

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 02-C-5762
v.)	Judge John W. Darrah
)	Magistrate Judge Ashman
BAY AREA BUSINESS COUNCIL, INC.,)	
a Florida corporation, <i>et al.</i> ,)	
)	
Defendants.)	
)	

FTC’S MEMORANDUM IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANTS AND RESPONDENTS SHOULD NOT BE HELD IN CONTEMPT

Under the guise of a supposed mortgage foreclosure rescue operation, defendant Peter J. Porcelli, II, and his confederates have not only found a new lucrative method to scam financially troubled consumers, they have blatantly and systematically violated this Court’s permanent injunction orders entered in April 2004 and February 2005. Plaintiff, Federal Trade Commission, moves for an order to show cause why defendants Porcelli, Bonnie Harris, and Christopher Tomasulo, and respondents Thomas C. Little, Safe Harbour Foundation of Florida, Inc., Silverstone Lending, LLC, and Silverstone Financial LLC, should not be held in contempt.¹

Porcelli and his confederates have engaged in wholesale violations of the permanent injunctions entered by this Court: they saw an opportunity to take advantage of the growing

¹ Concurrent with the filing of this motion, the FTC is filing a new action in this district, styled *FTC v. Safe Harbour Foundation of Florida, Inc., et al.*, alleging that the defendants’ new operation, along with the non-party respondents to this motion and other non-parties, have violated several key provisions of the Home Ownership and Equity Protection Act (“HOEPA”), 15 U.S.C. § 1639, the Truth In Lending Act (“TILA”), 15 U.S.C. § 1601-1666j, and Section Five of the FTC Act, 15 U.S.C. § 45. Because of vast overlap in both subject matter and potential remedies in the two cases, the FTC intends to file a separate motion seeking reassignment of *FTC v. Safe Harbour Foundation of Florida, Inc., et al.*, to this Court.

number of distressed homeowners who are facing foreclosure.² But just like the illusory credit card scam in which consumers paid \$200 for nothing, resulting in this Court's order granting the FTC's motion for summary judgment on April 8, 2004,³ the new enterprise promised affordable loans to troubled homeowners and instead charged them exorbitant fees on extremely high interest rate loans, forcing most of the homeowners into even deeper debt. Even more outrageous is that this Court's prior orders permanently banned the principals from any involvement in an enterprise which extends credit to consumers. For this reason and to prevent further consumer injury and asset dissipation, we are asking that the Court take all necessary actions to coerce the defendants' and respondents' compliance with the Court's permanent injunctions, including requiring the contemnors to return all monies they received in connection with their mortgage operations, and enjoining them from foreclosing on or taking any further damaging actions with respect to their loans to homeowners.

I. PROCEDURAL HISTORY

In August 2002, the FTC filed its complaint against Porcelli, Bonnie A. Harris, Christopher Tomasulo and various corporate defendants based on their operation of an advance fee credit card scam in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits "unfair or deceptive acts or practices in or affecting trade or commerce," as well as the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310. The defendants misled tens of thousands of reasonable consumers into believing they would receive a credit card, although the

² More than 2.2 million foreclosures were filed in the U.S. in 2007, a 75% increase over 2006. *See* Statement of the Federal Trade Commission on Foreclosure Rescue Fraud before the U.S. Senate Special Committee on Aging (Feb. 13, 2008), available at <http://www.ftc.gov/os/testimony/P064814foreclosure.pdf>.

