

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 11-CV-80155-COHN

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

U.S. MORTGAGE FUNDING, INC.,
a Florida corporation,

DEBT REMEDY PARTNERS, INC.,
a Florida corporation,

LOWER MY DEBTS.COM, LLC,
a Florida limited liability company,

DAVID MAHLER, individually and as an officer
of Debt Remedy Partners, Inc. and
a former officer of U.S. Mortgage Funding, Inc.

JOHN INCANDELA, JR., a.k.a. Jonathan
Incandela, Jr., individually and as a former director
of U.S. Mortgage Funding, Inc. and a manager of
Lower My Debts.Com, LLC, and

JAMEN LACHS, individually and as an officer of
U.S. Mortgage Funding, Inc.,

Defendants.

FILED BY _____
2011 FEB -9 PM 3:08
STEVEN H. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA.-FTL

**AMENDED EX PARTE TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE,
APPOINTMENT OF RECEIVER, EXPEDITED DISCOVERY,
AND OTHER EQUITABLE RELIEF AND ORDER TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

THIS CAUSE is before the Court on Plaintiff's Motion for *Ex Parte* Temporary Restraining Order with Asset Freeze and Other Equitable Relief and Order to Show Cause why a Preliminary Injunction Should Not Issue [DE 7] ("Motion for TRO").

Plaintiff, the Federal Trade Commission ("FTC"), has filed a Complaint for a Permanent Injunction and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*, and has moved for an *Ex Parte* Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure. The Court has carefully considered the Complaint, the Motion for TRO, all attached declarations, exhibits, and the memorandum of law filed in support, is otherwise advised in the premises, and finds the following:

- A. 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), and there is good cause to believe that it will have jurisdiction over all parties hereto.
- B. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).
- C. There is good cause to believe that Defendants, U.S. Mortgage Funding, Inc., Debt Remedy Partners, Inc., Lower My Debts.Com, LLC, David Mahler, John Incandela, Jr., and Jamen Lachs, have engaged in and are likely to continue to engage in acts and practices that violate Section 5 of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and that the FTC therefore is likely to prevail on the merits of this action.
- D. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary

restitution will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or corporate records unless Defendants are immediately restrained and enjoined by Order of this Court. There is thus good cause for an asset freeze, the appointment of a temporary receiver over the Receivership Defendants, as defined herein, immediate access to Defendants' business premises, and for ordering such relief without notice to Defendants to preserve the status quo pending the preliminary injunction hearing. Based on the foregoing, there is good cause to issue this order on an *ex parte* basis.

- E. The Court has considered the FTC's likelihood of ultimate success and weighed the equities, and finds that a temporary restraining order providing for an asset freeze, the appointment of a temporary receiver, the preservation of business records, financial disclosures, expedited discovery, and other equitable relief is in the public interest.
- F. Pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, no security is required of any agency of the United States for issuance of a temporary restraining order.
- G. Balancing the equities and considering the FTC's likelihood of success on the merits, the entry of this Temporary Restraining Order is in the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

- A. **"Plaintiff"** or **"FTC"** means the Federal Trade Commission.

- B. **“Defendants”** means, together and separately: U.S. Mortgage Funding, Inc., Debt Remedy Partners, Inc., Lower My Debts.Com, LLC, David Mahler, John Incandela, Jr., also known as Jonathan Incandela, Jr., and Jamen Lachs.
- C. **“Individual Defendants”** means: David Mahler, John Incandela, Jr., also known as Jonathan Incandela, Jr., and Jamen Lachs.
- D. **“Corporate Defendants”** or **“Receivership Defendants”** means: U.S. Mortgage Funding, Inc., Debt Remedy Partners, Inc., and Lower My Debts.Com, LLC.
- E. **“Consumer”** means any Person that any Defendant has contacted, intended to contact, or intends to contact concerning Defendants’ product or services, whether or not a sale is actually consummated.
- F. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real or personal property including, without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.
- G. **“Document”** is synonymous in meaning and equal in scope to the usage of the terms “document” and “electronically stored information,” as described in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and any 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.

