luis H. Gallegos _____
Luis H. Gallegos