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up-front fee, ranging from a few hundred to more than a thousand dollars, to secure the sale or rental. In many cases, VPS telemarketers would sweeten the promise by falsely telling consumers they would receive a refund of VPS's f

rent these properties for the consumers.¹⁰ Many of these consumers had registered their phone numbers with the National Do Not Call Registry (the "Registry") prior to being called by Defendants.¹¹ And a significant percentage of VPS's consumer victims were elderly.¹²

Defendants frequently told consumers that they had buyers or renters who were interested in purchasing or renting their timeshares for specified prices or price ranges.¹³ In other cases, Defendants told consumers that timeshares were in high demand and that VPS would sell or rent them quickly.¹⁴ Defendants sometimes told consumers that, in addition to selling or renting their timeshares, VPS would also refund the consumers previously paid to other unscrupulous timeshare resale companies.¹⁵ Furthermore, Defendants often falsely told consumers that VPS would hold an open house or other sales event at their resort in order to attract buyers.¹⁶ And Defendants frequently promised to send consumers a list of buyers or renters as soon as the consumers paid VPS's fees.¹⁷ Many consumers, especially those struggling with the costs associated with timeshare ownership and maintenance, found

⁹ Id.

¹⁰ See, e.g. Px. 7 (Skiba Dec.) [D.E. 3-5], ¶¶ 1-6; Px. 132 (Allen Dec.), ¶ 3.

¹¹ See Section II.C., infra.

¹² See e.g. Px. 150 (Murray Dep.) at 85:20-86:3, 121:19-21; Px. 151 (S. Wilson Dep.) at 63:1-11.; Px. 127 (Barnes Dec.), ¶¶ 3-4; Px. 116 (Blumberg Dec.), ¶ 1; Px. 122 (Bower Dec.), ¶ 1; Px. 118 (F. Brown Dec.), ¶ 1; Px. 131 (Hampton Dec.), ¶ 1; Px. 135 (Hattox Dec.), ¶ 1; Px. 110 (Hensel Dec.), ¶ 1; Px. 119 (Hubbard Dec.), ¶ 1; Px. 117 (Martin Dec.), ¶ 1; Px. 130 (Meade Dec.), ¶¶ 1; 120 (Taylor Dec.), ¶ Px. 128 (Yancik Dec.), ¶ 1.

¹³ See Section II.A.2, infra

attractive Defendants' offer of a speedy sale or rental.¹⁸ Most consumers would never have paid VPS's high fees if they knew the truth. VPS[']s service [was] limited to posting an online advertisement." Defendants' Answer [D.E. 61], ¶ 53.

Defendants told consumers that they must pay an up-front fee ranging from a few hundred to more than a thousand dollars, before a sale or rental could be completed.¹⁹ They provided consumers various justifications for the fee, often stating that it covered sales-related costs.²¹ If consumers requested to have the fee deducted from the timeshare sale proceeds, Defendants would refuse, telling consumers that VPS's fee must be paid up-front.²² Defendants also falsely assured many skeptical consumers that VPS's fee would be refunded if the sale did not close as promised or VPS would provide a refund if requested within seven days.²³ Many consumers agreed to pay the fee, believing – as they were promised – that Defendants had a buyer or renter for their timeshare property and/or would have it sold or rented quickly, and that VPS's fee must be paid up-front in order to assure that the sale or

¹⁸ See e.g., Px. 7 (Skiba Dec.) [D.E. 3-5], ¶ 9 ("My house had recently flooded and I needed money to pay for the repairs"); Px. 120 (Taylor Dec.), ¶ 6 ("Because of my husband's death, I decided that it was probably a good time to sell our points."); Px. 116 (Blumberg Dec.), ¶ 6 ("Due to the onset of serious health problems, my husband was finding it difficult to travel and enjoy the timeshare, so we began to consider selling it."); Px. 115 (Waddell Dec.), ¶ 3 ("I told Ms. Murray I did not think we would afford [the VPS up-front fee] since we are on a fixed income, but she told me not to worry since this fee would be refunded to me if our timeshare did not sell within six months."); accord Px. 129 (Morris Dec.), ¶ 5; Px. 126 (Galvin Dec.), ¶ 6; Px. 110 (Hensel Dec.), ¶ 7; Px. 113 (Hullinger Dec.), ¶ 7; Px. 132 (Allen Dec.), ¶ 5; Px. 131 (Hampton Dec.), ¶ 2; Px. 119 (Hubbard Dec.), ¶ 6; Px. 133 (Miller Dec.), ¶ 3; Px. 112 (Strom Dec.), ¶ 4; Px. 122 (Bower Dec.), ¶ 6.