- H. **“Material”** means likely to affect a person’s choice of, or conduct regarding goods or services.
- I. **“Mobile Device”** means any mobile phone or other portable computing device, including any smart phone or tablet computer that operates using a mobile operating system, including iOS, Android, Blackberry OS, Windows Phone, and WebOS.
- J. **“Mortgage assistance relief service”** means any good, service, plan, or program that is represented, expressly or by implication, to assist a consumer in any manner to (1) stop, prevent, or postpone any home mortgage or deed of trust foreclosure sale; (2) obtain or arrange any renegotiation, settlement, modification, or other alteration of any term of a mortgage, deed of trust, or home loan; (3) obtain any forbearance from any mortgage loan holder or servicer; (4) exercise any right of reinstatement of any mortgage loan; (5) obtain, arrange, or attempt to obtain or arrange any extension of the period within which the owner of property sold at foreclosure may cure his or her default or reinstate his or her obligation; (6) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in that deed of trust; (7) obtain a loan or advance of funds that is connected to the consumer’s home ownership; (8) avoid or ameliorate the impairment of the consumer’s credit record, credit history, or

credit rating that is connected to the consumer's home ownership; (9) save the consumer's residence from foreclosure; (10) assist the consumer in obtaining proceeds from the foreclosure sale of the consumer's residence; (11) obtain or arrange a pre-foreclosure sale, short sale, or deed-in-lieu of foreclosure; (12) obtain or arrange a refinancing, recapitalization, or reinstatement of a mortgage, deed of trust, or home loan; (13) audit or examine any term of a consumer's mortgage, deed of trust, or home loan application; or (14) obtain, arrange, or attempt to obtain or arrange any extension of the period within which the renter of property sold at foreclosure may continue to occupy the property. The foregoing shall include any manner of claimed assistance, including, but not limited to, debt, credit, budget, or financial counseling; receiving money for the purpose of distributing it to creditors; contacting creditors or servicers on behalf of the consumer; and giving advice of any kind with respect to filing for bankruptcy.

- K. **"Person"** means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, or any other group or combination acting as an entity.
- L. **"Record"** means any document, relating to the business or business practices of any Defendant.
- M. **"Servicer"** means any beneficiary, mortgagee, trustee, loan servicer, loan holder, or other entity that performs loan or credit account administration or processing services and/or its authorized agents.

- N. The terms “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the applicable phrase or sentence inclusive rather than exclusive.

I. PROHIBITED REPRESENTATIONS

IT IS HEREBY ORDERED that in connection with the advertising, marketing, promotion, offering for sale, or sale of any mortgage assistance relief service, Defendants and their successors, assigns, members, officers, 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 or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby temporarily restrained and enjoined from misrepresenting, or from assisting others who are misrepresenting, either orally or in writing, expressly or by implication:

- A. That any Defendant or any other person:
1. will obtain for consumers a mortgage loan modification that will make consumers' mortgage payments substantially more affordable;
 2. is affiliated with, referred, or approved by consumers' lenders;
 3. will provide full or partial refunds to consumers if Defendants fail to obtain a mortgage loan modification for consumers;
- B. The degree of success that any Defendant or any other person has had in performing any mortgage assistance relief service;

- C. The nature of any Defendant's or any other person's relationship with any mortgage loan holder or servicer, or other secured or unsecured lender;
- D. The terms that any beneficiary, mortgagee, or other home-loan holder will or is likely to offer or accept to stay a foreclosure, cure any delinquency or default on, or to reinstate or modify, any mortgage, deed of trust, or other home loan;
- E. That any Defendant or any other person has the ability to obtain specific reductions in consumers' mortgage interest rates;
- F. That any Defendant or any other person has specialized expertise in negotiating modifications with mortgage lenders and saving consumers' homes from foreclosure;
- G. The amount of time it will take or is likely to take to obtain or arrange a renegotiation, settlement, modification, or other alteration of the terms of any secured or unsecured debt, including but not limited to the modification of any term of a consumer's home loan, deed of trust, or mortgage, including any recapitalization or reinstatement agreement;
- H. The refund policy of any Defendant or any other person, 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; or
- I. Any other fact material to a consumer's decision whether to purchase any mortgage assistance relief service.