³ Docket No. 112 ("Summary Judgment Op.").

defendants never could, and never intended to, provide credit cards to anyone.⁴ The defendants also failed to disclose the additional fees they would charge consumers for a “pay-as-you-go ‘Mastercard’” – a form of debit card – and falsely promised consumers that purchasing this card would boost the consumers’ credit ratings, even though the use of such a card was never reported to credit bureaus.⁵ In all, defendants bilked consumers out of at least \$12.5 million.⁶

The FTC initially sought, and this Court entered, a temporary restraining order, including an asset freeze as to each defendant, and the appointment of a receiver over the corporate entities, in August 2002.⁷ After protracted litigation, including bankruptcy filings by various defendants and an attempted “removal” to federal district court in Florida, this court entered judgment against all defendants except for Tomasulo.⁸ On April 14, 2004, the Court entered an Order for Permanent Injunction with Monetary Judgment and Other Relief Against Bay Area Business Council, Inc., Bay Area Business Council Customer Service Corp., American Leisure Card Corp., Bay Memberships, Inc., Sr. Marketing Consultants, Inc., Special Technologies, Inc., Peter J. Porcelli, II, and Bonnie Harris (the “Porcelli/Harris Order”).⁹ In addition to ordering redress in the amount of the operation’s total net sales, the Porcelli/Harris Order provides for broad permanent injunctive relief, including banning the defendants from telemarketing and

⁴ *FTC v. Bay Area Business Council, Inc.*, 423 F.3d 627, 635 (7th Cir. 2005) (affirming this Court).

⁵ *Id.* at 636.

⁶ *See* Summary Judgment Op. at 25.

⁷ Docket No. 3.

⁸ Tomasulo was already engaged in settlement negotiations with the FTC prior to the FTC’s filing of its motion for summary judgment, so he was not included as a respondent.

⁹ Docket No. 114, PX 209.

marketing credit-related products.¹⁰ The Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief Against Defendant Christopher Tomasulo (the “Tomasulo Order”) was entered by the Court on February 2, 2005.¹¹ Although the wording of the key provisions are not identical in the two orders, all the defendants are banned from involvement in the marketing or sale of “Credit-Related Products” to consumers.

In a unanimous opinion, the Seventh Circuit Court of Appeals affirmed the Court’s summary judgment ruling in August 2005, including its ruling that Porcelli and Harris should be held jointly and severally liable for the redress award.¹² Porcelli was then criminally prosecuted for the same conduct, entering a guilty plea and receiving a sentence of 156 months incarceration in October 2007.¹³ Porcelli began serving his sentence in early 2008.

II. RESPONDENTS’ CONTEMPTUOUS CONDUCT

Within months of being banned from having any involvement in advertising, promoting, or selling Credit-Related Products, Porcelli began his new mortgage foreclosure operation. Porcelli continued to run this new scam until he entered federal prison and its operations

¹⁰ Defendants have made no efforts to comply with the monetary award in the Porcelli/Harris Order. Although the Court ordered redress of \$12,563,962.34, the FTC to date has received only \$110,000, and that sum did not come directly from the defendants. The bulk of that amount came from a distribution of monies paid by Porcelli to the Chapter 7 Trustee in the case *In re Peter J. Porcelli, II*, Case No. 03-04075 (M.D. Fla. Bankr.) to settle claims that he misrepresented his assets in his bankruptcy filing. The remaining amount paid to the FTC came from the Chapter 7 Trustee as a distribution in the case of one of the corporate defendants, *In re Bay Memberships, Inc.*, Case No. 02-21694 (M.D. Fla. Bankr.).

¹¹ Docket No. 124, PX 210.

¹² *FTC v. Bay Area Business Council, Inc.*, 423 F.3d 627, 635 (7th Cir. 2005).

¹³ *US v. Porcelli*, No. 3:07-cr-30037-WDS (S.D. Ill.), PX 212.

continue today. Porcelli set up a web of corporate entities, as he did with the credit card scam,¹⁴ and he has operated this business through at least three corporations which he owns or controls: Safe Harbour Foundation of Florida, Inc., Silverstone Financial LLC, and Silverstone Lending, LLC.¹⁵ Both Bonnie Harris and Christopher Tomasulo, his codefendants in this case, have been actively involved with the new operations.