¹⁹ See, e.g.,

rental would go forward.²⁴

2. Defendants Told Consumers They Had Buyers or Renters for the Consumers' Timeshares

To convince consumers to pay VPS's fees, defendants repeatedly told consumers that they already had a buyer or renter identified to purchase or rent the timeshare. For many consumers, the pitch began with an unsolicited call from VPS purporting to deliver great news: We've found a buyer for your timeshare with no more maintenance fees or loan payments! Plus a sizable check at the closing. Thousands of consumers paid VPS's large up-front fees, relying upon false statements like these.²⁵

VPS's telemarketers admitted that VPS had promised to deliver buyers to its customers. For example, as set forth below, VPS telemarketer Lisa Murray testified at length to the lies she told to lock in a customer and admitting that "there's a lot of times that we did fabricate."²⁶ Confronted with her own handwritten call notes that repeatedly referred to fictitious "pre-financed buyers," Murray admitted that she commonly told potential

²³ See Section II.A.4, *infra*.

²⁴ See Px. 7 (Skiba Dec.) [D.E. 3-5], ¶ 11; Px. 16 (Gardner Dec.), ¶¶ 11-12; Px. 18 (Gray Dec.) [D.E. 3-7], ¶ 10.

²⁵ See, e.g., Px. 7 (Skiba Dec.) [D.E. 3-5], ¶ 6 ("[Georgette Kramer] told me that there were two people waiting to buy my timeshare. She told me to fast or I would lose the buyers."); Px. 16 (Gardner Dec.) [D.E. 3-6], ¶ 8 ("[Mike] Wilson told me that the owners of my timeshare resort wanted to buy back various timeshares in order to 'flip' them.... Mr. Wilson told me that he could get

customers that VPS had located a “pre-financed buyer.” This fictitious buyer was a cornerstone of many sales pitches, as revealed during Murray’s testimony:

Q. Do you see towards the bottom where it says, “Financed for [\$]5,000”?

A. Yes.

Q. Is that another case of fabrication or do you have a buyer financed for [\$]5,000?

A. I would say yes. ...

Q. Yes, what?

A. That it was most likely a fabrication.²⁷

* * * *

Q. You see towards the bottom, the next-to-last line says, “Open house finance,” and the next line says, “20K.” Do you see that?

A. Yes.

Q. Is this another fabricated buyer financed for [\$]20,000?

A. Yes....

Q. Do you see towards the bottom where it says, “Have someone inter + financed for 15K”? Do you see that?

A. Yes.

Q. Is that another case of a fabricated financed buyer?

A. Yes....

Q. Do you see towards the bottom where it says, “We open house Saturday,” below that it says, “Financed 20K.” Do you see that?

A. Yes.

Q. Is that another case of a fabricated financed buyer?

A. I’m thinking so, yes. They went all that way, though, just so you know.

Q. Turn to the next page.... Do you see the line below that says, “Financed for 15K inter realistically probably get 13,500” Do you see that line?

A. Uh-huh.

Q. Is that another case of a fabricated financed buyer?

A. Yes.²⁸

* * * *

Q. What would you do to try and save a sale?

A. For the most part, convince them that there was somebody very interested in their property, probably financed or use another fictitious name or something.

Q. If you told them that you had a fictitious person financed or a fictitious buyer, would that

²⁷ Id. at 56:13-24.

²⁸ Id. at 57:7-58:20.

usually save the sale?
A. For the most part, yes ...²⁹
* * * *

in scores of declarations from VPS's victims.³⁶

An undercover call between FTC investigator

promise prospective customers that they could rent out banked weeks prior to a sale.³⁸ And defendant Taylor stated that VPS did not have a problem with telemarketers telling consumers that they could quickly sell or rent their timeshares.⁴⁰

Although Jennifer Wilson, Albert Wilson, and David Taylor all admitted to, or participated in, VPS promising consumers that their timeshares would sell quickly, they each candidly conceded the misleading nature of such a statement. For instance, although Jennifer Wilson told Ms. Vera that her timeshare could sell within “probably one to maybe two months,” she claimed at her deposition that she should not have told another customer that her property would “sell in a month because that is ridiculous. Most properties take a lot longer.”⁴¹

Defendant Wilson stated that it is “[v]ery hard to sell timeshares in the resale market,” Tc 0 Tw (39)Tj 12 e a lo7l6eMs. Vm39

wrong, correct?