II. RESTRICTIONS ON TELEMARKETING

IT IS FURTHER ORDERED that Defendants and their successors, assigns, members, officers, 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 or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the telemarketing, advertising, marketing, promotion, offering for sale or sale of any good or service, are hereby temporarily restrained and enjoined from violating, or assisting others in violating, any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to:

- A. Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii), by misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristic of any good or service;
- B. Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii), by misrepresenting, directly or by implication, affiliation with, or endorsement by, any government or third-party organization;
- C. Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv), by misrepresenting, directly or by implication, any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;
- D. Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), by initiating or causing others to initiate outbound telephone calls to a person's telephone number on the National Do Not Call Registry; and

E. Section 310.8 of the TSR, 16 C.F.R. § 310.8, by initiating or causing others to initiate an outbound telephone call to a telephone number within a given area code without Defendants, either directly or through another person, first paying the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry.

III. RESTRICTION ON COLLECTION OF ADVANCE FEES

IT IS FURTHER ORDERED that, immediately upon entry of this Order, Defendants and their successors, assigns, members, officers, 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 or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any mortgage assistance relief service, are hereby temporarily restrained and enjoined from requesting or accepting payment of any fee or consideration in advance of performing each and every mortgage assistance relief service that Defendants contracted to perform or represented would be performed.

IV. DISABLEMENT OF WEBSITES

IT IS FURTHER ORDERED that, immediately upon service of the Order upon them and pending determination of the FTC's request for a preliminary injunction, (1) any person hosting any Internet website for, or on behalf of, any Defendant, and

(2) Defendants and their successors, assigns, members, officers, 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 or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, shall:

- A. Immediately do whatever is necessary to ensure that any Internet website used by Defendants for the advertising, marketing, promotion, offering for sale, sale, or provision of any mortgage assistance relief service and containing statements or representations prohibited by Section I of this Order, including, but not limited to usmortgagefunding.org, cannot be accessed by the public;
- B. Prevent the destruction or erasure of any Internet website used by Defendants for the advertising, marketing, promotion, offering for sale, sale, or provision of any mortgage assistance relief service, including but not limited to usmortgagefunding.org, by preserving such website in the format in which they are maintained currently; and
- C. Immediately notify in writing counsel for the FTC of any other Internet website operated or controlled by any Defendant not listed in Sections IV.A or B above.

V. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from directly or indirectly:

- A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a

lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, consumer lists, or any other assets, or any interest therein, wherever located, including outside the United States, that are (1) owned or controlled, directly or indirectly, by any Defendant(s), in whole or in part, or held, in whole or in part for the benefit of any Defendant(s); (2) in the actual or constructive possession of any Defendant(s); or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any Defendant(s), and any assets held by, for, or under the name of any Defendant(s) at any bank, savings and loan institution, or bank of any Defendant(s), or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind; (4) derived from Corporate Defendants' customers and accepted on behalf of Corporate Defendants by a third party, and (5) transferred by any Corporate Defendant to a third party without consideration;

- B. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendant(s), or subject to access by any Defendant(s);
- C. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Defendant(s);
- D. Obtaining a personal or secured loan;
- E. Incurring liens or encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Defendant(s); and

F. Cashing any checks from consumers, clients, or customers of any Defendant(s).

The assets affected by this Section shall include (a) all assets of the Defendants as of the time this Order is entered; and (b) for all assets acquired after the entry of this Order, only those assets derived from Defendants' mortgage assistance relief services. This Section does not prohibit transfers to the Temporary Receiver, as specifically required in Section XIII (Delivery of Receivership Property), nor does it prohibit the Repatriation of Foreign Assets, as specifically required in Section VIII of this Order.

