

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

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FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 408-cv-067
	)	
NATIONAL HOME TEAM SOLUTIONS, LLC , et al.,	)	
	)	
Defendants	)	

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FEDERAL TRADE COMMISSION'S MOTION FOR AN ORDER  
TO SHOW CAUSE WHY EVE RARD TAYLOR, ELIAS TAYLOR, EBONY  
TAYLOR, AND NATIONAL FINANCIAL ASSIST

TABLE OF CONTENTS

I. INTRODUCTION..... 2 .

II. STATEMENT OF FACTS. .... 4 .

A. The Underlying Action. .... 4 .

B. Contempt Defendants’ Contumacious Business Practices..... 5

1. Contempt Defendants Used Nationwide Financial Aid to Offer Mortgage Foreclosure Rescue Services. .... 5.

2. Contempt Defendants Used Nationwide Financial Aid to Make False Representations about their Mortgage Foreclosure Rescue Services..... 6

3. Nationwide Financial Aid’s Representations Were False..... 10

4. Everard, Elias, Ebony and National Financial Assistance Used Nationwide Financial Aid to Cause Consumer Injury..... 10

C. Parties to the Contempt Action: Contempt Defendants..... 11

1. Everard Taylor’s Contempt of Court..... 12

a. Everard Taylor’s Orchestration of the Nationwide Financial Aid Scheme ..... 12

b. Everard Taylor’s Denial of His Contemptuous Behavior..... 15

2. Ebony Taylor’s Active Concert or Participation in the Nationwide Financial Aid Scheme. .... 17

3. Elias Taylor’s Active Concert or Participation in the Nationwide Financial Aid Scheme. .... 20

4. National Financial Assistance’s Active Concert or Participation in the Nationwide Financial Aid Scheme. .... 21

III.	ARGUMENT.....	23.
A.	Contempt Defendants Are Bound by the Permanent Injunctions and Were Bound by the PI. ....	23
1.	Contempt Defendants Evered Taylor and Elias Taylor. ....	23
2.	Contempt Defendant Ebony Taylor.....	23
3.	Contempt Defendant National Financial Assistance .....	26
B.	This Court Has Authority to Grant the Requested Relief.....	27
1.	There Is Clear and Convincing Evidence that a Court Order Was in Effect. ....	29
2.	There Is Clear and Convincing Evidence that the Orders Require Certain Conduct by the Contempt Defendants .....	30
3.	There Is Clear and Convincing Evidence that Defendants Have Ignored the Injunctive Provisions of the Court's Bind Permanent Injunctions. ....	30
C.	Contempt Defendants Should Pay Compensatory Sanctions.....	31
IV.	ADVERSE INFERENCES. ....	33
V.	EXPEDITED DISCOVERY. ....	35
VI.	CONCLUSION. ....	35.

TABLE OF AUTHORITIES

FEDERAL CASES

5-Star Premium Finance, Inc v. Wood  
No. 99-3705,  
2000 U.S. Dist. EXIS 15582 (E.D. La. Oct. 16, 2000)..... 33

Acord v. Saez,  
No. H-09-2587, Misc. Case No. 09-0392,  
2009 U.S. Dist. EXIS 77274 (S.D. Tex. August 28, 2009)..... 27

Additive Controls & Measurements System, Inc. v Flowdata, Inc,  
96 F.3d 1390 (Fed. Cir. 1997)..... 3

m

FSLIC v. Dixon  
835 F.2d 554 (5th Cir. 1987).....35

FTC v. Gill,  
183 F. Supp. 2d 1171 (C.D. Cal. 2001)..... 31

FTC v. Kuy

People's Housing Development Corp. v. City of Poughkeepsie, 425 F. Supp. 482 (S.D.N.Y. 1976).....	28
Perfect Fit Industrial, Inc. v. AcmeQuilting Co., 646 F.2d 800 (2d Cir. 1981).....	23
Petroleos Mexicanos v Crawford Enterprises, Inc. 826 F.2d 392 (5th Cir. 1987).....	27, 28, 29
Porter v. Warner Holding Co. 328 U.S. 395 (1946)	



