

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 LOUIS GENDASON**

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 Louis Gendason [DE 154-4] (“Stipulation”). The Court has carefully reviewed the Stipulation and is otherwise fully informed in the premises.

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), commenced this civil action on February 7, 2011, 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 for Defendants’ acts or practices in violation of 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 subsequently filed an *Amended* Complaint naming Louis Gendason as a Defendant on July 26, 2011. On September

20, 2011, the Court entered a Default Judgment and Order against Defendants U.S. Mortgage Funding, Inc. and Lower My Debts.Com, LLC. (DE 125).

The FTC and Defendant Louis Gendason 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 13(c) of the Securities Exchange Act of 1934.

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 Louis Gendason 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 Louis Gendason waives all rights to seek judicial review or

website, email, or other electronic communication; (C) formulating or providing, 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.

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.

A. Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii), by
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any corporation, subsidiary, division, or other device

no prepayment penalty and/or other fees or costs will be incurred if the consumer subsequently refinances; and

g. that the interest rate(s) or annual percentage rate(s) are fixed rather than adjustable or adjustable rather than fixed;

2. Any person's ability to improve or otherwise affect a consumer's 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

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 Louis Gendason 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 advertisement

balance.

D.

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 Gendason 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 Gendason 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 Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish a consumer report concerning Defendant Gendason 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 Louis Gendason 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

collect, collecting, 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.

X. PROHIBITIONS ON USE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant Louis Gendason and his agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with 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 Defendant obtained prior to entry of this Order in connection with the advertising, marketing, promotion, offering for sale or sale of any mortgage loan modification or foreclosure
- B. Failing to dispose of such customer information in all forms in their possession, custody, or control within 30 days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided further, however, customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

XI. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant Louis Gendason shall obtain acknowledgments of receipt of this Order:

- A. Defendant Gendason, 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 Gendason for any business that he, individually or collectively with any other Defendant, is the majority owner 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 Gendason delivered a copy of this Order, Defendant Gendason must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

XII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant Louis Gendason make timely

submissions to the Commission:

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- A. One year after entry of this Order, D

Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

B. For 20 years following entry of this Order, Defendant Gendason must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Defendant Gendason performs services whether as an employ

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. The subject line must begin: RE: *FTC v. U.S. Mortgage Funding, Inc., et al.*, X110016.

XIII. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant Louis Gendason must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant Gendason, for any business in which he, 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;

with Defendant Gendason 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 Gendason or any individual or entity affiliated with Defendant Gendason, 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.