A. In my opinion, yes.⁴³

The record, however, is replete with ~~evid~~ evidence that VPS promised consumers quick sales or rentals.^{44, 45}

4. Defendants Misrepresented VPS's ~~Ref~~ Policy and Told Other Lies

Not content to rely on the "buyer in hand" or "quicksale" lies, Defendants made numerous other false statements to ensnare consumers, telling potential customers that:

x

- x VPS would host a “sales presentation” at their resort;⁵²
- x VPS would list the timeshare on the resort’s website;⁵³
- x VPS would affirmatively reach out to individual buyers to broker a sale;⁵⁴
- x VPS would handle the financing of the sale;⁵⁵ and
- x VPS would provide a free “vacation voucher.”⁵⁶

All of these promises were false.⁵⁷

5. VPS Operated As a Fraudulent Boiler Room

VPS’s day-to-day operations bolsters the circumstantial evidence that VPS operated in the fashion of a typical boiler room pedaling the standard timeshare resale fraud lie “we have a buyer!” and “we’ll sell it quickly!” Defendants and their former employees admit that VPS:

- x took no efforts after March 2008 to follow-up on possible sales and did not keep track of sales in any manner, even though VPS routinely operated with the goal of assisting consumers with selling their timeshares;⁵⁸
- x routinely ignored client phone calls and refused to return messages from consumers after they paid VPS’s up-front fee;⁵⁹

⁵² See, e.g., Px. 19 (Hinson Dec.) [D.E. 3-7], ¶ 8; Px. 134 (Nannie Dec.), ¶ 9; Px. 132 (Allen Dec.), ¶ 5; Px. 116 (Blumberg Dec.), ¶¶ 4, 7; Px. 139 (Webb Dec.), ¶ 7; Px. 28 [D.E. 3-10], FTC-VPS 000383:10-18 (undercover call with J. Wilson) (“Ms. Wilson [Your timeshare] will also be eligible to start receiving offers from our sales events right out in Orlando and also from people that have went [sic] on the tours.”).

⁵³ See, e.g., Px. 132 (Allen Dec.), ¶ 5.

⁵⁴ See, e.g., Px. 27 [D.E. 3-10], FTC-VPS 370:9 -371:2; Px. 29 [D.E. 3-10], FTC-VPS 391:21-392:7.

⁵⁵ See, e.g., Px. 28 [D.E. 3-10], FTC-VPS 383:20-21.

⁵⁶ See, e.g., Px. 137 (Patton Dec.), ¶ 4.

⁵⁷ See, e.g., Defendants’ Answer [D.E. 61], ¶ 53 (“Admit that VPS['] service is limited to posting an online advertisement.”); A. Wilson Dec. [D.E. 46-1], ¶ 4 (“VPS only advertises customers’ timeshares and does not handle any of the renting, buying, selling thereof.”); Px. 150 (Murray Dep.) at 87:24-88:3 (promise of an open house was “a big fat lie”); d. at 85:3-19; Px. 139 (Webb Dec.), ¶¶ 7-8 (promised sales events and open houses did not occur); accord

- x employed “unbecoming” employees;⁶⁰
- x was aware that its telemarketers drank alcohol and consumed drugs on the job;⁶¹
- x

VPS during the relevant period. VPSst31

paying a licensing penalty for another VPS office. David Taylor signed a settlement on behalf of "Vacation Property Services, Inc. d/b/a ... Higher Level Marketing."^{82, 83} And defendant Taylor testified that he regularly inspected the VPS office to ensure that it was using the proper scripts and displaying the necessary licenses.⁸⁴

3. Defendant Taylor's Tenure at VPS

David Taylor joined VPS in February 2004 by paying \$100,000 to purchase Mark Dann's 50% ownership interest in VPS.⁸⁵ He served as President of VPS.⁸⁶ In that role, Taylor admits that he supervised employees, handled customer complaints, regulatory compliance, employee discipline, employee training, credit card chargeback requests, BBB complaints, drafted scripts, negotiated with Florida AG, monitored other VPS offices and managed various other day-to-day matters.⁸⁷

Defendant Taylor also opened another VPS office under the auspices of VPS – D&D Vacations, Inc. d/b/a Vacation Property Services d/b/a United States Property Services ("D&D VPS").⁸⁸ In addition to owning an equity stake in D&D VPS, Taylor also served as its Secretary.⁸⁹ In 2007, Taylor met with a representative from the Florida AG with respect to

⁸¹ Px. 140 (Bassett Dec.), ¶ 7 (Perry signed contract on behalf of VPS in 2007).

