

Plaintiff further filed a motion for a Preliminary Injunction Order (“Order”) pursuant to Rule 65 of the Federal Rules of Civil Procedure and Local Rule CV-65. This Court has considered the Complaint, exhibits, memoranda, declarations, testimony, and other submissions of the parties, and now finds and concludes that:

FINDINGS

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b), and has jurisdiction over all parties.
2. There is good cause to believe venue properly lies with this Court.
3. There is good cause to believe that Defendants Home Relief Foundation, Inc, also d/b/a National Home Retention, John DiCristofalo, and Josephine Amanda DiCristofalo, have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the MARS Rule, 16 C.F.R. Part 322, recodified as Regulation O, 12 C.F.R. § 1015, that the FTC is therefore likely to prevail on the merits of this action.
4. There is a reasonable likelihood that Defendants will violate Section 5 of the FTC Act, 15 U.S.C. §45, and Regulation O, 12 C.F.R. § 1015, in the future unless Defendants are restrained and enjoined by order of this Court.
5. There is good cause to believe that immediate and irreparable damage to this Court’s ability to grant effective final relief for consumers – including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies – will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or company records, or those assets and company records under their control, unless Defendants are enjoined by order of this Court.

6. Considering Plaintiff's likelihood of success on the merits and weighing the equities, a Preliminary Injunction with an asset freeze and other equitable relief is in the public interest.

7. No security is required of any agency of the United States for the issuance of a Preliminary Injunction. Fed. R. Civ. P. 65(c).

DEFINITIONS

For the purposes of this Preliminary Injunction, the following definitions shall apply:

1. "**Asset**" or "**Assets**" means any legal or equitable interest in, right to, or claim to any real, personal, or intellectual property of any Defendant, or held for the benefit of any Defendant, wherever located, whether in the United States or abroad, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares of stock, commodities, futures, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), cash, and trusts.

2. "**Assisting others**" includes, but is not limited to:

- a. Performing customer service functions, including, but not limited to, receiving or responding to consumer complaints;
- b. Formulating or providing, or arranging for the formulation or provision of, any advertising or marketing material, including, but not limited to, any telephone sales script, direct mail solicitation, or the design, text, or use of images of any Internet website, email, or other electronic communication;

- c. Formulating or providing, or arranging for the formulation or provision of, any marketing support material or service, including, but not limited to, web or Internet protocol addresses or domain name registration for any Internet websites, affiliate marketing services, or media placement services;
- d. Providing names of, or assisting in the generation of, potential customers;
- e. Performing marketing, billing, or payment services of any kind; and
- f. Acting or serving as an owner, officer, director, manager, or principal of any entity.

3. **“Commercial communication”** means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing any service, plan, or program, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial (“infomercial”), the internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term.

4. **“Consumer-specific commercial communication”** means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the Mortgage Assistance Relief Service, and that is directed at a specific consumer.

5. “**Corporate Defendant**” means Home Relief Foundation, Inc, also d/b/a National Home Retention, and its successors and assigns.

6. “**Defendants**” means Corporate Defendant and Individual Defendants.

7. “**Document**” means writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the party into a reasonably usable form. The term includes electronically stored information. A draft or non-identical copy is a separate document within the meaning of the term.

8. “**General commercial communication**” means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the Mortgage Assistance Relief Service, and that is not directed at a specific consumer.

9. “**Individual Defendants**” means John DiCristofalo and Josephine Amanda DiCristofalo, a/k/a Amanda DiCristofalo.

10. “**Mortgage Assistance Relief Service**” means any product, service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

- a. Stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer’s dwelling, any repossession of the consumer’s dwelling, or otherwise saving the consumer’s dwelling from foreclosure or repossession;

- b. Negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;
- c. Obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;
- d. Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may (i) cure his or her default on a dwelling loan, (ii) reinstate his or her dwelling loan, (iii) redeem a dwelling, or (iv) exercise any right to reinstate a dwelling loan or redeem a dwelling;
- e. Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or
- f. Negotiating, obtaining, or arranging (i) a short sale of a dwelling, (ii) a deed-in-lieu of foreclosure, or (iii) any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

The foregoing shall include any manner of claimed assistance, including, but not limited to, auditing or examining a consumer's mortgage or home loan application.

11. **"Person"** means any natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

12. **"Plaintiff"** means the Federal Trade Commission ("FTC" or "Commission").

ORDER

I. PROHIBITED REPRESENTATIONS

IT IS THEREFORE ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with

any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the telemarketing, advertising, marketing, promotion, offering for sale or sale of any Mortgage Assistance Relief Service, are hereby preliminarily restrained and enjoined from misrepresenting, or from assisting others who are misrepresenting, expressly or by implication:

- A. That any Defendant or any other person will obtain mortgage loan modifications for consumers that will make their payments substantially more affordable, will substantially lower their interest rates, or will help them avoid foreclosure;
- B. The amount of time it will take or is likely to take for any Defendant or any other person to deliver the promised result from the Mortgage Assistance Relief Service;
- C. That any Defendant or any other person is affiliated with, endorsed or approved by, or otherwise associated with, the United States government, any governmental homeowner assistance plan, any federal, state, or local governmental agency, unit, or department, any nonprofit housing counselor agency or program, the maker, holder, or servicer of the consumer's dwelling loan, or any other individual, entity, or program;
- D. That a consumer cannot or should not contact or communicate with his or her lender or servicer; and
- E. 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.