The Federal Trade Commission brings this action to redress consumer harm caused by Everard Taylor, Ebony Taylor, Elias Taylor, and National Financial Assistance's flagrant violation of this Court's Orders. In 2008, in connection with *FTC v. National Hometeam Solutions*, the Court entered three Orders: a Preliminary Injunction ("PI") and two Stipulated Permanent Injunctions<sup>1</sup> prohibiting Defendants Everard Taylor and Elias Taylor, and those in active concert or participation with them, from misrepresenting to consumers that they would stop, postpone, or prevent consumers' mortgage foreclosures and that they would refund consumers' fees if they were unable to assist consumers. Completely disregarding this Court's Orders, shortly after the entry of the PI on March 6, 2008, Everard Taylor and Elias Taylor, in active concert or participation with Ebony Taylor and National Financial Assistance, LLC (collectively "Contempt Defendants"), resumed the prohibited conduct by operating another mortgage foreclosure rescue scam.<sup>2</sup> Contempt Defendants continued their deceptive conduct until at least July 2009, well after the Court entered its Permanent Injunctions on September 8, 2008. When given the opportunity to explain their conduct at depositions in September 2009, Everard Taylor and Ebony Taylor refused and repeatedly asserted their Fifth Amendment privilege against self-incrimination.<sup>3</sup> Contempt Defendants' contumacious conduct caused consumer injury of at least \$126,131.80.

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<sup>1</sup> Dkt # 38.

<sup>2</sup> Dkt # 52 and Dkt # 54. The Court also entered additional stipulated Permanent Injunctions that are unrelated to this contempt act. See Dkt # 51 and Dkt # 53.

<sup>3</sup> Ebony Taylor is married to Everard Taylor. App. 511.

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

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



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

## I. INTRODUCTION

On February 26, 2008, the Commission filed a Complaint and ex parte application for TRO against Everard Taylor, Elias Taylor, Emmanuel Taylor, Edwin Taylor, and their respective companies collectively “the Taylor Defendants.” (Dkt. # 19-52000-0000) TP 1(2440, 6)

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

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

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

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

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

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

## II. STATEMENT OF FACTS

### A. The Underlying Action

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

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

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<sup>10</sup> The corporate defendants were National HomeTeam Solutions, LLC; National Financial Solutions, LLC; United Financial Solutions, LLC; Nationwide Foreclosure Services, LLC; Evalan Services, LLC; and Elant, LLC.

<sup>11</sup> Plaintiff respectfully requests the Court take judicial notice of the filings and orders in the underlying action. On September 8, 2008, Elias received a copy of his Stipulated Permanent Injunction. App. 22 ¶ 5 and pp. 41-42. No later than September 24, 2008, Everard received a copy of his Stipulated Permanent Injunction. App. 22 ¶ 5 and pp. 25-26.



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

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

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

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

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

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

<sup>20</sup> Gordon, App. 165 ¶.

<sup>21</sup> Williams, App. 116 ¶ 4; Fuller App. 128-29 ¶¶ 3-4; Willis, App. 142 ¶¶ 5-7; Tapia, App. 153 ¶¶ 6; Gordon, App. 165-66 ¶; Hand, App. 177-2 ¶¶ 56; AMorg

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

In order to extract fees from these financially distressed consumers, Nationwide Financial Aid made a number of representations. Besides representing that Nationwide Financial Aid would stop consumers' home foreclosures,<sup>27</sup> Nationwide Financial Aid promised to contact consumers' lenders and negotiate loan modifications<sup>28</sup> or refinancing.<sup>29</sup> Sometimes, Nationwide