Safe Harbour targets distressed homeowners, claiming in its articles of incorporation that it is a non-profit designed to “help save homeowners from foreclosure by introducing them to lenders.”¹⁶ Obtaining lists of homeowners facing foreclosure, Safe Harbour contacts consumers, typically by sending them a flyer in the mail. The flyer, under the heading “SAFE HARBOUR FOUNDATION, A NON PROFIT CORPORATION, FORECLOSURE RELIEF” states:

We have all the funds available to pay your bills
and save your home from foreclosure. GUARANTEED!

- Don’t lose your home.
- Guaranteed solution to stay in your home.
- Immediate relief from financial pressures.
- Stop the harassment.
- Save your credit

¹⁴ Summary Judgment Op. at 12, 15.

¹⁵ Safe Harbour and Silverstone Financial were incorporated in December 2004. Silverstone Lending was incorporated in June 2005. Porcelli owns and, at least until he entered a federal penitentiary on January 28, 2008, controlled all three corporations. It should be noted that Safe Harbour is not, and never has been, qualified as a tax exempt entity pursuant to Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and it seems to have no function other than steering consumers to Porcelli’s for-profit lending companies.

¹⁶ See PX 214 (McKenney Decl.) Att. D.

The flyer goes on to describe Safe Harbour as “having been established to give people a second chance when no one else will.”¹⁷ It warns consumers to “[b]e careful of other companies who look to profit from your misfortune.” Continuing the same theme, the bottom of the flyer warns homeowners to watch out for “Investment Sharks,” “Quick Money offers,” and to not “Keep Swimming,” i.e., “think . . . this will work itself out.” The flyer directs homeowners to call “Peter James” (a pseudonym Porcelli has used in the past) at a toll-free number.

Homeowners who call Safe Harbour usually reach either Bonnie Harris or Porcelli. Safe Harbour obtains payoff letters, foreclosure information, and other relevant information about the property itself, but it does nothing to determine whether the homeowners have the means to pay back a new loan; it does not perform any type of credit check or even determine the homeowners’ income before moving forward on the loans.¹⁸

The loans to consumers are made and secured by Silverstone Financial or Silverstone Lending, two companies also controlled by Porcelli, which have had the same address and are otherwise indistinguishable from Safe Harbour.¹⁹ Thomas Little, Porcelli’s lawyer in the later

¹⁷ See *Heise v. Porcelli, et al.*, No. 8:07-cv-1866-T-24 MAP (M.D. Fla.) (attachment to complaint), PX 213.

¹⁸ See PX 214 (McKenney Decl.) Atts. G(2), H(2), I(17), J(20-21), K(2), L(24), M(17), N(17), O(19), P(16), Q(13), R(16), S(2), T(2), U(23), V(17), X(15), Y(17), Z(15), AA(15), BB(16), CC(15), DD(15), EE(17), HH(2), II(16), JJ(16), KK(16), LL(15), MM(15), NN(15), OO(18), PP(15), QQ(2), RR(2), SS(15), UU(16), VV(15), WW(16), XX(15), YY(16), AAA(2), BBB(13), CCC(14), DDD(15), EEE(17) (intake forms).

¹⁹ See PX 214 (McKenney Decl.) Atts. I(7-12), J(8-12), L(8-12), M(8-12), N(8-12), O(8-12), P(8-12), Q(8-12), R(8-12), U(8-12), V(8-12), W(8-11, 20-24), X(8-11), Y(6-13), Z(8-11), AA(8-11), BB(8-11), CC(8-11), DD(8-11), EE(8-11), FF(8-11), GG(8-12), II(8-11), JJ(8-11), KK(8-11), LL(8-11), MM(8-11), NN(8-11), OO(8-11), PP(8-11), SS(8-11), TT(7-10), UU(8-12), VV(8-11), WW(8-11), XX(8-11), YY(8-11), ZZ(5-9), BBB(8-11), CCC(8-11), DDD(8-11), EEE(8-11) (notes and mortgages).

