**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**TAMPA DIVISION**

**FEDERAL TRADE COMMISSION**

Plaintiff,

v.

**WASHINGTON DATA RESOURCES, INC.,** a Florida corporation,

**OPTIMUM BUSINESS SOLUTIONS, LLC,** a Nevada limited liability company also known as Attorney Finance Services, LLC, and doing business as Attorney Finance Services,

**CROWDER LAW GROUP, P.A.,** a Florida corporation, formerly known as Jackson, Crowder & Associates, P.A., and doing business as Legal Support Services,

**RICHARD A. BISHOP,** individually and as a member of Optimum Business Solutions, LLC,

**BRENT MCDANIEL,** individually and as an officer of Washington Data Resources, Inc.,

**TYNA CALDWELL,** individually,

**DOUGLAS A. CROWDER,** individually and as an officer of Crowder Law Group, P.A.,

**BRUCE MELTZER,** individually and as an officer of Crowder Law Group, P.A.,

**KATHLEEN LEWIS,** a/k/a Kathy Lewis, individually and as a member of Optimum Business Solutions, LLC,

Defendants.

**Case No.**

**PLAINTIFF FEDERAL TRADE COMMISSION'S**

**COMPLAINT FOR PERMANENT INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (FTC), for its complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (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 *et seq.*, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, 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 in violation of the FTC's Telemarketing Sales Rule (TSR), 16 C.F.R. Part 310, in connection with the marketing and sale of mortgage loan modification and foreclosure relief services.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

**PLAINTIFF**

4. The FTC is an independent agency of the United States Government, created by statute. 15 U.S.C. § 41 *et seq*. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. § 6101 *et seq*. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 6102(c), and 6105(b).

**DEFENDANTS**

6. Defendant Washington Data Resources, Inc. (WDR), is a Florida corporation with offices at 28870 U.S. Highway 19 North, Clearwater, Florida. It transacts or has transacted business in this District and in several states.

7. Defendant Optimum Business Solutions, LLC (AFS), is a Nevada limited liability company that uses the names Attorney Finance Services, LLC, and Attorney Finance Services. It is authorized to conduct business in Florida and has offices at 28870 U.S. Highway 19 North, Clearwater, Florida. AFS transacts or has transacted business in this District and in several states.

8. Defendant Crowder Law Group, P.A. (Crowder Law Group), is a Florida professional corporation that was incorporated as Jackson, Crowder & Associates, P.A., before changing names earlier this year. It has offices at 28870 U.S. Highway 19 North, Clearwater, Florida. Crowder Law Group transacts or has transacted business in this District and in several states.

9. Defendant Richard A. Bishop (Bishop) is a managing member of AFS. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set

forth in this Complaint. In connection with the matters alleged herein, Defendant Bishop transacts or has transacted business in this District and in several states.

10. Defendant Brent McDaniel (McDaniel) is an officer of WDR. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. In connection with the matters alleged herein, Defendant McDaniel transacts or has transacted business in this District and in several states.

11. Defendant Tyna Caldwell (Caldwell) is an employee, agent, or other representative of Crowder Law Group, AFS, or WDR. At times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. In connection with the matters alleged herein, Defendant Caldwell transacts or has transacted business in this District and in several states.

12. Defendant Douglas A. Crowder (Crowder) was a manager, officer, and/or principal of Crowder Law Group. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. In connection with the matters alleged herein, Defendant Crowder transacts or has transacted business in this District and in several states.

13. Defendant Bruce Meltzer (Meltzer) is a manager, officer, and/or principal of Crowder Law Group. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated

in the acts and practices set forth in this Complaint. In connection with the matters alleged herein, Defendant Meltzer transacts or has transacted business in this District and in several states.

14. Defendant Kathleen (Kathy) Lewis (Lewis) is a managing member of AFS. At times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. In connection with the matters alleged herein, Defendant Lewis transacts or has transacted business in this District and in several states.