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

<sup>24</sup> Willis, App. 142-43 ¶¶ 5, 8 and App. 151 (Wachovia #8873); Tapia, App. 153 ¶¶ 78 and App. 159 (WAMU #8854); Gordon, App. 166 ¶ 5 and App. 168 (WAMU 8854); Hand, App. 172 ¶ and App. 176 (WAMU #8854); Morgan, App. 183 ¶ and App. 187 (WAMU #8854); Barnes, App. 189 ¶¶ 6, 8 and App. 194 (WAMU #8854); Clark, App. 204 ¶¶ 8 and App. 210 (WAMU #8854); see also Gosha, App. 193 ¶ 1516 (discussing National Financial Assistance's ownership of bank accounts ending 8873 and 8854). These of National Financial Assistance's bank accounts shows its active participation in the mortgage foreclosure rescue scheme orchestrated by Everad. When asked Nationwide Financial Aid customers deposited payments into National Financial Assistance's WAMU bank account, Ebony refused to answer and invoked her Fifth Amendment privilege against self-incrimination. App. 685:12-686:5.

<sup>25</sup> Williams, App. 117 ¶ 7; Pippins, App. 246 ¶ 6 see also Gosha, App. 193 ¶ 24.

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

<sup>27</sup> See supra note 16.

<sup>28</sup> Tapia, App. 152 ¶ 3; Gordon, App. 165 ¶ 3; Hand, App. 171 ¶; Barnes, App. 188 ¶ 3; Clark, App. 203 ¶ 4; Pippins, App. 245 ¶ 3; Morgan, App. 182 ¶.

<sup>29</sup> Williams, App. 116 ¶ 3 and App. 126; Pippins, App. 245 ¶ 3.

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

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<sup>30</sup> Hand, App. 171 ¶; Morgan, App. 182 ¶; Barnes, App. 188 ¶; Clark, App. 203 ¶ 4.

<sup>31</sup> Morgan, App. 182 ¶; Barnes, App. 188 ¶; Pippins, App. 245 ¶ 3.

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

<sup>33</sup> Fuller, App. 128 ¶ 2; see Morgan, App. 182 ¶ 3, 5.

<sup>34</sup> Williams, App. 116 ¶ 3 and App. 126; Tapia, App. 152 ¶ 3.

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

<sup>36</sup> Gordon, App. 165 ¶.

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



3. Nationwide Financial Aid's Representations Were False

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

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

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

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<sup>38</sup> Williams, App. 117-18 ¶¶ 94; Fuller, App. 129 ¶¶ 67; Tapia, App. 154-55 ¶¶ 1345; Gordon, App. 166 ¶¶ 9; Morgan, App. 184-85 ¶¶ 10-13, 15, 18-20; Barnes, App. 191 ¶ 18; Clark, App. 205-06 ¶¶ 3, 16, 18.

<sup>39</sup> See Willis, App. 143 ¶ 9; Tapia, App. 155 ¶ 6; Hand, App. 172-73 ¶¶ 9, 11-13; Morgan, App. 183-84 ¶ 9; Barnes, App. 189 ¶ 9; Clark, App. 204-06 ¶¶ 9-12, 14, 17.

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

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

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

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<sup>43</sup> Williams, App. 125 (#8854); Uller, App. 132 (#8873); Tapia, App. 159 (#8854); Gordon, App. 168 (#8854); see also Gosha, App. 193-2 ¶¶ 1516 (discussing National Financial Assistance, LC ownership of the bank accounts ending 8854 and 8873).

<sup>44</sup> See also Gosha, App. 10-1 ¶ 33 (discussing an analysis of WAMU bank records).

<sup>45</sup> See also Gosha, App. 11-2 ¶ 35.

<sup>46</sup> Everard admitted that there were 18 Nationwide Financial Aid clients served



Everard and Ebony's home.<sup>50</sup> Third, he used National Financial Assistance's bank accounts to conduct Nationwide Financial Aid's business.<sup>51</sup> National Financial Assistance's WAMU bank account existed before the underlying lawsuit was filed on February 26, 2008.<sup>52</sup> Fourth, National Financial Assistance opened a bank account with Wachovia on May 30, 2008.<sup>53</sup> Nationwide Financial Aid gave written instructions to deposit fee payments into one of these accounts.<sup>54</sup> Wachovia bank records show deposits and checks cashed from residents of California and Georgia.<sup>55</sup> Fifth, Everard transferred funds between the WAMU bank account and the Wachovia bank account.<sup>56</sup> Sixth, National Financial Assistance's bank account records reflect personal charges by Everard<sup>57</sup> and charges associated with Nationwide Financial Aid's mortgage