years of this litigation, has prepared the legal documents for most of the transactions, collecting a \$400 “title escrow fee” from the consumers.²⁰

While the amounts of the loans vary based on the current indebtedness of the consumers, the loans are otherwise essentially identical. Consumers receive loans that permit them to bring their current mortgages up to date, avoid foreclosure, and (at least temporarily) stay in their homes. The loans all have a term of six months or less, and are secured as second mortgages.²¹ All the loans are negatively amortized, i.e., they provide for interest-only payments with a balloon payment to pay off all the principal and unpaid interest on the due date.²² In most if not all cases, the loans are made to look even more attractive to the homeowners by deferring much of the interest until the loan term ends.²³ All the loans include hefty fees to Safe Harbour and the lender (usually Silverstone Lending).²⁴ Substantial “underwriting” fees also are charged by third parties which seem to provide nothing of value to the consumers,²⁵ although some of the third

²⁰ PX 214 (McKenney Decl.) Atts. I(13), L(13), M(13), O(13), Q(2), R(13), U(13), V(24), W(12, 29), Y(14, 21), Z(12, 22), AA(12, 18, 20), DD(12, 24), EE(12-13), FF(12, 21, 23), GG(13, 18-19, 21), JJ(12, 27), KK(12), LL(21), MM(12, 21, 23), NN(12, 24, 26), OO(12, 21, 23), PP(12), SS(12, 21, 23), WW(12, 23, 25), YY(20), BBB(12, 19), CCC(12, 22, 24), DDD(12, 22, 24), EEE(12, 23), FFF(7, 9), HHH(2), JJJ(4, 6, 8, 13), KKK(7).

²¹ *Supra note 19.*

²² *Id.*

²³ *Id.*

²⁴ *See* PX 214 (McKenney Decl.) Atts. I(3), J(3), L(3), M(3), N(3), O(3), P(3), Q(3), R(3), U(3), V(3), W(3), X(3), Y(3), Z(3), AA(3), BB(3), CC(3), DD(3), EE(3), FF(3), GG(3), II(3), JJ(3), KK(3), LL(3), MM(3), NN(3), OO(3), PP(3), SS(3), TT(3), UU(3), VV(3), WW(3), XX(3), YY(3), ZZ(3), BBB(3), CCC(3), DDD(3), EEE(3).

²⁵ *See* PX 214 (McKenney Decl.) Atts. I(14), J(13), L(14-15), M(14), N(13-14), P(13), U(14), W(13, 25), X(12), BB(12-13), CC(11), DD(13-14), EE(13-14), II(12), JJ(13), KK(13), LL(12), OO(13), TT(12-13), UU(13), VV(12), WW(13), XX(12), YY(12-13), ZZ(10), EEE(13-14).

parties ultimately become “assignees” of the mortgages.²⁶ These attendant fees and other costs are often nearly as large as the amount of the arrearages on the first mortgages. Although the Truth In Lending Act disclosures provided to consumers show APRs of 18 - 28%, most of these loans actually have APRs, when properly computed, of more than 100%.²⁷ In some cases, respondents have either bullied or tricked homeowners into also signing deeds in lieu of foreclosure, allowing the respondents to simply take possession of the homeowner’s house in the event of default without providing the homeowners the protections built into the foreclosure process.²⁸ Respondents hold these “deeds” in escrow, only registering them with the local recorders’ offices months later. In all, there is evidence showing more than three dozen loans throughout central Florida entered into by the respondents.

