

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

*In re* SANCTUARY BELIZE (D) ¶2754c 0.002 Tw ¶11.66585 Td(C)- Tw 11N9.93PJM

**I. The Redress Plan Furthers Several Primary Goals Despite Limitations Defendants Created.**

**A. The Redress Plan Furthers Several Primary Goals.**

Defendants’ scheme left the FTC and Receiver with an extraordinarily complicated and messy situation involving more than \$100 million in losses, substantial undeveloped real estate in Belize, incomplete records, and hundreds of understandably desperate lot purchasers<sup>2</sup>—many of whom have uncertain (and sometimes conflicting) claims and rights. Nevertheless, the Redress Plan achieves important practical and policy objectives:

▪ **Notice and Opportunity.** The Redress Plan contains extensive notice provisions that will ensure all lot purchasers have an opportunity to participate. The Redress Plan far exceeds the weak notice provisions courts sometimes approve in analogous claims-made resolutions. It includes multiple “gold standard” features including, by way of example only, requirements that the Receiver: (i) communicate with prospective participants multiple times to solicit claims, *see, e.g.*, PXA at 21, § II(C); and (ii) where necessary, make additional communications tailored to individual claimants to enable them to cure submissions that may be incomplete, *id.* at 22, § II(G)(1). It also requires multiple clear and conspicuous disclosures regarding deadlines, *see, e.g., id.*, and follow up from the Receiver should it appear likely the claimant may miss certain key deadlines.<sup>3</sup>

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(quoting *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953)). In fact, the FTC Act “gives the federal courts broad authority to fashion appropriate remedies for violations of the Act. *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir.1994) (citations omitted) (internal quotation marks omitted). *See also FTC v. Health Formulas, LLC*, No. 14-cv-01649, 2015 WL 2130504, \*5 (D. Nev. May 6, 2015) (“The court’s power to supervise the receivership and determine appropriate remedies is extremely broad.”) (quotation omitted).

<sup>2</sup> In this memorandum, we use phrases such as “lot purchaser” informal

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**B. Defendants' Malfeasance Limits Redress Possibilities.**

Despite the likelihood that the Redress Plan will achieve these goals, there are significant risks and limitations arising from the circumstance Defendants created. As discussed below, there is no plan that will come anywhere close to compensating lot purchasers fully, nor is there any solution tha

deadlines clear, *see id.* at 22, § II(D), and before the deadline, contact every consumer that received but has not returned a claim application, *id.* at II(F).

Through the claim application, consumers will provide the Receiver with information to determine their eligibility, their interest in a particular lot, and the amounts they paid. *See id.* at 2, § I(4). Stated very generally, consumers who purchased lots through the Sanctuary Belize or

transitional sales process are (4) by (e e e 2 ( ) T J 0 . d - 2 ( d . ) 0 T J / T T 1 t ) - 2 ( h a ) - 1 ( 3 T d ( 2 , § I ) - 2 ( 5 - 2

any remaining balance with a ten-year, interest-free loan payable to the Receiver or its assignee (a new developer) in equal monthly installments. *See id.* at 25 § III(B). Consumers will then communicate their election to the Receiver and execute the relevant materials including clear and conspicuous disclosures that the FTC must approve. *See id.* at 25 § III(B).

Next, most Kanantik lot purchasers will choose between three options: (1) keeping their Kanantik lot under a reformed contract; (2) returning their lot to the Receiver with no obligation to make payments under their contract (regardless of the balance), or other obligations to the Defendants, Receiver, or future developer; or (3) exchanging their Kanantik lot for one in New Sanctuary, accepting a reformed contract that will reduce the price of the new lot

(with proceeds to eligible lot purchasers), and its interest in New Sanctuary. *See id.* The Receiver must sell its interest in New Sanctuary to a qualified developer that agrees to provide security and complete various infrastructure and maintenance projects including, among other things, sufficient roads and utilities to ensure that every lot purchaser that becomes a New Sanctuary owner has a buildable lot. *See id.*

**III. The Redress Plan Provides Lot Purchasers With Clear Choices and the Best Chance To Maximize Recovery Overall.**

The Redress Plan is complex, and several additional considerations warrant separate mention because they further illustrate that the Redress Plan represents an r

- **Everyone Will Have the Choice To Obtain or Retain a New Sanctuary Lot.**

Many eligible consumers will not have straightforward claims to Sanctuary Belize lots for many reasons—as examples, they purchased in Kanantik, Defendants purportedly “foreclosed” on their lot or otherwise claimed to have taken it back, they sold their lot at a loss, or another consumer has



their particular circumstances, the election they make, or both. Importantly, however, the Redress Plan's design means that participating should not make any lot purchaser worse off. Put differently, the Redress Plan will benefit every eligible lot purchaser who submits a claim.