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

<sup>51</sup> App. 951-54 (Efax), 962-64 (Efax), 970-71 (Efax), 977 (Efax and Melissa Data), 980 (Efax and Melissa Data), 983 (Efax and Melissa Data), 985 (Efax), 987 (Efax); App. 1270 (Melissa Data), 1274-75 (Efax and Melissa Data), 1279-80 (Efax and Melissa Data), 1284-87 (Efax and Melissa Data); see also Gosha, App. 19228 ¶ 7 (discussing Nationwide Financial Aid's use of Melissa Data) and App. 19335 ¶¶ 18-19 (discussing Nationwide Financial Aid's use of Efax).

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

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

<sup>54</sup> See supra note 43.

<sup>55</sup> App. 1330, 1366, 1375 (California); App. 1379 (Georgia).

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

<sup>57</sup> See e.g., App. 951-53, 1279, 1286 (Kroger Company stores); App. 962, 977, 1279, 1286 (Chick-fil-A restaurants); App. 963, 983 (Starbucks Coffee Company); App. 964, 970, 980 (McDonald's restaurants); App. 1313 (laundry); App. 1315 (homeowner)

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association)



an employee or agent of any company that was subject to his Permanent Injunction.<sup>70</sup> Everard stated that the Commission confirmed his assumption that Ebony was not subject to his Permanent Injunction.<sup>71</sup> Everard's statements give the wrong impression that prior to Everard beginning his deceptive operation, the Commission accepted Everard's explanation that Nationwide Financial Aid was his wife's business and that Everard had no involvement in it. However, this is not the case. While it is true that Everard had a conversation with Evan Rose, an attorney in the Commission's San Francisco office, Everard failed to mention in his compliance

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<sup>70</sup> App. 303, 306-07.

<sup>71</sup> App. 307.

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

<sup>73</sup> See *supra* note 12 and accompanying text.

<sup>74</sup> Rose, App. 1941-42 ¶ 4 (stating that Everard framed his inquiry as a hypothetical question).

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

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<sup>75</sup> Rose, App. 1942 ¶ 6.

<sup>76</sup> App. 312.

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

<sup>78</sup> See supra note 53 and accompanying text.

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

<sup>80</sup> App. 511.





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

<sup>88</sup> Morgan, App. 18334 ¶ 9 (Northern Federal Aid representative “Liz” provided telephone number (832) 452-8588 to a consumer); App. 9323 (AT&T business records show telephone number (832) 452-8588 assigned to Ebony Taylor); Barnes, App. 193 (showing Northern Federal Aid’s use of telephone number (866) 496-7317); App. 930 (Vonge telephone records show telephone number (866) 496-7317 assigned to Nourisha Taylor); see also Gosha, App. 1930, ¶ 12 (discussing Ebony’s use of the middle name Nourisha). At his deposition, Everard admitted that telephone number (832) 452-8588 was his phone number and that he and his wife used the telephone number App. 427:23-428:6. When asked his wife used telephone number (832) 452-8588 in connection with a mortgage foreclosure rescue business, Everard refused to answer and invoked his Fifth Amendment privilege against self-incrimination. App. 429:16-19.

<sup>89</sup> App. 932-33 (AT&T business records showing Ebony’s use of the email address ebonyntaylor@gmail.com); App. 311 (Everard admitted that Ebony used the email address ebonyntaylor@gmail.com); see also Gosha, App. 19335 ye4d 18-00000 0..0000 TD (35 ye4dj 5.2800 0.