III. THE RESPONDENTS SHOULD BE FOUND IN CONTEMPT

By engaging in their supposed mortgage foreclosure rescue operations, there is no question that Porcelli and his cohorts have violated the Court’s final orders in this case. The case for contempt is straightforward. Pursuant to their respective permanent injunctions, Porcelli, Harris and Tomasulo are enjoined from any involvement in the sale of any product or service related to credit. In particular, Section II of the Porcelli/Harris Order enjoins the

²⁶ See PX 214 (McKenney Decl.) Atts. J(16-19), L(20-23), M(20), O(27-30), P(21), R(23), U(19-22), V(22-25), W(28-31), X(20), Z(20), AA(17, 19), CC(19), DD(21-24), EE(22), FF(20-23), GG(17, 21), II(23-26), JJ(24-27), KK(20-23), LL(21), MM(20-23), NN(23-26), OO(20-23), SS(20-23), UU(20), WW(22-25), YY(19-20), BBB(18), DDD(21-24), EEE(22).

²⁷ See PX 214 (McKenney Decl.) Atts. I(6), J(6), L(6), M(6), N(6), O(6), P(6), Q(6), R(6), U(6), V(6), W(6, 18), X(6), Y(4), Z(6), AA(6), BB(6), CC(6), DD(6), EE(6), FF(6), GG(6), II(6), JJ(6), KK(6), LL(6), MM(6), NN(6), OO(6), PP(6), SS(6), TT(5), UU(6), VV(6), WW(6), XX(6), YY(6), ZZ(4), AAA(6), BBB(6), CCC(21), DDD(6), EEE(6) (TILA stmts).

²⁸ See PX 214 (McKenney Decl.) Att. GG(19), FFF(7), HHH(2), III(2), JJJ(8), KKK(7).

defendants “from promoting, offering for sale, or selling, directly or indirectly, Credit-Related Products to any consumer.” Section I of the Tomasulo Order enjoins him from “engaging in, participating in, or assisting in the Telemarketing, advertising, promotion, offering for sale, or sale of Credit-Related Products to any consumer.” Both orders define “Credit-Related Product” as:

any product, program, or service which is advertised, offered for sale, or sold as a method by which persons may establish or obtain any extension of credit or credit device, including, but not limited to credit cards, loans, or financing, or as a method to consolidate or liquidate debts.

A. Standard for Contempt.

To prove contempt, the FTC must show by clear and convincing evidence that: (1) valid court orders existed; (2) the defendants had knowledge of the orders; and (3) the defendants failed to comply with the orders. *See FTC v. Trudeau*, No. 03-C-3904, 2007 U.S. Dist. LEXIS 85214, at *11 (N.D. Ill. November 16, 2007) (J. Gettleman) (citing *Stotler & Co. v. Able*, 870 F.2d 1158, 1163 (7th Cir. 1989)). If a violation is shown, the defendant’s intent is irrelevant. *See SEC v. McNamee*, 481 F.3d 451, 455-56 (7th Cir. 2007) (“*scienter* is not required for civil-contempt”) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949)); *American Family Mutual Ins. Co. v. Roth*, No. 05-C-3839, 2008 U.S. Dist. LEXIS 3557, at *7-8 (N.D. Ill. Jan. 15, 2008) (J. Guzman) (“an inadvertent violation does not preclude a contempt citation”) (citing *CFTC v. Premex, Inc.*, 655 F.2d 779, 785 n.11 (11th Cir. 1981)); *SEC v. Showalter*, 227 F. Supp. 2d 110, 120 (D.D.C. 2002) (“[t]he defendant’s intent regarding compliance with the order is irrelevant”); *SEC v. Yun*, 208 F. Supp. 2d 1279, 1285 (M.D. Fla. 2002) (intent in failing to comply is irrelevant); *SEC v. Bilzerian*, 112 F. Supp. 2d 12, 16 (D.D.C. 2000) (“Bilzerian’s intent is irrelevant; the Court need not find that his failure to comply with the orders was willful

or intentional.”). Moreover, unfamiliarity with the particulars of an order is not a defense to a charge of contempt. *Perfect Fit, Inc. v. Acme Quilting Co.*, 646 F.2d 800, 808 (2d Cir. 1981). A party may be held in civil contempt unless the defendant establishes that he or she has been “reasonably diligent and energetic in attempting to accomplish what was ordered.” *Goluba v. School District of Ripon*, 45 F.3d 1035, 1037 (7th Cir. 1995); *American Family*, 2008 U.S. Dist. LEXIS 3557, at *8; *FTC v. Trudeau*, 2007 U.S. Dist. LEXIS 85214, at *11.