II. REQUIRED DISCLOSURES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the telemarketing, advertising, marketing, promotion, offering for sale or sale of any Mortgage Assistance Relief Service, are hereby preliminarily restrained and enjoined from engaging in, or assisting others in engaging in, the following conduct:

- A. Failing to make clearly and prominently the following disclosures in all general commercial communications: (1) "(Name of company) is not associated with the government, and our service is not approved by the government or your lender"; and (2) in cases where the Mortgage Assistance Relief Service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (b) through (f) of the definition of Mortgage Assistance Relief Service, "Even if you accept this offer and use our service, your lender may not agree to change your loan."
- B. Failing to disclose in a clear and prominent manner in every consumer-specific commercial communication 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."

2. “(Name of company) is not associated with the government, and our service is not approved by the government or your lender.”
 3. in cases where the Mortgage Assistance Relief Service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (b) through (f) of the definition of Mortgage Assistance Relief Service, “Even if you accept this offer and use our service, your lender may not agree to change your loan.” and
- C. In all general commercial communications, consumer-specific commercial communications, and other communications: Failing to disclose clearly and prominently in cases where the Mortgage Assistance Relief Service provider has represented, expressly or by implication, that the consumer should temporarily or permanently discontinue payments, in whole or in part, on a dwelling loan, a statement disclosing that “If you stop paying your mortgage, you could lose your home and damage your credit rating.”

III. PROHIBITION ON COLLECTION OF ADVANCE FEES

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the telemarketing, advertising, marketing, promotion, offering for sale or sale of any Mortgage Assistance Relief Service, are hereby preliminarily restrained and enjoined from requesting or receiving payment of any fee or other consideration until consumers have executed a written agreement between the consumer and the consumer’s loan holder or servicer that incorporates the offer obtained by Defendants.

IV. ASSET FREEZE

IT IS FURTHER ORDERED that each of the Defendants is hereby preliminarily restrained and enjoined, until further order of this Court, from:

- A. Transferring, encumbering, selling, concealing, pledging, hypothecating, assigning, spending, withdrawing, disbursing, conveying, gifting, dissipating, or otherwise disposing of any funds, property, coins, lists of consumer names, shares of stock, or other assets, wherever located, that are: (1) owned or controlled by any of the Defendants, in whole or in part; (2) in the actual or constructive possession of any of the Defendants; (3) held by an agent of any of the Defendants, as a retainer for the agent's provision of services to a Defendant; or (4) owned, controlled by, or in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, or other entity directly or indirectly owned or controlled by any of the Defendants;
- B. Opening or causing to be opened any safe deposit boxes titled in the name of any of the Defendants, or subject to access by any of the Defendants;
- C. Incurring charges or cash advances on any credit or debit card issued in the name, singly or jointly, of any of the Defendants, or any corporation, partnership, or other entity directly or indirectly owned or controlled by any of the Defendants;
and
- D. Failing to disclose to Plaintiff, immediately upon service of this Order, information that fully identifies each asset of the Defendants, and each entity holding such asset, including, without limitation, the entity's name, address, and

telephone number, the number of the account, and the name under which the account is held.

- E. Provided, that the freeze imposed in this Section shall be construed to apply to assets that any of the Defendants acquires following service of this Order only if such assets are derived from activity prohibited by this Order.

V. FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that within seven (7) business days after service of this Order:

- A. Each of the Individual Defendants shall complete and deliver to the FTC the Financial Statement captioned “Financial Statement of Individual Defendant,” a copy of which is attached hereto as Attachment A;
- B. Corporate Defendant Home Relief Foundation, Inc shall complete and deliver to the FTC the Financial Statement captioned “Financial Statement of Corporate Defendant,” a copy of which is attached hereto as Attachment B. Defendants John DiCristofalo and Josephine Amanda DiCristofalo shall be jointly responsible for this obligation;
- C. Each of the Individual Defendants shall, on behalf of each corporation or other entity of which he or she is the majority owner or otherwise controls, other than Home Relief Foundation, Inc, complete and deliver to the FTC a separate copy of the “Financial Statement of Corporate Defendant”;
- D. Defendants shall provide the FTC access to records and documents pertaining to assets of any of the Defendants that are held by financial institutions outside the

territory of the United States by signing a Consent to Release of Financial Records, a copy of which is attached hereto as Attachment C.

