

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 DEFENDANT JOHN INCANDELA, JR.

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 Defendant John Incandela, Jr. [DE 154-2] (“Stipulation”). The Court has carefully 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 FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, in connection with the

marketing and sale of mortgage assistance relief services. The FTC and Defendant John Incandela, Jr. hereby stipulate to the entry of this Final Judgment and Order for Permanent Injunction and Other Equitable Relief (“Order”).

FINDINGS

By stipulation of the parties and being advised of the premises, the Court finds:

1. This is an action by the Commission instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310. Pursuant to these Sections of the FTC Act and the Telemarketing Act, the Commission has the authority to seek the relief contained herein.

2. The Complaint states a claim upon which relief may be granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b).

3. This Court has jurisdiction over the subject matter of this case and jurisdiction over the Defendant John Incandela, Jr.

4. Venue in the United States District Court for the Southern District of Florida is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

5. The activities of Defendant John Incandela, Jr., as alleged in the Complaint, are “in or affecting commerce” as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

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. Except as otherwise provided herein, Defendant John Incandela, Jr. does not admit any of the allegations set forth in the Complaint, other than the jurisdictional facts, merely by stipulating and agreeing to the entry of this Order.

7. Defendant John Incandela, Jr. waives all rights to seek judicial review or

arranging for the formulation or provision of, any marketing support material or service, including but not limited to, web or Internet Protocol addresses or domain name registration for any Internet websites, affiliate marketing services, or media placement services; (D) providing names of, or assisting in the generation of, potential customers; (E) performing marketing, billing, or payment services of any kind; and (F) acting or serving as an owner, officer, director, manager, or principal of any entity.

2. "Competent and reliable evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. "Consumer" means any natural person.

4. "Customer" means any person who has paid, or may be required to pay, for products,

5. "Debt relief product or service" means any product, service, plan, or program represented, expressly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt or obligation, including but not limited to a tax debt or obligation, between a person and one or more unsecured creditors or debt collectors, including but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

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 M

credit history, or credit rating; (C) provide advice or assistance to any consumer with regard to any activity or service the purpose of which is to improve a consumer's credit record, credit history, or credit rating; (D) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, a loan or other extension of credit; E) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving a debt relief product or service; or (F) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving any service represented, expressly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of any debt or obligation (other than a debt or obligation secured by a mortgage on a consumer's dwelling), including but not limited to a tax debt or obligation, between a consumer and one or more secured creditors, servicers, or debt collectors.

9. "Material fact" means any fact that is likely to affect a person's choice of, or conduct regarding, goods or services.

10. "Mortgage assistance relief product or service" means any product, service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following: (A) stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession; (B) negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal

balance, monthly payments, or fees; (C) obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan; (D) negotiating, obtaining, or arranging any extension of the period of time within which the consumer may (i) cure his or her default on a dwelling loan, (ii) reinstate his or her dwelling loan, (iii) redeem a dwelling, or (iv) exercise any right to reinstate a dwelling loan or redeem a dwelling; (E) obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or (F) negotiating, obtaining, or arranging (i) a short sale of a dwelling, (ii) a deed-in-lieu of foreclosure, (iii) or any other disposition of a dwelling loan other than a sale to a third party that is not the dwelling loan holder. The foregoing shall include any manner of claimed assistance, including, but not limited to, auditing or examining a consumer's mortgage or home loan application.

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

12. "Receiver" means Michael I. Goldberg, Esquire.

13. "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

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 Defendant Incandela, 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.

III. PROHIBITED REPRESENTATIONS RELATING TO
FINANCIAL RELATED PRODUCTS OR SERVICES

IT IS FURTHER ORDERED that Defendant John Incandela, Jr. and his 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 the borrower to any third parties;

e. whether the payment of the minimum amount specified each

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.

