

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 11-80155-CIV-COHN/SELTZER

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

U.S. MORTGAGE FUNDING, INC.,
a Florida corporation, et al.,

Defendants.

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AS TO DEFENDANTS DEBT REMEDY
PARTNERS INC. AND DAVID MAHLER

THIS CAUSE is before the Court upon the filing of a Proposed Stipulated Judgment and Order For Permanent Injunction and other Equitable Relief as to Defendants Debt Remedy Partners Inc. and David Mahler [DE 154-1] ("Stipulation"). The Court has carefully reviewed the Stipulation and is otherwise fully informed in the premises.

On February 7, 2011, Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), commenced this civil action pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108 to obtain preliminary and permanent injunctive and other equitable relief. On July 26, 2011, Plaintiff filed an Amended Complaint adding Louis Gendason as a Defendant. The Amended Complaint alleges that Defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and the

6. The parties stipulate and agree to entry of this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint to the date of entry of this Order. This settlement does not settle or resolve any matters not alleged in the Complaint. Defendants DRP and Mahler do not admit any of the allegations set forth in the Complaint, other than the jur

6. “Defendants ” means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination. “Corporate Defendants ” means U.S. Mortgage Funding, Inc., Lower My Debts.Com, LLC, Debt Remedy Partners, Inc., and their successors (including Lachs Capital LLC d/b/a Diversified Home Solutions) and assigns, as well as any subsidiaries, and any fictitious business entities or business names created or used by these entities, or any of them.

“Individual Defendants ” means David Mahler, John Incandela, Jr., Jamen Lachs, Louis Gendason, and by whatever other names each may be known.

7. “Federal homeowner relief or financial stability program” means any program (including its sponsoring agencies, telephone numbers, and Internet websites) operated or endorsed by the United States gover

arrange for any consumer to receive, or assist any consumer in receiving, credit, debit, or stored value cards; (B) improve, or arrange to improve, any consumer's credit record, credit history, or credit rating; (C) provide advice or assistance to any consumer with

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

14. "Telemarketing" means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog, which prompted the customer's call or in a substantially similar catalog.

ORDER
I. PERMANENT BAN ON MORTGAGE ASSISTANCE
RELIEF PRODUCTS AND SERVICES

IT IS THEREFORE ORDERED that Defendants DRP and Mahler, whether acting directly or through any other person, are permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any mortgage assistance relief product or service; and
- B. Assisting others in advertising, marketing, promoting, offering for sale, or selling any mortgage assistance relief product or service.

IT IS FURTHER ORDERED that Defendants DRP and Mahler, whether acting directly or through any other person, are permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any debt relief product or service; and
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any debt relief product or service.

III. PROHIBITION AGAINST VIOLATING
THE TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Defendants DRP and Mahler and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any good or service are hereby permanently restrained and enjoined from violating or assisting others in violating any provision of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, including, but not limited to:

- A. Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii), by misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristic of any good or service;
- B. Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii), by misrepresenting, directly or by implication, affiliation with, or endorsement by, any person or government entity;

- C. Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv), by misrepresenting, directly or by implication, any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;
- D. Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), by initiating or causing others to initiate outbound telephone calls to a person's telephone number on the National Do Not Call Registry; and
- E. Section 310.8 of the TSR, 16 C.F.R. § 310.8, by initiating or causing others to initiate an outbound telephone call to a telephone number within a given area code without Defendants Lachs, either directly or through another person, first paying the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry.