⁸² Px. 148, page 88, 92 (Taylor Dep., Ex. 98) (Unsub Telemarketer Settlement); Px. 148 (Taylor Dep.) at 191:6-19. VPS 31st. was incorporated as High Level Marketing, Inc. See note 3, supra

⁸³ Rule 408 does not bar consideration of this settlement because, *inter alia*, the claim settled in Px. 98 is not at issue in this case. See, e.g., *McClandon v. Heathrow Land Co. Ltd. Partnerships*, No. 06-08-cv-35, 2010 WL 336345, *3 (M.D. Fla. Jan. 22, 2010); *Broadcort Capital Corp. v. Summa Med. Corp.*, 72 F.2d 1183, 1194 (10th Cir. 1992).

⁸⁴ Px. 148 (Taylor Dep.) at 48:6-50:23 (Taylor visited various VPS offices, including VPS 31

⁸⁵

complaints filed against “[a]ll the Vacation Property Services” offices, including D&D VPS.⁶⁰

In December 2007, Taylor relinquished his day-to-day roles at VPS. Taylor suggested to Wilson that he pay Taylor 50% of

(iv) they will sell or rent the consumers' timeshares with a short period of time; (v) their sales representatives will personally market consumers' timeshares; and (vi) they will be able to obtain refunds if their timeshares are not sold as a result of VPS's advertising.⁹⁷ Defendants ignored the AVC and, until stopped by Court, VPS continued to operate as if the AVC had never been signed. Indeed, VPS office manager Stacy Wilson (Wilson's wife) admitted that VPS did not inform its telemarketers about the AVC's terms and restrictions.⁹⁸

C. Defendants Violated the Do Not Call Laws

Defendants called tens of thousands of telephone numbers belonging to consumers who had registered their number with the violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).⁹⁹ And Defendants did not pay fees for access to the Registry in violation of the TSR.¹⁰⁰ In fact, defendant Taylor admitted that VPS did not access the Registry.¹⁰¹

III. ARGUMENT

A. Defendants Violated the FTC Act

A solicitation is deceptive and violates the FTC Act if it involves a material

⁹⁷ Px. 36 [D.E. 3-16 & 43-1], FTC-VPS 633-33, ¶ 3.2. VPS agreed to pay \$15,000 to the Florida Department of Legal Affairs Revolving Trust Fund and refunded \$12,266.00 to consumers. It further agreed to escrow \$10,000 for any unidentified refund requests made prior to the effective date of the AVC.

misrepresentation that is likely to mislead consumers acting reasonably under the circumstances. *FTC v. RCA Credit Servs., LLC*, 2010 WL 1320, 1329 (M.D. Fla. 2010). “Express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service are presumed to be material.” In deciding whether a solicitation is likely to mislead consumers, courts consider the overall “net impression” it creates. *Id.* “A solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.” *Id.*¹⁰²

As demonstrated in the Statement of Disputed Material Facts, Defendants’ aggressive sales pitch to consumers represented, expressly or by implication, that Defendants had buyers lined up to purchase or rent consumers’ timeshares and/or that Defendants would sell or rent the consumers’ timeshares within a short period.¹⁰³ In addition, Defendants often assured consumers that Defendants’ fee would be refunded if the sale did not close as promised.¹⁰⁴ Such representations are presumed to be material because they are express claims. *RCA*, F. Supp. 2d at 1329 (citing *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003)). The materiality of these claims is also evidenced by the consumer declarations and other evidence cited herein.¹⁰⁵ Further, these claims were false. Defendants had no buyer or renter in hand and did not arrange for quick sales or rentals of consumers’ timeshares. Thus, Defendants’ deceptive marketing practices violated Section 5(a) of the FTC Act.

B. Defendants Violated the TSR

Defendants similarly violated the TSR in numerous ways:

¹⁰² Quoting *FTC v. Cyberspace.com LLC*

First, Defendants lied about having buyers or renters lined up to purchase or rent consumers' timeshares and by falsely promising quick sales or rentals.¹⁰⁶ Part 310.3(a)(4) of the TSR prohibits Defendants from making false or misleading statements to induce the purchase of goods or services.