**IV. The Redress Plan Contains Additional Features That Address Certain Difficult Issues.**

As discussed above, Defendants are responsible for the difficult situation the consumers face. That situation involves many difficult issues, including several that the Court should note:

- **Competing Claims.** One of the most difficult issues is how the receivership will address situations in which multiple consumers have interests in the same lot. The most common such circumstance occurred because Defendants frequently sold a lot to a buyer, purported to repossess the lot, and then re-sold the lot to a second buyer without properly extinguishing the first buyer's rights to the lot. The Redress Plan awards the lot to the eligible consumer who would suffer the greatest loss if he or she does not receive the lot considering the totality of the circumstances, including whether anyone has built on the lot. *See* PXA at 23-24, § II(K).

- **Who Qualifies as an Eligible Consumer.** Defining who qualifies as an "eligible consumer" is complicated due to the scam's length and complexity as well as Defendants' haphazard and unlawful business practices. The Redress Plan intends to compensate people who one would commonly view as "consumers." Accordingly, and subject to various exceptions, *see* PXA at 3-4, § I(5), the Redress Plan covers parties whose rights derive from purchasing a lot through Defendants' retail sales process, and excludes parties that are provably liable for malfeasance at issue in this matter, *see id.*

- **Constructive Trust.** The Court may recall that, in the original *AmeriDebt* proceedings, the Court recognized "the doctrine of constructive trust which requires that any proceeds of wrongdoing may be properly ordered held in trust for the victims of the wrongdoing." *FTC v. AmeriDebt, Inc.*, 373 F. Supp. 2d 558, 565 (D. Md. 2005). The Court found that a constructive trust protected frozen assets from possible creditors (specifically, the IRS), because the claims would not apply to "property that was wrongfully obtained from

consumers.” *Id.* (“Under the same doctrine of constructive trust previously referred to, even if the IRS has placed liens on Defendants’ assets, those liens would not attach to property that was wrongfully obtained from consumers, precisely what the FTC alleges in this case.”). The same rationale applies here (and, in fact, the Final Order against Pukke, Baker and Chadwick already places most of their assets in constructive trust for victims, *see* ECF No. 1111 (Jan. 11, 2021) at

\$100,000 lot (100% paid). To further illustrate the point, consider whether the 100% paid consumer is likely to pay an additional \$200,000 to switch positions with his 50% paid neighbor—this is extremely unlikely, and if the fully-paid consumer though

4 Cristobal: Purchased an identical lot with a \$200,000

with what consumers actually lost rather than their percentage paid (or any other arbitrary metric) and, as such, represents a fair exercise of the Court's equitable authority.

**Conclusion**

For all the aforementioned reasons, the Court should adopt the Redress Plan, which reflects the FTC's careful consideration and enjoys the strong support of both the Receiver and the Government of Belize.

Dated: January 21, 2021

Respectfully Submitted,

/s/

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**Certificate of Service**

I certify that on January 21, 2021, I caused to be served the foregoing filing, and all related documents, through ECF and otherwise by email or Federal Express to the following people and entities identified below:

Andris Pukke and entities he owns or controls at ekkup@msn.com;

Peter Baker and entities he owns or controls at peterbakerx@gmail.com;

Luke Chadwick and entities he owns or controls at luketchadwick@gmail.com;

Bruce Searby, as standby counsel for Luke Chadwick and the entities he owns or controls, at bsearby@searby.law;

Gary Caris, James E. Van Horn, and Kevin Driscoll, counsel for the Receiver, by ECF or at gcaris@btlaw.com; jvanhorn@btlaw.com; kevin.driscoll@btlaw.com; and

All persons and parties Appendix A hereto identifies (email or physical address information held and preserved by the FTC).<sup>14</sup>

/s/ Jonathan Cohen

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<sup>14</sup> The FTC understands that the Receiver will serve this submission, and the Redress Plan itself, on consumers and trade creditors.