IV. PROHIBITED REPRESENTATIONS RELATING TO
FINANCIAL RELATED PRODUCTS OR SERVICES

IT IS FURTHER ORDERED that Defendants DRP and Mahler and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any financial related product or service, are hereby permanently restrained and enjoined from:

- A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

1. The terms or rates that are available for any loan or other extension of credit, including, but not limited to:

- a. closing costs or other fees;
- b. the payment schedule, the monthly payment amount(s), or other payment terms, or whether there is a balloon payment; interest rate(s), annual percentage rate(s), or finance charge; the loan amount, the amount of credit, the draw amount, or outstanding balance; the loan term, the draw period, or maturity; or any other term of credit;
- c. the savings associated with the credit;
- d. the amount of cash to be disbursed to the borrower out of the proceeds, or the amount of cash to be disbursed on behalf of

credit record, credit history, or credit rating or ability to obtain credit;

3. That any person can improve any consumer's credit record, credit history, or credit rating by permanently removing negative information from the consumer's credit record, credit history, or credit rating, even where such information is accurate and not obsolete;

4. Any aspect of any debt relief product or service, including, but not limited to, the amount of savings a consumer will receive from purchasing, using, or enrolling in such debt relief product or service; the amount of time before which a consumer will receive settlement of the consumer's debts; or the reduction or cessation of collection calls; and

5. That a consumer will receive legal representation;

B. Advertising or assisting others in advertising credit terms other than those terms that actually are or will be arranged or offered by a creditor or lender.

V. PROHIBITED REPRESENTATIONS
RELATING TO ANY PRODUCTS OR SERVICES

IT IS FURTHER ORDERED that Defendants DRP and Mahler and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any product, service, plan, or program are hereby permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any

execute all documents and perform any other act necessary to effect the liquidation of assets and shall maintain (including making required monthly payments to any lien holders and current insurance) and take no action to diminish the value of said assets. After all of said assets have been liquidated, the Receiver shall account for the proceeds derived therefrom and transfer all Net Proceeds from the sale of each asset to the Commission or its designated agent, in accordance with instructions provided by a representative of the Commission. Provided further, that if the sale of such assets result in a deficiency owed to any lien holder, Defendant Mahler shall be responsible for payment of such deficiency.

B. Defendants DRP and Mahler shall provide full cooperation to the Receiver or representative of the FTC in carrying out his duties pursuant to the Section of this Order, titled "Receivership."

C. Time is of the essence. In the event of any default by Defendants DRP and Mahler to perform any obligation imposed under Section VII.A.1 and 2 and Section VII.B.:

1. The judgment imposed herein will not be suspended, and the full amount of that Judgment SEVENTEEN MILLION SEVEN HUNDRED NINETY-ONE THOUSAND AND EIGHTY-FIVE Dollars (\$17,791,085.00) shall immediately become due and payable, plus interest from the date of

entry of this Order pursuant to 28 U.S.C. § 1961, as amended, less any amounts already paid and

2. The Commission shall be entitled to immediately exercise any and all rights and remedies against Defendants DRP and Mahler to collect the full amount of the judgment and interest thereon, less any amounts already paid.

D. Upon entry of this Order, \$588,212.00, the portion of the monetary judgment that is not suspended shall become immediately due and payable, and interest, computed pursuant to 28 U.S.C. §1961(a), as amended, immediately shall begin to accrue upon any unpaid balance.

E. Defendants DRP and Mahler shall immediately transfer to the Commission any tax refund that they may receive for taxes paid in 2008, 2009 and 2010.

F. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to consumer redress, and any attendant expenses for the administration of such equitable relief. Defendants DRP and Mahler shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion, that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as the FTC determines to be reasonably related to