VI. FINANCIAL REPORTS AND ACCOUNTING

IT IS FURTHER ORDERED that each Defendant shall:

- A. Prepare and serve on counsel for Plaintiff and the Temporary Receiver, within seven (7) business days after service of this Order, completed financial statements fully disclosing the Defendants' finances and those of all corporations, partnerships, trusts or other entities that each Defendant owns, controls, or is associated with in any capacity, jointly or individually, on the forms attached to this Order as **Attachments A and B**, accurate as of the date of service of this Order upon Defendants;
- B. Prepare and serve on counsel for Plaintiff and the Temporary Receiver, within seven (7) business days after service of this Order, copies of signed and completed federal and state income tax forms, including all schedules and attachments for the three most recent filing years;
- C. Provide access to records and documents held by financial institutions outside the territory of the United States, by signing the Consent to Release of Financial

Records attached to this Order as **Attachment C**, immediately upon service of this Order upon them, or within such time as permitted by the Temporary Receiver or counsel for Plaintiff in writing; and

- D. Provide copies of such other financial statements as the Temporary Receiver or Plaintiff may request in order to monitor Defendants' compliance with the provisions of this Order.

VII. RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS AND OTHER THIRD PARTIES

IT IS FURTHER ORDERED that any financial or brokerage institution or depository, escrow agent, title company, commodity trading company, trust, entity, or person that holds, controls, or maintains custody of any account or asset owned or controlled by any Defendant(s), or has held, controlled, or maintained any account or asset of, or on behalf of, any Defendant(s) at any time since January 1, 2009, upon service with a copy of this Order, shall:

- A. Hold and retain within its control and prohibit Defendants from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, gifting, or otherwise disposing of any of the assets, funds, or other property held by or on behalf of any Defendant(s) in any account maintained in the name of or for the benefit of any Defendant(s), in whole or in part, except:
1. as directed by further order of the Court; or
 2. as directed in writing by the Temporary Receiver (regarding assets held in the name or for the benefit of Receivership Defendants).

- B. Deny the Defendants access to any safe deposit box titled in the name of any Defendant(s), individually or jointly, or subject to access by any Defendant(s), whether directly or indirectly.
- C. Provide counsel for Plaintiff and the Temporary Receiver, within seven (7) business days after being served with a copy of this Order, a certified statement setting forth:
1. the identification number of each such account or asset titled (1) in the name, individually or jointly, of any Defendant(s); (2) held on behalf of, or for the benefit of, any Defendant(s); (3) owned or controlled by any Defendant(s); or (4) otherwise subject to access by any Defendant(s), directly or indirectly;
 2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted;
 3. the identification of any safe deposit box that is either titled in the name of any Defendant(s), or is otherwise subject to access by any Defendant(s); and
 4. if an account, safe deposit box, or other asset has been closed or removed, the date closed or removed, the balance on such date, and the manner in which such account or asset was closed or removed.

- D. Provide counsel for Plaintiff and the Temporary Receiver, within seven (7) business days after being served with a request, copies of all documents pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, 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; provided that such institution or custodian may charge a reasonable fee.
- E. Cooperate with all reasonable requests of the Temporary Receiver relating to this Order's implementation.

VIII. REPATRIATION OF FOREIGN ASSETS

IT IS FURTHER ORDERED that, within seven (7) business days following the service of this Order, each Defendant shall:

- A. Provide counsel for Plaintiff and the Temporary Receiver with a full accounting of all funds and assets outside of the territory of the United States which are held either: (1) by Defendant(s); (2) for the benefit of any Defendant(s); or (3) under direct or indirect control, individually or jointly, of any Defendant(s), as required by the forms included in **Attachments A and B**;
- B. Transfer to the territory of the United States all such funds and assets in foreign countries; and

- C. Hold and retain all repatriated funds and assets, and prevent any disposition, transfer, or dissipation whatsoever of any such assets or funds, except as required by this Order.