Second, Defendants lied about their refund policy when they claimed that the consumer's fee would be refunded if the sale or rental did not close and when they promised to refund consumers that requested a refund within seven days.¹⁰⁷ Part 310.3(a)(2)(iv) of the TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication ... [a]ny material aspect of the nature or terms of the [ir] refund, cancellation, exchange, or repurchase policies. See also 6 C.F.R. Part 310.3(a)(4).

Third, Defendants called hundreds of thousands of consumers who had listed their phone numbers on the Registry, in violation of Part 310.4(b)(1)(i)(B) of the TSR.¹⁰⁸

And fourth, Defendants failed to pay the required fees for access to the Registry, in violation of Part 310.8 of the TSR.¹⁰⁹

C. Defendants' Excuses and Defenses Do Not Save Them From Liability

1. Defendants' Lies Were Not Mere "Puffing"

Defendants have suggested that their false statements were mere "puffery."¹¹⁰ The law, however, does not permit fraudsters to utilize "puffery" defense where, as here, defendants make demonstrably false claims. See, e.g., *United States v. Martinez*, 454 F.3d 1300, 1317

¹⁰⁵ See, e.g. Section II.A., supra see also note 19, supra

¹⁰⁶ See Section II.A., supra

(11th Cir. 2006) (“Here, the trial judge refused to instruct on the ‘puffing’ defense, noting that the evidence ‘cannot impossibly stretch be characterized as mere puffery or just a sales pitch.’ We agree. The misrepresentations in this case were not exaggerated opinions or hyped-up sales

verifier to ensure that the sale will move forward.¹¹⁶

Second, many verifiers spoke quickly, making them difficult to understand.¹¹⁷

Third, many verification tapes were edited to remove incriminating statements.¹¹⁸

Fourth, many such calls included confirmation of VPS's misrepresentations.¹¹⁹

Fifth, although the VPS "verification script" included a question asking whether the telemarketer made any statements or promises that conflicted with the statements made by the verifier, the overwhelming majority of the verification calls did not

3. No Evidence of Sales/Rentals by VPS

Defendants have attempted to justify their fraud by claiming that VPS was responsible for significant numbers of timeshare sales. In testifying as VPS's § 30(b)(6) representative, defendant Wilson claimed that he had evidence of offers for VPS's timeshare properties on his Hotmail account and agreed to share them with the FTC.¹²³ Nevertheless, when the FTC requested these "offers," Defendants failed to provide any such evidence or information.¹²³

Moreover, deposition testimony from Wilson and VPS employees confirms the lack of sales and rentals at VPS during the relevant period.¹²⁴ In a "confirmation document" sent to VPS's customers after they had paid the up-front fee, VPS admitted that "the ratio of the

buyers and the likely speed of sales. The FTC has provided irrefutable evidence of Defendants' liability for these lies. Some VPS customers may have sold or rented their timeshares. But, even if there were evidence of sales, there is no evidence that VPS's website led to such sales.

D. The Individual Defendants Are Personally Liable for the Unlawful Acts
To obtain equitable and monetary relief against Wilson and Taylor, the FTC must establish that they (1) participated directly in the unlawful acts or practices or had authority to control them; and (2) had some knowledge of these acts or practices. ¹²⁶ *RCA*, 727 F. Supp. 2d at 1339. "Authority to control a company's practices may be demonstrated by active participation in the corporate affairs, including assuming duties as a corporate officer." "The knowledge component does not require proof of subjective intent to defraud; it may be satisfied by a showing of actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth." *FTC v. FTN Promo., Inc.*, No. 8:07-CV-1279, 2008 WL 821937, *2 (M.D. Fla. March 26, 2008) (quotations and citation omitted).¹²⁷ In addition, "the degree of participation in business is probative of knowledge." *RCA*, 727 F. Supp. at 1340.

The Statement of Undisputed Facts details Defendants Wilson and Taylor's key roles in the fraud. Their ownership of, and executive and managerial positions in, VPS, as well as their own deposition testimony, make plain that they participated in this scam and controlled

the entity through which it was executed. Thus, Wilson and Taylor are liable for the unlawful practices at issue here.¹²⁸

E. VPS and VPS 31st St. Operated As a Common Enterprise

Although Defendants are liable for their conduct specifically with respect to VPS, as demonstrated above, Defendants are also liable for the fraudulent acts and practices of VPS 31st St. based on the common enterprise relationship between the two offices. “When determining whether a common enterprise exists, courts look to a variety of factors, including: common control, the sharing of office space and officers, whether business is transacted through ‘a maze of interrelated companies,’ the commingling of corporate funds and failure to maintain separation of companies, unified advertising, and evidence which ‘reveals that no real distinction existed between the Corporate Defendants.’” *FTC v. Wolf No. 94-8119*, 1996 WL 812940, *7-8 (S.D. Fla. Jan. 30, 1996).¹²⁹