**COMMON ENTERPRISE**

15. Defendants Crowder Law Group, AFS, and WDR (collectively the Corporate Defendants) have operated as a common enterprise while engaging in the acts and practices alleged below. Defendants have conducted the acts and practices described below through an interrelated network of companies that have, at least, common managers, business functions, employees, and office locations. Because the Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Individual Defendants, Bishop, McDaniel, Caldwell, Crowder, Meltzer, and Lewis, have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

## COMMERCE

16. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

## AVAILABILITY OF FREE LOAN MODIFICATION AND FORECLOSURE RELIEF SERVICES

17. Numerous mortgage lenders and servicers have instituted free programs to assist financially distressed homeowners by offering them the opportunity to modify loans that have become unaffordable. Many of these "loan modification" programs have expanded dramatically as lenders have increased participation in the federal government's "Making Home Affordable" program, a plan to stabilize our housing market and help up to 7 to 9 million Americans reduce their monthly mortgage payments to more affordable levels. The Making Home Affordable program includes the Home Affordable Modification Program, in which the federal government has committed $75 billion to keep up to 3 to 4 million Americans in their homes by preventing avoidable foreclosures. Moreover, numerous major mortgage lenders and servicers, non-profit and community-based organizations, the federal government, and the news media have helped publicize the availability of these free mortgage loan modification programs. Lenders often notify consumers of the availability of these programs, or of consumers' eligibility, through their "loss mitigation" departments. Defendants divert consumers from these free programs and induce them to spend thousands of dollars on their modification services.

## DEFENDANTS' BUSINESS PRACTICES

18. Since at least late 2008, Defendants have advertised, marketed, offered to sell, and sold to consumers mortgage loan modification and foreclosure relief services. Defendants' marketing includes, at a minimum, mailing postcards to consumers in financial straits that invite the consumers to call a toll-free number for more information.

## DIRECT MAIL SOLICITATION

19. The postcards Defendants mail represent that they come from a government agency. The cards are about 8 ½ inches wide, 5 ½ inches high, and printed on off-white paper. The return address bears an official-sounding name, such as "Fresh Start Program" or "New Start Program." The addressee side of the card contains completed areas for a "Case #," a "Date of Record," a "Document #:" and a "County." At least as early as June 2009, a black and red box to the left of the address advises:

Final Notice

You may qualify under the new
government bailout to
refinance your current mortgage
and reduce your interest rate.

Call Immediately
1-866-565-9692

20. Defendants promise, via postcards, to provide consumers a lower mortgage payment and lower interest rate. On the non-address side of postcards, "PRE-QUALIFIED" appears in the upper right-hand corner. On a June 2009 card, a message to the left of PRE-QUALIFIED describes the Defendants' "Hope4Homeowners" program as "designed for homeowners just like you who have fallen behind on their mortgage" and claims the

program "will enable you to either refinance your existing loan or restructure your loan to reduce your interest rate and lower your mortgage payment." A postcard from March 2009 describes Defendants' "New Start Program" as "a federal program designed for homeowners just like you who may have fallen behind on their mortgage. You have been selected to receive this offer to help relieve you from the burden of overdue mortgage payments, past medical and credit card debt." To further convey their promise of help, the postcards are signed by an attorney in the consumer's state.

21. Nothing on the postcards limits or in any way qualifies the promises made on them.

**TELEMARKETING SALES PITCH**

22. Consumers who call the telephone number on the postcard speak to Defendants' representative. In numerous instances, Defendants tell consumers that they are a law firm with attorneys in several states offering loan modification, Chapter 13 bankruptcy, and Chapter 7 bankruptcy. Concerning loan modifications, in numerous instances, Defendants tell consumers that they will negotiate with a consumer's mortgage lender to convince the lender to waive late fees and attorneys' fees, lower the interest rate, change an adjustable rate mortgage rate to a fixed rate, and reduce the principal balance so that the monthly mortgage payment is reduced to be in line with the consumer's budget. During the call Defendants' representatives gather detailed financial information about the consumer's mortgage, income, and expenses.

23. In numerous instances, after stating that a consumer "qualifies" for their program and convincing the consumer to purchase, Defendants arrange for the consumer to

pay a $2000 loan modification fee, often in four installments of $500 each. Defendants then send a written agreement to consumers for signature. The agreement, which purports to be between the consumer and an attorney, contains a provision titled "NO CLIENT CONTACT WITH LENDER," which instructs the consumer to refer any calls from their lender to the attorney and to call the attorney rather than their lender for information on the status of their modification.

