

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

FMC Counseling Services, Inc., a Florida
corporation;

FDC Assoc Group, Inc., a Florida corporation;

FDC Business, Inc., a Florida corporation;

FMC Review Corporation, a Florida corporation;

NDR Group, Inc., a Florida corporation;

FMC Consultants Group, Inc., a Florida
corporation;

JONATHAN L. HERBERT, individually and d/b/a
Federal Debt Commission, Inc., FDC Financial,
Inc., and FDC Consultants, Inc.;

Defendants.

Case No. 14-61545-CIV-Zloch

Judge William J. Zloch

**PRELIMINARY INJUNCTION WITH
ASSET FREEZE AND OTHER
EQUITABLE RELIEF AS TO
DEFENDANT JONATHAN L.
HERBERT**

Plaintiff, Federal Trade Commission (“Commission” or “FTC”), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the 2009 Omnibus Appropriations Act, Public Law 111-8, Section 626, 123 Stat. 524, 678 (Mar. 11, 2009) (“Omnibus Act”), as clarified by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24, Section 511, 123 Stat. 1734, 1763-64 (May 22, 2009), and amended by the Dodd-Frank Wall Street Reform and

Corporation, NDR Group, Inc., and FMC Consultants Group, Inc., and their successors 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.

4. “**Defendants**” means Jonathan Herbert and all of the Corporate Defendants, individually, collectively, or in any combination.

5. “**Document**” or “**Documents**” means any materials listed in Federal Rule of Civil Procedure 34(a), Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

6. “**Financial Institution**” means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

7. “**Individual Defendant**” means Jonathan L. Herbert, and by whatever other names or aliases he may be known.

8. “**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 and offering to provide or providing legal services.

9. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

10. **“Plaintiff”** means the Federal Trade Commission (“FTC” or “Commission”).

11. **“Receiver”** means Walter Matthews, Esq., the court-appointed Receiver, and his associates, employees, agents, and attorneys.

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Individual Defendant, and his agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale, sale, or provision of any product or service, including, but not limited to, any mortgage assistance relief product or service, are hereby restrained and enjoined from:

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

1. That consumers qualify for a federal mortgage loan modification program that will make their payments substantially more affordable or will help them avoid foreclosure;

2. That Defendants are affiliated with, endorsed or approved by, or otherwise associated with the United States government, any governmental homeowner assistance plan, or any Federal, State, or local government agency, unit, or department;

3. That consumers are not obligated to, or should not, make scheduled periodic payments or any other payments pursuant to the terms of consumers' dwelling

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II.

DISCLOSURES REQUIRED BY MARS RULE

amount or method for calculating the amount] for our services,” in violation of the MARS Rule, 16 C.F.R. § 322.4(b)(1), and Regulation O, 12 C.F.R. § 1015.4(b)(1). For the purposes of this section, the amount "you will have to pay" shall consist of the total amount the consumer must pay to purchase, receive, and use all of the mortgage assistance relief services that are the subject of the sales offer, including but not limited to, all fees and charges;

2. “[Name of company] is not associated with the government, and our service is not approved by the government or your lender,” in violation of the MARS Rule, 16 C.F.R. § 322.4(b)(2), and Regulation O, 12 C.F.R. § 1015.4(b)(2);

3. “Even if you accept this offer and use our service, your lender may not agree to change your loan,” in violation of the MARS Rule, 16 C.F.R. § 322.4(b)(3), and Regulation O, 12 C.F.R. § 1015.4(b)(3); and

4. “If you stop paying your mortgage, you could lose your home and damage your credit,” in violation of the MARS Rule, 16 C.F.R. § 322.4(c), and Regulation O, 12 C.F.R. § 1015.4(c).

III.