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

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

Working with Nationwide Financial Aid, Contempt Defendant Elias Taylor, Everard's brother, called himself "Specialist White" when he continued to provide deceptive mortgage foreclosure rescue services to consumers.<sup>96</sup> Nationwide Financial Aid instructed consumers to contact Specialist White at a toll-free telephone number (877) 5705494, to obtain additional information about the progress of their cases.<sup>97</sup> Telephone records reveal that calls to the toll-free phone number (877) 5705494, were routed to Elias' personal cell phone from the day the account was opened in May 2006 until it was closed on September 10, 2009. Posing as

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

<sup>94</sup> See supra note 43.

<sup>95</sup> App. 1294 (Wachovia bank record showing payment to Ebony Taylor); App. 947-48, 956, 966-67, 1007-08, 1024, 1048 (WAMU bank records showing payments to Ebony Taylor).

<sup>96</sup> See Gosha, App. 1935 ¶10 (discussing Elias' ownership of the telephone number associated with Specialist White).

<sup>97</sup> Fuller, App. 129 ¶18; see also App. 1822 (Antonio King's complaint submitted to the Commission).

<sup>98</sup> App. 860-913 (uRach Technologies records showing calls made to (877) 570-5494 were routed to telephone number (972) 955-0526); see App. 917-22 (Verizon Wireless business records showing Elias Taylor owned telephone number (972) 955-0526); see also Gosha, App. 1935 ¶10 (discussing the business records associated with toll free telephone

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

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

According to Texas Secretary of State records, Contempt Defendant National Financial Assistance is a Texas limited liability company that was registered on June 12, 2007. The limited liability company did not have members, but was governed by its sole member, Contempt

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number (877) 570-5494, and telephone number (972) 9550526).

<sup>99</sup> Karen Fuller, App. 139 ¶ 2.

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

<sup>101</sup> See *supra* note 43.

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

<sup>103</sup> App. 329-31 (Secretary of State records for National Financial Assistance LC).



### III. ARGUMENT

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

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

##### 1. Contempt Defendants Everard Taylor and Elias Taylor

As parties to the underlying action, Everard and Elias are bound by the Court's Orders. Under Federal Rule of Civil Procedure 65(d)(2)(A), every order granting an injunction and every restraining order is binding on a party who receives actual notice of the order by personal service or otherwise. Everard and Elias signed and returned affidavits acknowledging receipt of their Permanent Injunctions in September 2008.<sup>111</sup>

##### 2. Contempt Defendant Ebony Taylor

Everard's wife, Ebony, is bound by the Court's Orders under Federal Rules of Civil Procedure 65(d)(2)(B) and (C). As a manager of Evalan Services, LLC, Ebony is subject to the Court's Orders. Under Federal Rule of Civil Procedure 65(d)(2)(B), every order granting an injunction and every restraining order is binding on "the parties' officers, agents, servants, employees, and attorneys" who receive actual notice of the order by personal service or otherwise. In the context of civil contempt, notice of the order, whether actual or constructive, is notice of the order's existence, not of its precise terms. See Cent. States, Se. & Sw. Areas Health & Welfare & Pension Funds v. Transcon Lines, No. 90 C 1853, 1995 U.S. Dist. LEXIS 11372, at \*22 (N.D. Ill. Aug. 4, 1995); see also Perfect Fit Indus., Inc. v. Ame Quilting Co., 646 F.2d 800, 802 (Cir. 1981).<sup>112</sup> "[A]ctual knowledge of the order is all that is required;

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<sup>111</sup> App. 25-26 (Everard's affidavit), 41-42 (Elias' affidavit).

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

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

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

<sup>113</sup> See supra notes 85-94 and accompanying text.

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Ebony currently resides in the Southern District of Texas. App. 1886 (Showing



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

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

### 3. Contempt Defendant National Financial Assistance

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

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<sup>117</sup> See supra note 12.

<sup>118</sup> See supra note 87.

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

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

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

B. This Court Has Authority to Grant the Requested Relief

Obedience to judicial orders is a fundamental expectation of our legal system. Injunctions issued by a court of competent jurisdiction must be obeyed until withdrawn or vacated. *W.R. Grace & Co. v. Local Union 75*, 461 U.S. 757, 766 (1983). Courts possess the inherent authority to enforce compliance with their orders through civil contempt. *Spallone v. United States*, 493 U.S. 265, 276 (1990); *Shillitani v. United States*, 384 U.S. 364, 370 (1966); 18 U.S.C. § 401.<sup>22</sup> Injunctive orders are extraordinary writs, enforceable by the court's power of contempt. *Gunn v. Univ Comm. to End War in Vietnam*, 399 U.S. 383, 389 (1970).