IX. NON-INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants, and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily 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 Section VIII of this Order, including but not limited to:

- A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement, until such time that all assets have been fully repatriated pursuant to Section VIII of this Order; and
- B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time that all assets have been fully repatriated pursuant to Section VIII of this Order.

X. APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Michael Goldberg of Akerman Senterfitt & Eidson, PA is appointed Temporary Receiver for Receivership Defendants, and any affiliates or subsidiaries thereof controlled by any Receivership Defendant(s), with the full power of an equity Receiver. The Temporary Receiver shall be the agent of this Court and solely the agent of this Court in acting as Temporary Receiver under this Order. The Temporary Receiver shall be accountable directly to this Court. The Temporary Receiver shall comply with all local rules and laws governing federal equity receivers.

XI. COOPERATION WITH THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Defendants shall fully cooperate with and assist the Temporary Receiver. Defendants' cooperation and assistance shall include, but not be limited to, providing any information to the Temporary Receiver that the Temporary Receiver deems necessary to exercise the authority and discharge the responsibilities of the Temporary Receiver under this Order; providing any login and password required to access any computer or electronic files or information in any medium; and advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Temporary Receiver. Defendants are hereby restrained and enjoined from directly or indirectly:

- A. Transacting any of the business of the Receivership Defendants;
- B. Excusing debts owed to the Receivership Defendants;

- C. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of the Receivership Defendants;
- D. 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 Temporary Receiver;
- E. Failing to notify the Temporary Receiver of any asset, including accounts, of any of the Receivership Defendants held in any name other than the name of one or more Receivership Defendants, or by any person or entity other than Receivership Defendants, or failing to provide any assistance or information requested by the Temporary Receiver in connection with obtaining possession, custody, or control of such assets; or
- F. Doing any act or thing whatsoever to interfere with the Temporary Receiver's taking and keeping custody, control, possession, or managing of the assets or documents subject to this receivership; or to harass or interfere with the Temporary 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 Temporary Receiver or the Temporary Receiver's duly authorized agents in the exercise of their duties or authority under any Order of this Court.

This Section does not prohibit transfers to the Temporary Receiver, as specifically required in Section XIII (Delivery of Receivership Property), nor does it

prohibit the Repatriation of Foreign Assets, as specifically required in Section VIII of this Order.

XII. DUTIES AND AUTHORITY OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the Temporary Receiver is directed and authorized to accomplish the following:

- A. Assume full control of the Receivership Defendants by removing, as the Temporary Receiver deems necessary or advisable, any director, officer, independent contractor, employee, attorney, or agent of the Receivership Defendants, including any Defendant(s), from control of, management of, or participation in, the affairs of the Receivership Defendants.
- B. Take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated. The Temporary Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants.
- C. Take all steps necessary to secure the business premises of the Receivership Defendants, which may include, but are not limited to, taking the following steps as the Temporary Receiver deems necessary or advisable: (1) serving and filing this Order; (2) completing a written inventory of all receivership assets;

(3) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including, but not limited to, the name, home address, social security number, job description, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent;

(4) video-recording all portions of the location; (5) changing the locks and disconnecting any computer networks or other means of access to electronically stored information or other documents maintained at that location; or

(6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Temporary Receiver with proof of identification, and/or to demonstrate to the satisfaction of the Temporary Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendants. Such authority shall include, but not be limited to, the authority to order any owner, director, or officer of any Receivership Defendant to remove him or herself from the business premises.

- D. Conserve, hold, and manage all receivership assets, and perform all acts necessary or advisable to preserve the value of those assets, in order to prevent any irreparable loss, damage, or injury to consumers, including, but not limited to, obtaining an accounting of the assets and preventing the transfer, withdrawal, or misapplication of assets.
- E. Enter into contracts and purchase insurance as advisable or necessary. Prevent the inequitable distribution of assets and to determine, adjust, and protect the interests of consumers and creditors who have transacted business with one or more Receivership Defendants.