24. After returning the signed written agreement, consumers sometimes get a call from the attorney whose name appears on the written agreement. Defendants have contracted with attorneys in several states to have them call consumers to explain Defendants' loan modification process and, if necessary, file bankruptcy pleadings. Other than the telephone call, the attorneys have little, if any, involvement with consumers seeking loan modifications. Defendants pay these attorneys for each consumer they agree to accept as a "client."

25. At this point, after the consumer returns the written signed agreement, Defendants finally ask for documentation of the consumer's financial condition. After submitting the documentation, consumers find that they cannot reach any of Defendants' representatives who can tell them the status of their loan modification.

26. In numerous instances, Defendants fail to obtain the promised mortgage loan modifications that will make consumers' mortgage payments substantially more affordable. Defendants are not part of, or affiliated with, the United States government or any agency thereof.

## VIOLATIONS OF SECTION 5 OF THE FTC ACT

27. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts and practices in or affecting commerce."

28. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

### Count I

29. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of mortgage loan modification or foreclosure relief services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants will obtain for consumers mortgage loan modifications, in all or virtually all instances, that will make their mortgage payments substantially more affordable.

30. In truth and in fact, Defendants do not obtain for consumers mortgage loan modifications, in all or virtually all instances, that will make their mortgage payments substantially more affordable.

31. Therefore, Defendants' representation as set forth in Paragraph 29 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S. C. § 45(a).

### Count II

32. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of mortgage loan modification or foreclosure relief services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants are an agency of, or affiliated with, the United States government.

33. In truth and fact, Defendants are not an agency of, or affiliated with, the United States government.

34. Therefore, Defendants' representation as set forth in Paragraph 32 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S. C. § 45(a).

## THE TELEMARKETING SALES RULE

35. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, in 1994. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain sections thereafter.

36. The TSR exempts from coverage telephone calls initiated by a customer in response to a direct mail solicitation, unless the solicitation fails to clearly, conspicuously, and truthfully disclose all material information listed in Section 310.3(a)(1) of the TSR, including the total costs to purchase, receive, or use the good or service that is the subject of the sales offer. 16 C.F.R. § 310.6(b)(6). Nowhere in Defendants' solicitation letter is there any mention of the fees or total costs to purchase, receive, or use Defendants' mortgage loan modification services.

37. Defendants are "seller[s]" or "telemarketer[s]" engaged in "telemarketing" as those terms are defined in the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).

38. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

a. Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii); and

b. A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity. 16 C.F.R. § 310.3(a)(2)(vii).

39. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**VIOLATIONS OF THE TELEMARKETING SALES RULE**

**Count III**

40. In numerous instances in the course of telemarketing mortgage loan modification or foreclosure relief services, Defendants have misrepresented, directly or by implication, a material aspect of the performance, efficacy, nature, or central characteristic of such services, including but not limited to that Defendants will obtain for consumers mortgage loan modifications, in all or virtually all instances, that will make their mortgage payments substantially more affordable.

41. Defendants' acts or practices, as alleged in Paragraph 40 above, violate Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

**Count IV**

42. In numerous instances in the course of telemarketing mortgage loan modification or foreclosure relief services, Defendants have misrepresented, directly or by implication, their affiliation with, or endorsement or sponsorship by, a person or government entity, including that Defendants are an agency of, or affiliated with, the United States government.

43. Defendants' acts or practices, as alleged in Paragraph 40 above, violate Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii).

**CONSUMER INJURY**

44. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

**THIS COURT'S POWER TO GRANT RELIEF**

45. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

46. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including rescission or reformation of contracts, and the refund of money.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. § 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to temporary and preliminary injunctions, appointment of a receiver over the corporate Defendants, and an order freezing assets;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action as well as such other and additional relief as the Court may determine to be just and proper.

Dated: 11/10/09

Respectfully submitted,

WILLARD K. TOM
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