B. Porcelli, Harris, and Tomasulo Should Be Found in Contempt.

The FTC clearly has satisfied its initial burden here. Porcelli, Harris and Tomasulo are all subject to valid court orders.²⁹ Similarly, all three have shown they know of their respective orders.³⁰ Finally, they all have violated the orders: the orders unambiguously enjoin the defendants from virtually any involvement in any enterprise which charges consumers money in connection with the consumers obtaining loans.

In dozens of instances, Porcelli, Harris and Tomasulo did exactly what was forbidden by the Court’s orders – they engaged in, participated in, or assisted in, the advertising, promotion, offer for sale, or sale of a product or service by which persons could obtain a loan. All of Safe Harbour’s income apparently came from charging substantial fees to homeowners for “assisting” in obtaining loans, which Safe Harbour “advertised” and “promoted,” from Safe Harbour’s lending counterparts, Silverstone Lending and Silverstone Financial. Similarly, Silverstone Lending and Silverstone Financial apparently earned their income from substantial fees and payments from loans they “sold” to homeowners. The attached documentary evidence clearly

²⁹ See PX 209 (Porcelli/Harris Order), PX 210 (Tomasulo Order).

³⁰ See PX 214 (McKenney Decl.) Atts. A, B, C.

establishes extensive participation by each defendant. Porcelli was an owner, officer, or manager of each corporation.³¹ He signed loan documents on behalf of the corporations, corresponded and communicated with homeowners and third parties with respect to the loans, and managed their day-to-day operations.³² Harris also corresponded and communicated with homeowners, ordered appraisals on behalf of the corporations, and arranged for the loan closings.³³ Tomasulo communicated with consumers and third parties, and signed loan documents on behalf of the companies.³⁴

In short, each of the defendants engaged in a variety of tasks for an enterprise whose primary purpose was to violate this Court's orders.

C. Safe Harbour, Silverstone Lending, Silverstone Financial, and Thomas C. Little Should Be Held in Contempt.

Under Fed. R. Civ. P. 65, injunctions apply not only to the defendants, but also to those

³¹ See PX 214 (McKenney Decl.) Att. D.

³² See PX 214 (McKenney Decl.) Atts. I(5), J(5, 17, 19), L(5, 18, 20), M(5, 21), N(5, 19, 22, 23), O(5, 18, 20, 28), P(5, 17, 21), R(5, 23), U(5, 17, 19), V(5, 16, 23, 25, 26), W(5, 29, 31), X(5, 20), Y(11, 16, 20), Z(5, 21), AA(5, 17, 21), BB(5), CC(5, 20), DD(5, 19), EE(5, 23), FF(5, 18, 20), GG(5, 17, 22), II(5, 24, 27), JJ(5, 22, 24), KK(5, 20, 24), LL(5, 21), MM(5, 20, 24), NN(5, 16, 17, 23, 27), OO(5, 17, 20), PP(5, 20, 24), SS(5, 20), TT(4, 17), UU(5, 19-20), VV(5, 8), WW(5, 22, 26), XX(5), YY(5, 19), AAA(3), BBB(5, 18), CCC(5, 15, 17, 22, 25), DDD(5, 21), EEE(5, 23), GGG(2), III(2), JJJ(4,10).