VI. RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES

IT IS FURTHER ORDERED that any person having possession, custody, or control of any asset or document owned, controlled, or held for the benefit of any Defendant, either individually or jointly, or subject to withdrawal or access or use by, any of the Defendants, or which has maintained any such asset or document at any time since January 1, 2010, shall:

- A. Hold, preserve, and retain within its control and prohibit the removal, withdrawal, transfer, encumbrance, pledge, assignment, dissipation, sale, alteration, or other disposal of any such account, other asset, or documents, except as directed in writing by counsel for Plaintiff, or by further order of this Court;
- B. Provide the FTC and the FTC's agents, within seven (7) business days of this Order, access to electronically stored information stored, hosted, or otherwise maintained on behalf of Defendants for forensic imaging;
- C. Deny access to any safe deposit box titled individually or jointly in the name of, or otherwise subject to access by, any of the Defendants;
- D. Provide to Plaintiff, within seven (7) business days of notice of this Order, a sworn statement setting forth:
 1. The identification of each account or asset;
 2. The balance of each account or a description of the nature and value of each asset as of the close of business on the day notification of this Order is received, and, if the account or asset has been closed or moved, the balance or value removed and the person or entity to whom it was transferred; and

3. The identification of any safe deposit box titled in the name of or subject to access by any of the Defendants.
- E. Upon request by counsel for Plaintiff , promptly provide Plaintiff with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

IT IS FURTHER ORDERED that the accounts subject to this provision include (a) all assets of each Defendant deposited as of the time this Order is entered, including any closed accounts, and (b) those assets deposited after entry of this Order that are derived from the actions alleged in Plaintiff's Complaint.

VII. REPATRIATION OF ASSETS

IT IS FURTHER ORDERED that within five (5) business days following service of this Order, each of the Defendants shall:

- A. Repatriate to the United States all funds, documents, or assets in foreign countries held either: (1) by them; (2) for their benefit; or (3) under their direct or indirect control, jointly or singly;
- B. Notify the FTC of the name and location of the financial institution or other entity that is the recipient of such funds, documents, or assets;
- C. Serve this Order on any such financial institution or other entity;

- D. Provide the FTC with a full accounting of all funds, documents, and assets outside of the territory of the United States held either: (1) by them; (2) for their benefit; or (3) under their direct or indirect control, jointly or singly; and
- E. Hold and retain all repatriated funds, documents, and assets and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds.

VIII. NONINTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants are hereby preliminarily enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by Section VII of this Order, including, but not limited to:

- A. Sending any statement, letter, fax, email or wire transmission, or telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms of a foreign trust agreement until such time that all assets have been fully repatriated pursuant to Section VII of this Order;
- B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a court order, until such time that all assets have been fully repatriated pursuant to Section VII of this Order.

IX. PRESERVATION OF RECORDS AND TANGIBLE THINGS

IT IS ORDERED that Defendants, Defendants’ officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who

receive actual notice of this Order, whether acting directly or indirectly, are hereby preliminarily enjoined from:

- A. Failing to create and maintain books, records, and accounts which, in reasonable detail, accurately, fairly, and completely reflect the incomes, assets, disbursements, transactions and use of monies by any Defendant or other entity directly or indirectly under the control of any Defendant; and
- B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents or records that relate to the business practices, or business or personal finances, of Defendants, or other entity directly or indirectly under the control of Defendants.

This Section specifically applies to all documents that have been or are displayed on or have been or are accessible from any and all Internet websites owned or controlled by any Defendant, including, but not limited to, any of the websites with the following URL domain names: www.homerelieffoundation.org, www.ghardinlaw.com, and www.patlonglaw.com.

X. CONSUMER REPORTS

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any Defendant to the FTC.

XI. MONITORING

IT IS FURTHER ORDERED that agents or representatives of the FTC may contact Defendants or Defendants' agents or representatives directly and anonymously for the purpose of monitoring compliance with Sections I, II, and III of this Order, and may tape record any oral communications that occur in the course of such contacts.

**XII. PROHIBITION ON RELEASE OF CUSTOMER INFORMATION
OR CUSTOMER LISTS**

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby preliminarily enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid money to any of the Defendants for a mortgage loan modification or foreclosure relief service or who were contacted or are on a list to be contacted by any of the Defendants; provided that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

XIII. STAY OF ACTIONS

IT IS FURTHER ORDERED that:

- A. Except by leave of this Court, Defendants and all other persons or entities (except for Plaintiff) are hereby stayed from taking any action to establish or enforce any claim, right, or interest for, against, or on behalf of, or in the name of the Defendants, including, but not limited to, the following actions:
1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;
 2. Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody, or control of any asset; attempting to foreclose, forfeit, alter, or terminate any

interest in any asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;

3. Executing, issuing, serving, or causing the execution, issuance, or service of, any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not; or
4. Causing the Corporate Defendant to be placed in involuntary bankruptcy.

B. This Section does not stay:

1. The commencement or continuation of a criminal action or proceeding;
2. The commencement or continuation of an action or proceeding by a governmental unit to enforce such unit's police or regulatory power; or
3. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

XIV. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that the Individual Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, client company, agent, attorney, and representative of the Defendants, and shall, within ten (10) days of from the date of service of this Order, provide the Plaintiff with a sworn statement that the Individual Defendants have complied with this provision of the Order. This statement shall include the names, titles, addresses, and telephone numbers of each such person who received a copy of the Order.

XV. SERVICE OF THIS ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission or email, upon any financial institution or other person that may have possession, custody, or control of any documents or assets of any Defendant, or that may be subject to any provision of this Order.

SO ORDERED this 19th day of July, 2014.



DISTRICT JUDGE