

1 Plaintiff, the Federal Trade Commission ("FTC"), for its complaint alleges:

2 1. The FTC brings this action under Sections 13(b) and 9 of the Federal
3 Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the
4 Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing
5 Act"), 15 U.S.C. §§ 6101 -6108 to obtain temporary, preliminary, and permanent
6 injunctive relief, rescission or reformation of contracts, restitution, e c T D, (c) T r a 1200 000

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 reformation of contracts, restitution, the refund of monies paid, and the
2 disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A)-(B), 57b,
3 6102(c), and 6105(b).

4 DEFENDANTS

5 6. Defendant U.S. Homeowners Relief, Inc., having also done business
6 as Greenleaf Modify and Greenleaf ("U.S. Homeowners"), is a California
7 corporation
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9

1 controlled, had the authority to control, or participated in the acts and practices set
2 forth in this Complaint. Defendant Sarpas resides in and transacts or has transacted
3 business in this District and throughout the United States.

4 15. Defendant Damon Grant Carriger ("Carriger") is an officer, owner
5 and/or principal of Defendants DGC and DLD. At times material to this
6 Complaint, acting alone or in concert with others, he has formulated, directed,
7 controlled, had the authority to control, or participated in the acts and practices set
8 forth in this Complaint. Defendant Carriger resides in and transacts or has
9 transacted business in this District and throughout the United States.

10 COMMON ENTERPRISE

11 16. Defendants U.S. Homeowners, Waypoint, American Lending, New
12 Life, DGC, and DLD (collectively, "Corporate Defendants") have operated as a
13 common enterprise while engaging in the deceptive acts and practices alleged
14 below. They have conducted these practices through a network of interrelated
15 companies that have common ownership, officers, business functions, and office
16 locations and have commingled their funds. Because the Corporate Defendants
17 have operated as a common enterprise, each of them is jointly and severally liable
18 for the acts and practices alleged below. Defendants Paul Bain, Macie Bain,
19 Sarpas, and Carriger (collectively, "Individual Defendants") have formulated,
20 directed, controlled, had the authority to control, or participated in, the acts and
21 practices of the Corporate Defendants that constitute the common enterprise. The
22 Individual Defendants also engaged in the common enterprise by doing business as
23 Liberty Lending Review and US Financial Solutions (Paul Bain), New Life
24 (Sarpas, prior to incorporation of New Life), and US Mortgage Solutions and
25 Home Relief Center (Macie Bain).

26
27
28

COMM ERCE

17.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

COMPLAINT

1 behind in their mortgage payments or in danger of losing their homes to
2 foreclosure.

3 21. Defendants have engaged in telemarketing by participating in plans,
4 programs, or campaigns conducted to induce the purchase of goods or services by
5 use of one or more telephones and which involve more than one interstate
6 telephone call. Defendants' telemarketing activities include initiating calls to
7 customers, or having others initiate calls to customers, to induce the purchase of
8 mortgage loan modification and foreclosure relief services. Defendants also
9 engage in telemarketing by mailing, or causing others to mail, flyers delivered by
10 U.S. mail that invite consumers to contact the Defendants by telephone or via
11 Defendants' websites. The flyers that invite consumers to contact the Defendants
12 by telephone do not disclose the total costs to purchase, receive, or use Defendants'
13 services.

14 Purported Loan Modification and Foreclosure Relief Services

15 22. Defendants deceive consumers into spending hundreds or thousands
16 of dollars on their purported loan modification services.

17 23. Defendants' advertising promotes their ability to modify mortgage
18 loans and help consumers avoid foreclosure. For example, Defendants' radio
19 advertisements represented that Defendants could provide "a very attractive
20 mortgage modification that will keep you in your home that you have worked so
21 hard for." Defendants' websites represent that the companies' loan modification
22 services can reduce monthly payments, interest, and principal, and prevent
23 foreclosure. These websites also promise to "work with your lender, exploring
24 options that will provide a satisfactory conclusion for all parties involved."
25 Defendants represent that their expertise and established relationships with l

1 example, under the heading, "2009-A SPECIAL RELIEF ADVISORY," as aff and est 32 TD 00
2 Defendants' mailers asked consumers, "Are you in need of lower house payments
3 and a better interest rate?" The mailer claimed that the program it offered was eDk
4 "designed to keep the mail 1200 (0406) 01516 00 000 TD (-) TP 4 (0) P 6 0200 TD 5 (a) 0060

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 iv. Defendants' relationships with "all major lending
2 institutions" have "saved our clients millions of dollars in successful loan
3 modifications."

4 b. Telemarketers have stated that Defendants' success rate for
5 providing desired loan modifications is 90% or higher.

6 c. Defendants use testimonials on their websites and in documents
7 they provide to consumers in which purported customers claim that Defendants
8 reduced their monthly payments by lowering their loan interest rates, their loan
9 principals, or both.

10 27. Before Defendants render any service, they charge consumers fees
11 ranging from \$835 to \$4,250 for their purported loan modification and foreclosure
12 rs information

1 respond to calls or emails from the consumers who paid their fees. In some
2 instances, Defendants have disconnected the telephone numbers they had provided
3 to these consumers. On several occasions, Defendants changed the name of their
4 business and continued the same business under a different name.