VIII. RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

- A. The Commission's agreement to, and the Court's approval of this Order, including, but not limited to the suspension of part of the monetary judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants DRP and Mahler's representations regarding their financial condition, as set forth in: (1) Financial Statement of Individual Defendant David Mahler and attachments (signed by David Mahler and dated June 21, 2011); (2) Financial Statement of Corporate Defendant Debt Remedy Partners, Inc. and attachments (signed by David Mahler and dated respectively March 31, 2011); (3) additional documentation submitted by letter from Defendants' counsel Christopher Meier of Greenspoon Marder to Commission counsel dated June 2, 2011 (attaching 2007 and 2008 Income Tax Returns and 2009 Capital Gains and Losses of Debt Remedy Partners and 2008, 2009, and amended 2009 Federal Income Tax Returns of David Mahler); letter dated June 28, 2011 (attaching 2010 Federal Income Tax Return of David Mahler and 2010 Federal Income Tax Return of Debt Remedy Partners); (4) Profit and Loss Statements of Debt Remedy Partners for the period of January 2011 through July 20, 2011; and (5) Property Appraisal dated November 5, 2011.
- B. The partial suspension of the \$17, 791,085.00 judgment shall be lifted as to Defendants DRP and Mahler, if, upon motion of the Commission, the Court finds that Defendants DRP and Mahler failed to disclose any material Asset,

materially misrepresented the value of any Asset, or made any other material misrepresentation in or omission from the financial information provided, the suspended judgment entered in Section VII shall become immediately due and payable (less any amounts already paid). Provided however that in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court.

C. If the partial suspension of the judgment is lifted, the judgment shall become immediately payable, and the amount due shall be calculated as follows: the judgment amount specified in Subsection VII.A. above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), minus any payments previously made pursuant to this Section, plus interest computed from the date of entry of this Order pursuant to 28 U.S.C. § 1961. For purposes of this Section, Defendants DRP and Mahler waive any right to contest any of the allegations in the Commission's Complaint.

IX. PROHIBITIONS ON USE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants DRP and Mahler and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are permanently restrained and enjoined from:

A. Disclosing, using, or benefitting from customer information, including the

name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which any

selling, or assigning, or otherwise transferring any right to collect payment from any consumer relating to the purchase of mortgage loan modification or foreclosure relief services.

XI. COOPERATION WITH COMMISSION COUNSEL

IT IS FURTHER ORDERED that Defendants DRP and Mahler and their successors, assigns, officers, shall, in connection with this action or any subsequent investigation or litigation related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendants DRP and Mahler shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint as it may be amended, without the service of a subpoena.

XII. RECEIVERSHIP

IT IS FURTHER ORDERED that the appointment of Receiver Michael Goldberg, pursuant to the Ex Parte Temporary Restraining Order entered on February 9, 2011, and the Preliminary Injunction entered on March 1, 2011, is hereby continued in full force and effect except as modified by this Section. The Receiver and those it employs are entitled to reasonable compensation for the performance of their duties pursuant to this Order and for the costs of actual out-of-pocket expenses incurred by them from the

assets held by or in the possession or control of the Receiver. The Receiver shall complete liquidation of all assets in Section VII.A.1. Upon liquidation of such assets, the Receiver shall submit his final report and application for fees and expenses, and upon approval of the same by the Court, shall pay an7 Tc 0.0600 Tw (asset)Tj r5 s

A. Defendants DRP and Mahler, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, Defendant Mahler, for any business that he, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls, and Defendant DRP, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendants DRP or Mahler delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

XV. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants DRP and Mahler make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact,

which representatives of the Commission may use to communicate~~at~~

1. Each Defendant must report any change in: (a) any designated point of contact; (b) the structure of Defendant DRP or any entity that Defendant Mahler has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, Defendant Mahler must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest, and identify its name, physical address, and Internet address, if any.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: " and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. U.S. Mortgage Funding, Inc., et al., X110016.

XVI. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants DRP and Mahler must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendants DRP and Mahler for any business in which either, individually or collectively with any other Defendant, is a majority owner or directly or indirectly controls, must maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Customer files obtained after entry of this Order showing the names, addresses, telephone numbers, dollar amounts paid, and the quantity and description of goods or services purchased;

Mahler must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants DRP and Mahler or any individual or entity affiliated with them, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XVIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

DONE AND ORDERED in chambers in Fort Lauderdale, Broward County, Florida, this 3rd day of February, 2012.



Copies to counsel of record via CM/ECF.