IV. PROHIBITED REPRESENTATIONS
RELATING TO ANY PRODUCTS OR SERVICES

IT IS FURTHER ORDERED that Defendant John Incandela, Jr. and his 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 material fact, including, but not limited to:

- A. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- B. That any person is affiliated with, endorsed or approved by, or otherwise connected to any other person, government entity, any federal homeowner relief or financial stability program, or public, non-profit, or other non-commercial program, or any other program;
- C. The total costs to purchase, receive, or use, or the quantity of, the product,

service, plan, or program;

D. Any material restriction, limitation, or condition on purchasing, receiving, or using the product, service, plan or program;

E. Any material aspect of the performance, efficacy, nature, or characteristics of the product, service, plan, or program.

V. SUBSTANTIATION FOR BENEFIT,
PERFORMANCE, AND EFFICACY CLAIMS

IT IS FURTHER ORDERED that Defendant John Incandela, Jr. and his 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 making any representation or assisting others in making any representation, expressly or by implication, about the benefits, performance, or efficacy of any financial related product or service, unless at the time such representation is made, Defendant Incandela possesses and relies upon competent and reliable evidence that substantiates that the representation is true.

VI. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against Defendant John Incandela, Jr., jointly and severally with other the Defendants in this matter, in the amount

\$18,755,227.00.

B. Defendant Incandela shall immediately transfer to the Commission any tax refund that he may receive for taxes paid in 2008, 2009 and 2010.

C. Upon entry of this Order, the moneta

chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

E. Defendant Incandela relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant Incandela shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

F. Defendant Incandela agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendant Incandela further stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C.

§ 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such purposes.

G. Upon request, Defendant Incandela is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC any tax identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order; and

H. Pursuant to Section 604(a)(1) of the Fair Credit Re0000 TD e00 0.00t'.00 rg dj 15.3600

concerning Defendant Incandela to the FTC, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

VII. COOPERATION WITH COMMISSION COUNSEL

IT IS FURTHER ORDERED that Defendant John Incandela, Jr. 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, Defendant Incandela 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.

VIII. COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that Defendant John Incandela, Jr. shall cooperate fully with the Receiver in: (A) pursuing any and all claims by the Receiver against other persons or entities; (B) assisting the Receiver in defending any and all actions or claims brought against the Receiver or the receivership estate by other persons or entities; (C) executing any documents necessary to transfer assets or ownership interests to the Receiver pursuant to the terms of this Order; (D) refraining from any act that would interfere or impede the Receiver in execution of the performance of its duties.

Provided further that Defendant Incandela releases, discharges and waives all

rights against the Receiver, the receivership estate and those persons that the Receiver employed in this matter from any and all claims, demands, actions, causes of actions, or suits that now exist or may hereafter accrue, whether known or unknown that relate to this Ord

or directly or indirectly controls, 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; (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 Defendant Incandela delivered a copy

including title, role, responsibilities, participation, authority, control, and any ownership;

2. (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 with Defendant Incandela; (b) identify all of Defendant Incandela's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Defendant Incandela must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how Defendant Incandela is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

B. must

interest, and identify its name, physical address, and Internet address, if any.

2. (a) any designated point of contact; (b) the structure of any entity that Defendant Incandela 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.

C. Defendant Incandela must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against him 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 18 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, D.C. 20580.

F. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

XIV. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant John Incandela, Jr.'s compliance with any provision of this Order:

A. Within 14 days of receipt of written request from a representative of the Commission, Defendant Incandela must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with Defendant Incandela. Defendant Incandela must permit representatives of the Commission to interview any employee or other person affiliated with Defendant Incandela who has agreed to such an interview. The person interviewed may have counsel present.

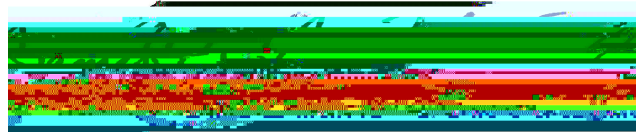
C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendant Incandela or any individual or entity affiliated with Defendant Incandela, without the necessity of identification or prior notice. 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.

XV. 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.