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

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<sup>121</sup> See also *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828 (1994); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-44 (1991); *Waffenschmidt*, 763 F.2d at 716; *SEC v. AmeriFirst Funding, Inc.*, No. 3:07-CV-1188-D2008 U.S. Dist. EXIS 107560, at \*16 (N.D. Tex. Dec. 11, 2008); *Acord v. Saenz*, No. H-092587, Misc. Case No. 09-0392, 2009 U.S. Dist. LEXIS 77274, at \*19-20 (S.D. Tex. Aug 28, 2009); *Productive Mktg.*, 136 F.Supp. 2d at 1107; *FTC v. Nat'l Bus. Consultants*, No. 89-1740, 1993 U.S. Dist. EXIS 10512, at \*8 (E.D. La. July 23, 1993); *In re Steinbreher on behalf of Meeks*, 599 F. Supp. 87, 89 (W.D. Tex. 1984).

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

<sup>123</sup> See also *American Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 585 (5th Cir. 2000); *Petroleos Mexicanos, v Crawford Enters., Inc.*, 826 F.2d 392, 405 (5th Cir. 1987); *United States v. Crawford Enters., Inc.*, 643 F. Supp. 370, 380 (S.D. Tex. 1986), *aff'd*, acting in good faith is not a defense to civil contempt. *Whitcraft v. Brown*, 570 F.3d 268, 272 (5th Cir. 2009); *Waffenschmidt*, 763 F.2d at 726; *Tivo v. Dish Network Corp*, No. 2:04-cv-01, 2009 U.S. Dist. LEXIS 46160, at \*27 (E.D. Tex. June 2, 2009); *Burdine v. Johnson*, 87 F. Supp. 2d 711, 714 (S.D. Tex. 2000).



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

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

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

C. Contempt Defendants Should Pay Compensatory Sanctions

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

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

In a civil contempt action, “[t]he measure of the court’s power . . . is determined by the requirements of full remedial relief.” *McComb*, 336 U.S. at 193-94. Accordingly, the Court may award compensatory damages in an amount sufficient “to make reparation to the injured party and restore the parties to the position they would have held had the injunction been obeyed.” *Vuitton et Fils, SA v. Carousel Handbags*, 592 F.2d 126, 130 (9th Cir. 1979).

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

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

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

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

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

IV



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

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

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

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<sup>134</sup> Id.

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

#### V. EXPEDITED DISCOVERY

To locate assets wrongfully obtained from consumers and to preserve documentary evidence, the FTC also seeks leave of the Court to conduct limited expedited discovery. Through the attached proposed Order, the FTC seeks permission to conduct depositions upon three calendar days' notice. This expedited discovery will enable the FTC to adequately prepare for the show cause hearing and locate assets for eventual recovery. District courts are authorized to depart from normal discovery procedures to meet particular needs. Fed. R. Civ. P. 26(b), 34(b). Such a discovery order reflects the Court's broad and flexible authority in equity to grant preliminary emergency relief in cases involving the public interest. See *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *FSLIC v. Dixon*, 835 F.2d 554, 562 (11th Cir. 1987).

#### VI. CONCLUSION

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

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

Respectfully submitted,

WILLARD K. TOM  
General Counsel

DEANYA T. KUECKELHAN  
Regional Director

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CERTIFICATE OF CONFERENCE

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

CERTIFICATE OF SERVICE

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

Elias H. Taylor,  
Individually and as an officer of National Hometeam Solutions, LLC; Elant, LLC; and National Financial Solutions, LLC  
1513 Kimberly Ct.  
Wylie, Texas 75098  
eliastaylor@hotmail.com

Everad Taylor  
Individ