ASSET FREEZE

IT IS FURTHER ORDERED that Individual Defendant, and his agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, except as provided herein, as stipulated by the parties, or as directed by further order of the Court, are hereby restrained and enjoined from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling,

Defendant or under any Defendant's control, without providing Plaintiff prior notice and an opportunity to inspect the contents in order to determine that they contain no assets covered by this Section;

C. Cashing any checks or depositing or processing any payments from customers of Defendants;

D. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of Individual Defendant; or

E.

managed, or controlled by, or under common control with Individual Defendant, which is served with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any of the assets, funds, documents, or other property held by, or under its control:

1. On behalf of, or for the benefit of, Individual Defendant or any other party subject to Section III above;

2. In any account maintained in the name of, or for the benefit of, or subject to withdrawal by, Individual Defendant or other party subject to Section III above; and

3. That are subject to access or use by, or under the signatory power of, Individual Defendant or other party subject to Section III above;

B. Deny Individual Defendant access to any safe deposit boxes or storage facilities that are either:

1. Titled in the name, individually or jointly, of any Defendant, or other party subject to Section III above; or

2. Subject to access by any Defendant or other party subject to Section III above;

C. Provide Plaintiff, within five (5) days of the date of service of this Order, a sworn statement setting forth:

1. The identification number of each account or asset titled in the name, individually or jointly, of Individual Defendant, or held on behalf of, or for the benefit of, Individual Defendant or other party subject to Section III above, including all trust accounts managed on behalf of any Individual Defendant or subject to Individual Defendant's control;

2. The balance of each such account, or a description of the nature and value of such asset;

3. The identification and location of any safe deposit box, commercial mail box, or storage facility that is either titled in the name, individually or jointly, of Individual Defendant, or is otherwise subject to access or control by Individual Defendant or other party subject to Section III above, whether in whole or in part; and

4. If the account, safe deposit box, storage facility, or other asset has been closed or removed, the date closed or removed and the balance on said date;

D. Within five (5) days of a request from the FTC, provide Plaintiff with copies of all records or other documents pertaining to each such account or asset, including, but not limited to, originals or copies of account applications, account statements, corporate resolutions, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and

E. This Section shall apply to existing accounts and assets, assets deposited or accounts opened after the effective date of this Order, and any accounts or assets maintained, held or controlled three years prior to the effective date of this Order. This Section shall not

prohibit transfers in accordance with any provision of this Order, any further order of the Court, or by written agreement of the parties.

V.

FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that, if he has not done so already in compliance with the temporary restraining order previously issued in this matter, Individual Defendant shall serve upon counsel for Plaintiff, no later than five (5) business days after entry of this Order, a completed financial statement accurate as of the date of entry of this Order, on the forms served on Defendants with the TRO, signed under penalty of perjury.

The financial statements shall include assets held outside the territory of the United States, shall be accurate as of the date of the entry of this Order, and shall be verified under oath. Individual Defendant shall attach to these completed financial statements copies of all local, state, provincial, and federal income and property tax returns, with attachments and schedules, as called for by the instructions to the financial statements.

VI.

COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that:

1. Individual Defendant and his agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, shall fully cooperate

with and assist the Receiver. This cooperation and assistance shall include, but not be limited to:

a. Providing any information to the Receiver that the Receiver deems necessary to exercising the authority and discharging the responsibilities of the Receiver;

b. Providing any password required to access any computer,

c. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants, or the Receiver;

d. Excusing debts owed to the Receivership Defendants;

e. Failing to notify the Receiver of any asset, including accounts, of the Receivership Defendants held in any name other than the name of the Receivership Defendants, or by any person or entity other than the Receivership Defendants, or failing to provide any assistance or information requested by the Receiver in connection with obtaining possession, custody, or control of such assets;

f. Doing any act or refraining from any act whatsoever to interfere with the Receiver's taking custody, control, possession, or managing of the assets or documents subject to this receivership; or to harass or interfere with the Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants; or to refuse to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any Order of this Court; or

g. Filing, or causing to be filed, any petition on behalf of the Receivership Defendants for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., without prior permission from this Court.

VII.