5 False Government Affiliation Claims

6 31. Some of Defendants' advertising bolsters their credibility by claiming
7 affiliation with a government entity. These claims are made in Defendants'
8 telemarketing, in television ads, and on their website.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 35. Along with Defendants U.S. Homeowners and Sarpas, Paul Bain is a
2 co-owner of the fictitious business names Greenleaf and Greenleaf Modify, which
3 were used by U.S. Homeowners. Paul Bain is also (i) Tj2s00 0.00 TD a
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 42. She is the domain name registrant and/or payor for website services
2 used by Defendants Waypoint and New Life.

3 43. Macie M. Bain owns the assumed business names US Mortgage
4 Solutions, which has been used as a d/b/a of Defendant DGC Consulting, and
5 Home Relief Center.

6 44. Macie M. Bain is jointly and severally liable for the conduct of the
7 corporate defendants because she has the authority to control and direct the
8 companies' activities; has participated in those activities; and has knowledge of the
9 companies' misrepresentations and other misconduct.

10 Sarpas' s Role

11 45. Sarpas is Chief Financial Officer of Defendant's Financial Services, Inc. (FSI)

Carriger's Role

1
2 49. Carriger is the President and/or Member of Defendants DGC and
3 DLD. He has acted as a sales representative for U.S. Homeowners and Waypoint.
4 Through DLD, Carriger has received consumer payments solicited by Defendant
5 American Lending d/b/a American Law Center and Defendant DGC d/b/a US
6 Mortgage Solutions.

7 50. Carriger is jointly and severally liable for the conduct of the corporate
8 defendants because he has the authority to control and direct the companies'
9 activities; has participated in those activities; and has knowledge of the companies'
10 misrepresentations and other misconduct.

11
12 VIOLATIONS OF SECTION 5 OF THE FTC ACT

13 51. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or
14 deceptive acts and practices in or affecting commerce."

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

17
18 COUNT I

19
20 False or Misleading Claims Regarding Loan Modification Services

21 53. In numerous instances, in connection with the advertising, marketing,
22 promotion, offering for sale, or sale of mortgage loan modification services,
23 Defendants have represented
24
25
26
27
28

1 61. Therefore, Defendants' representation as set forth in Paragraph 59 is
2 false and misleading and constitutes a deceptive act or practice in violation of
3 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

4 THE TELEM ARKETING SALES RULE

5 62. Congress directed the FTC to prescribe rules prohibiting abusive and
6 deceptive telemarketing acts or practices pursuant to the Telemarketing Act,
7 15 U.S.C. §§ 61016108, in 1994. The FTC adopted the original Telemarketing
8 Sales Rule in 1995, extensively amended it in 2003, and amended certain sections
9 thereafter.

10 63. Defendants are "seller[s]" or "telemarketer[s]" engaged in
11 "telemarketing" as those terms are defined in the TSR, 16 C.F.R. § 310.2(z), (bb),
12 and (cc)

13 64. The TSR prohibits sellers and telemarketers from misrepresenting,
14 directly or by implication, in the sale of goods or services, any of the following
15 material information:

16 a. Any material aspect of the performance, efficacy, nature, or
17 central characteristics of goods or services that are the subject of a sales offer,
18 16 C.F.R. § 310.3(a)(2)(iii);

19 b. A seller's or telemarketer's affiliation with, or endorsement or
20 sponsorship by, any person or government entity, 16 C.F.R. § 3103(a)(2)(vii); and

21 c. Any material aspect of the nature or terms of the seller's refund,
22 cancellation, exchange or repurchase policies, 16 C.F.R. § 310.3(a)(2)(iv).

23 65. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.
24 § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation
25 of the TSR constitutes an unfair or deceptive act or practice in or affecting
26 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

V ET 164.7600 I f* Q q 1T 52.44600 I f* 0000 Tc1T 52.44600LAI f* 9 TD

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

CONSUMER INJURY

1
2 72. Consumers have suffered and will continue to suffer substantial injury
3 as a result of Defendants' violations of the FTC Act and the TSR. In addition,
4 Defendants have been unjustly enriched as a result of their unlawful acts or
5 practices. Absent injunctive relief by this Court, Defendants are likely to continue
6 to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

7
8 73. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
9 to grant injunctive and such other relief as the Court may deem appropriate to halt
10 and redress violations of any provision of law enforced by the FTC. The Court, in
11 the exercise of its equitable jurisdiction, may award ancillary relief, including
12 rescission or reformation of contracts, restitution, the refund of monies paid, and
13 the disgorgement of ill-gotten monies, to prevent and remedy any violation of any
14 provision of law enforced by the FTC.

15 74. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the
16 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as
17 the Court finds necessary to redress injury to consumers resulting from
18 Defendants' violations of the TSR, including rescission and reformation of
19 contracts, and the refund of money.
20
21
22
23
24
25
26
27
28

1 b. Enter a permanent injunction to prevent future violations of the
2 FTC Act and the TSR by Defendants;

3 c. Award such relief as the Court finds necessary to redress injury
4 to consumers resulting from Defendants' violations of the FTC Act and the TSR,
5 including but not limited to rescission or reformation of contracts, restitution, the
6 refund of monies paid, and the disgorgement of ill-gotten monies; and

7 d. Award Plaintiff the costs of bringing this action, as well as such
8 other and additional relief as the Court may determine to be just and proper.

9
10 Dated this 27th day of September, 2010.

Respectfully submitted,

11 WILLARD K. TOM
12 General Counsel
13 ROBERT J. SCHROEDER
14 Regional Director

15 _____
16 MAXINE R. STANSELL
17 JENNIFER LARABEE
18 Attorneys for Plaintiff
19 Federal Trade Commission
20
21
22
23
24
25
26
27
28