³³ See PX 214 (McKenney Decl.) Atts. G(3-4), H(5), I(18-21), J(22-25), K(7-10, 12), L(25-26), M(18-19), O(18, 23-26), P(19-20), Q(14-16), R(15, 17-22), S(3-6), T(3-6), U(24-30), V(18-21), X(18-19), Y(18-19), Z(16-20), AA(16, 23-26), BB(18-21), CC(17-18), DD(16-19), EE(18-21), FF(17), GG(15-16), HH(9-10), II(15, 18-22), JJ(17-21), KK(17-19), LL(16-19), MM(16-19), NN(18-22), OO(16, 19-22), PP(16-19), QQ(4-5), RR(2-7), SS(16-19), TT(15-18), UU(17-18), VV(16-17), WW(18-21), XX(22-23), YY(18-19), ZZ(13), AAA(4-8), BBB(8, 14, 17), CCC(16-20), DDD(16-19), EEE(18-21).

³⁴ See PX 214 (McKenney Decl.) Atts. H(3-4), N(18), V(15-16, 26), X(16-17), BB(17), CC(16), DD(20), GG(22), HH(3-8), II(17), LL(20), QQ(3,6), TT(17), UU(19), WW(17), XX(16-21), DDD(20).

who have notice of the Order and are in “active concert or participation” with them. *See Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945); *SEC v. Homa*, Nos. 06-3320 & 07-1590, 2008 U.S. App. LEXIS 1337, at *35-37 (7th Cir. Jan. 24, 2008); *Stotler v. Able*, 870 F.2d 1158, 1164 (7th Cir. 1989); *FTC v. Productive Mktg., Inc.*, 136 F. Supp. 2d 1096, 1104 (C.D. Cal. 2001). Moreover, notice to a non-party does not require that the non-party be formally served with the injunction. “All that is required is that the aider and abettor be given ‘fair notice that acting in concert with the named defendants would subject them to contempt proceedings.’” *Select Creations, Inc. v. Paliapito America, Inc.*, 852 F. Supp. 740, 779 (E.D. Wis. 1994) (quoting *New York State National Org. for Women v. Terry*, 961 F.2d 390, 398 (2d Cir. 1992), vacated on other grounds, 113 S. Ct. 1233 (1993)). “Indeed, if courts did not have the power to punish those who cooperate with those named in an injunction, the named parties could easily thwart the injunction by operating through others.” *SEC v. Homa*, 2008 U.S. App. LEXIS 1337, at *35 (7th Cir. Jan. 24, 2008).

Based on this standard, Safe Harbour, Silverstone Lending, and Silverstone Financial should also be found in contempt. As detailed above, the three individual defendants control virtually every phase of the corporations’ business affairs – the corporations exist merely as a mechanism for violating this Court’s orders. *See Chicago Truck Drivers, Helpers & Warehouse Workers Union Pension Fund v. Brotherhood Labor Leasing*, 207 F.3d 500, 507 (8th Cir. 2000) (holding non-parties in contempt where they are “legally identified” with defendant contemnors); *Select Creations*, 852 F. Supp. at 779 (same) (citing *Illinois Dept. of Public Aid v. U.S. Dept. of Health & Human Services*, 772 F.2d 329, 332 (7th Cir. 1985)).

Similarly, Thomas Little should be held in contempt, for acting in active concert or participation with the named defendants. Little’s status as a lawyer is no impediment to his

being named a contemnor.³⁵ See, e.g., *Cottman Transmission Systems, Inc. v. Metro Distributing, Inc.*, Nos. 92-2131 & 2253, 1996 U.S. Dist. LEXIS 1052, at *13-15 (E.D. Pa. Feb. 2, 1996); *Georgine v. Amchem Products, Inc.*, No. 93-0215, 1995 U.S. Dist. LEXIS 9744, at *28 (E.D. Pa. July 13, 1995). As the lawyer for Porcelli and Harris in *Bay Area Business Council*, Thomas Little was fully informed about the terms of the order and attendant ban. In fact, Little filed and argued the appeal to the Seventh Circuit, which affirmed this Court in all respects. Despite this, Little not only organized the central corporate entities, has been involved in the foreclosure scam, and has acted as their registered agent, he also has prepared the legal documents and personally collected a fee in nearly every transaction.³⁶ Thus, Little's participation has been essential to the operation and he should be found in contempt.³⁷

Proposed Order

To prevent further consumer injury and asset dissipation, we therefore request that this Court take all necessary action to coerce the defendants' and respondents' compliance with the Court's Permanent Injunctions, including the following.