MAINTAIN RECORDS AND REPORT OF NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Individual Defendant, and his agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are hereby restrained and enjoined from:

- A. Failing to make and keep books, records, accounts, bank statements, current

number, e-mail address, and website address of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

VIII.

PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Individual Defendant, and his agents, servants, employees, attorneys, and all other persons or entities in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are hereby restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, birth date, telephone number, e-

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Provided, however, that Individual Defendant may disclose such financial or identifying personal information to a law enforcement agency or as required by any law, regulation, or court order.

IX.

REPATRIATION OF ASSETS AND DOCUMENTS

IT IS FURTHER ORDERED that Individual Defendant shall:

- A. Within three (3) business days following entry of this Order, taXTJ 0 T1g

other entities outside the territory of the United States of America, by signing and delivering to Plaintiff's counsel the Consent to Release of Financial Records attached to the TRO as Attachment C, if he has not done so already in compliance with the TRO.

X.

INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Individual Defendant is hereby restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by the preceding Section IX of this Order, including, but not limited to:

- A. Sending any statement, letter, facsimile, e-mail o4(t)-2()h.00-6(o)-4(n)-4()]TJ 0 Tc 0 Tw(R

Procedure 26(d) and (f), 30(a)(2)(A), and 31(a)(2)(A), the parties are granted leave, at any time after entry of this Order to:

A. Take the deposition of any person, whether or not a party, for the purpose of discovering the nature, location, status, and extent of the assets of Individual Defendant, and Individual Defendant's affiliates and subsidiaries; the nature and location of documents reflecting the business transactions of Individual Defendant, and Individual Defendant's affiliates and subsidiaries; the location of any premises where Defendants, directly or through any third party, conduct business operations; the Individual Defendant's whereabouts; and/or the applicability of any evidentiary privileges to this action; and

B. Demand the production of documents from any person, whether or not a party, relating to the nature, status, and extent of the assets of Individual Defendant, and Individual Defendant's affiliates and subsidiaries; the nature and location of documents reflecting the business transactions of Individual Defendant, and Individual Defendant's a and locatioidposes

depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section shall not be counted toward any limit on the number of depositions under the Federal Rules of Civil Procedure, including those set forth in Federal Rules of Civil Procedure 30(a)(2)(A) and 31(a)(2)(A). Service of discovery upon a party, taken pursuant to this Section, shall be sufficient if made through the means described in Section XIII of this Order.

XII.

DISTRIBUTION OF ORDER BY INDIVIDUAL DEFENDANT

IT IS FURTHER ORDERED that Individual Defendant shall immediately provide a copy of this Order to each of his corporations, subsidiaries, affiliates, partners, divisions, sales entities, successors, assigns, members, officers, directors, employees, independent contractors, agents, servants, attorneys, spouses, representatives, and any other persons in active concert or participation with them. Within five (5) calendar days following entry of this Order, Individual Defendant shall file with this Court and serve on Plaintiff an affidavit identifying the name, title, addresses, telephone numbers, date of service, and manner of service of the persons and entities Individual Defendant has served with a copy of this Order in compliance with this provision.

enforcement agency, or by private process server, upon any person, financial institution, or other entity that may have possession or control of any property, property right, document, or asset of Individual Defendant, or that may be subject to any provision of this Order. Service upon any branch or office of any financial institution or entity shall effect service upon the entire financial institution or entity.

XIV.

CONSUMER REPORTING AGENCIES

IT IS FURTHER ORDERED that, pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, any consumer reporting agency may furnish a consumer or credit report concerning Individual Defendant to Plaintiff.

XV.

CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF

IT IS FURTHER ORDERED that, for purposes of this Order, all correspondence and pleadings to the Commission shall be addressed to:

James Davis
Elizabeth Scott
Federal Trade Commission
55 West Monroe Street, Suite 1825

XVI.
RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this 17th day of July, 2014.



Judge William J. Zloch
United States District Judge
Southern District of Florida