As set forth in Section II.B.2, above, this is overwhelming evidence of the common enterprise between VPS and VPS 31st St. In fact, VPS’s own Florida telemarketing license applications list Perry as a “Principal” and “Manager” at VPS.¹³⁰ Accordingly, Defendants are also responsible for the fraud at VPS 31st St. – fraud that was extensively documented in the

no bearing on the question whether a section 5 violation has occurred”).

¹²⁸ Taylor remained liable until at least July 2010 – the date of the last known profit payment from VPS to Taylor. See Section II.B.3; see also *FTN Promo*, 2008 WL 821937 at *8 (“even if [defendant’s] direct participation were disregarded, his receipt of profits from the telemarketing scheme would support the partial freeze of his assets”). And even if Taylor’s culpability ended in December 2007, the evidence discussed in Section II. includes extensive pre-December 2007 evidence, including numerous consumer declarations. See, e.g. Px. 137 (Patton Dec.), ¶ 3; Px. 124 (Peart Dec.), ¶ 3; Px. 111 (M. Br. Dec.), ¶ 3; Px. 119 (Hubbard Dec.), ¶ 3; Px. 125 (Jolly

FTC's TRO Motion¹³¹ and, thereafter, admitted by Defendants.¹³²

F. Final Order

In light of the irrefutable, overwhelming evidence of Defendants' callous, long-running fraud, the FTC requests that the Court grant summary judgment and enter the attached, proposed final order. The attached order bans conduct prohibitions nearly identical to those entered against Perry and VPS¹³³ [D.E. 97]. The proposed order includes, *inter alia*, bans on: (1) telemarketing and (2) timeshare sale and rental products and services. These bans are appropriate in light of the long-running nature of Defendants' timeshare-related telemarketing fraud and their failure to abide by the conduct prohibitions in the AVC that should have stopped Defendants'

well as those of VPS's ¹³⁸ The amounts reflected in the attached chart include VPS's gross income, i.e., income less refunds ¹³⁹ paid to consumers and chargebacks.

Defendants' victims deserve restitution. Many of these victims fell prey to Defendants' deceitful promises of quick money after finding themselves in a precarious financial position or difficult personal situation. ¹⁴⁰ They believed Defendants when they were told that their timeshare would be sold or rented quickly, thereby ending burdensome maintenance fees and freeing up much needed money, if only they would agree to pay Defendants' up-front fee. Defendants preyed upon their victims' need and desire to quickly sell or rent their timeshares, extracting several hundred – even thousands – of dollars from individual victims premised on Defendants' false promises of buyers and renters in the wings or quick sales and rentals. Equity demands that they be ordered to give all of the proceeds of their fraud in the long overdue effort to repay at least some of the money they stole from American consumers during VPS's decades-long scam. VPS was simply "a big fat lie."

IV. CONCLUSION

The FTC respectfully requests that this Court end VPS's decades-long fraud by granting summary judgment to the FTC and entering the proposed final order.

restitution and disgorgement. *Id.* at 470 ("[S]ection 13(b) permits a district court to order a defendant to disgorge illegally obtained funds. To hold otherwise would permit a defendant to retain such funds simply by keeping poor records. Such a result would permit unjust enrichment and undermine the deterrence function of section 13(b). Further, ... a court may order the funds paid to the United States Treasury.").

¹³⁷ Plus pre-judgment interest.

¹³⁸ P.x. 146 (Vera Supp. Dec), ¶¶ 3-4 & Att. See also Proposed Order (attached), Section V.

¹³⁹ RCA, 727 F. Supp. 2d at 1336 ("In a Section 13(b) action of this kind, the proper measure of restitution is the purchase price of Defendants' services less any refunds paid to consumers.").

¹⁴⁰ See note 18, supra

Dated: January 6, 2012

Respectfully submitted,

/s/ William T. Maxson

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Certificate of Service

I hereby certify that on January 6, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and will send a notice of electronic filing to counsel of record. I also served defendants David Taylor, Albert Wilson, and Vacation Property Services, Inc. via e-mail and FedEx.

/s/ William T. Maxson

Service List

ANDREW COVE
COVE & ASSOCIATES