First, Porcelli, Harris, Tomasulo, Little, Safe Harbour, Silverstone Lending, and Silverstone Financial should be required to provide an accounting and deposit into an escrow

³⁵ Although this motion focuses on Little's conduct as part of the contemptuous operations, attorneys have been held in contempt even for incorrectly advising clients that certain conduct would not violate court orders. See *Chicago Truck Drivers*, 207 F.3d at 507 n. 7; *Chicago Truck Drivers, Helpers & Warehouse Workers Union Pension Fund v. Brotherhood Labor Leasing*, 230 F. Supp. 2d 963, 970-71 (E.D. Mo. 2002).

³⁶ *Supra* note 20.

³⁷ Little's participation, however, could not provide Porcelli or his cohorts with a defense to this motion: reliance on advice of counsel is not a defense to a charge of civil contempt. See *SEC v. McNamee*, 481 F.3d at 455-56 (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949); *In re Walters*, 868 F.2d 665, 668-69 (4th Cir. 1989)).

account with the Court all monies they received in connection with their mortgage operations.

Second, the Court should impose a daily fine on Porcelli, Harris, Tomasulo, Little, Safe Harbour, Silverstone Lending, and Silverstone Financial until the escrow is established. The daily fine should only cease to accrue once Porcelli, Harris, Tomasulo, Little, Safe Harbour, Silverstone Lending, and Silverstone Financial have established the escrow.

Third, the Court should amend the Order for Permanent Injunction to explicitly cover Porcelli's new companies, Safe Harbour Foundation of Florida, Silverstone Lending, and Silverstone Financial, as well as any other successor entities or DBAs created by or affiliated with Porcelli.

Fourth, the Court should enjoin Porcelli, Harris, Tomasulo, Little, Safe Harbour, Silverstone Lending, and Silverstone Financial, from taking any further actions with respect to the loans to homeowners for which they are responsible, including, but not limited to, foreclosing on mortgages, continuing further collection efforts, and recording, transferring, or taking any action with respect to any unregistered deeds in their possession.

Fifth, in the event that Porcelli, Harris, Tomasulo, or Little continue to disregard the Court's orders, the Court should order them to appear personally to show cause why they should not be incarcerated until such time as they comply with the Court's orders. *See, e.g., United States v. Lippett*, 180 F.3d 873, 877 (7th Cir. 1999) (characterizing confinement order to coerce compliance with a court order the "paradigmatic" civil contempt sanction).

WHEREFORE, plaintiff Federal Trade Commission respectfully requests that the Court enter an order to show cause why defendants Peter J. Porcelli, II, and Bonnie Harris, and respondents Thomas C. Little, Safe Harbour Foundation of Florida, Inc., Silverstone Lending, LLC, and Silverstone Financial, LLC, should not be held in civil contempt for violating the

Court's Order for Permanent Injunction with Monetary Judgment and Other Relief Against Bay Area Business Council, Inc., Bay Area Business Council Customer Service Corp., American Leisure Card Corp., Bay Memberships, Inc., Sr. Marketing Consultants, Inc., Special Technologies, Inc., Peter J. Porcelli, II, and Bonnie Harris, of April 14, 2004; and enter an order to show cause why defendant Christopher Tomasulo and respondents Thomas C. Little, Safe Harbour Foundation of Florida, Inc., Silverstone Lending, LLC, and Silverstone Financial, LLC, should not be held in civil contempt for violating the Court's Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief Against Defendant Christopher Tomasulo, of February 2, 2005.

Respectfully Submitted,

WILLIAM BLUMENTHAL
General Counsel

DATED: February 27, 2008

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