- F. Prevent the inequitable distribution of assets and to determine, adjust, and protect the interests of consumers and creditors who have transacted business with the Receivership Defendants.
- G. Manage and administer the business of the Receivership Defendants until further order of this Court by performing all incidental acts that the Temporary Receiver deems to be advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents.
- H. Choose, engage, and employ attorneys, accountants, appraisers, investigators, and other independent contractors and technical specialists, as the Temporary Receiver deems advisable or necessary in the performance of duties and responsibilities.
- I. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Temporary Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of this Order, except payments that the Temporary Receiver deems necessary or advisable to secure assets of the Receivership Defendants, such as rental payments.
- J. Collect any money due or owing to the Receivership Defendants.
- K. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts that the Temporary Receiver deems necessary and advisable to preserve or recover the assets of

- the Receivership Defendants or to carry out the Temporary Receiver's mandate under this Order.
- L. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted against the Receivership Defendants or the Temporary Receiver, that the Temporary Receiver deems necessary and advisable to preserve the assets of the Receivership Defendants or to carry out the Temporary Receiver's mandate under this Order.
- M. Continue and conduct the businesses of the Receivership Defendants in such manner, to such extent, and for such duration as the Temporary Receiver may in good faith deem to be necessary or appropriate to operate the businesses profitably, using the assets of the receivership estate, and lawfully, if at all.
- N. Take depositions and issue subpoenas to obtain documents and records pertaining to the receivership and compliance with this Order. Subpoenas may be served by agents or attorneys of the Temporary Receiver and by agents of any process server retained by the Temporary Receiver.
- O. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants. The Temporary Receiver shall deposit all funds of the Receivership Defendants in such a designated account and shall make all payments and disbursements from the receivership estate from such an account.
- P. Maintain accurate records of all receipts and expenditures made by the Temporary Receiver.

XIII. DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that immediately upon service of this Order upon them, Defendants, including the Receivership Defendants, shall forthwith or within such time as permitted by the Temporary Receiver in writing, deliver to the Temporary Receiver possession and custody of:

- A. All funds, assets, and property of the Receivership Defendants, whether situated within or outside the territory of the United States, which are: (1) held by one or more Receivership Defendants, individually or jointly, (2) held for the benefit of one or more Receivership Defendants, or (3) under the direct or indirect control, individually or jointly, of one or more Receivership Defendants;
- B. All documents of the Receivership Defendants, including but not limited to all books and records of assets including funds and property, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, records of ACH transactions, and check registers), corporate minutes, contracts, customer and consumer lists, title documents, and electronic records;
- C. All funds and other assets belonging to members of the public now held by one or more Receivership Defendants;
- D. All keys, computer and other passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects, and all monies in any bank deposited to the credit of the Receivership Defendants, wherever situated; and

- E. Information identifying the accounts, employees, properties, or other assets or obligations of the Receivership Defendants.

**XIV. TRANSFER OF FUNDS TO THE TEMPORARY RECEIVER BY
FINANCIAL INSTITUTIONS AND OTHER THIRD PARTIES**

IT IS FURTHER ORDERED that, upon service of a copy of this Order, any financial or brokerage institution or depository, escrow agent, title company, commodity trading company, or trust shall cooperate with all reasonable requests of counsel for Plaintiff and the Temporary Receiver relating to implementation of this Order, including transferring funds at the Temporary Receiver's direction and producing records related to the assets and sales of the Receivership Defendants.

XV. TEMPORARY RECEIVER'S REPORTS

IT IS FURTHER ORDERED that the Temporary Receiver shall report to this Court on or before the date set for the hearing to Show Cause regarding the Preliminary Injunction, regarding: (1) the steps taken by the Temporary Receiver to implement the terms of this Order; (2) the value of all liquidated and unliquidated assets of the Receivership Defendants; (3) the sum of all liabilities of the Receivership Defendants; (4) the steps the Temporary Receiver intends to take in the future to: (a) prevent any diminution in the value of assets of the Receivership Defendants; (b) pursue receivership assets from third parties; and (c) adjust the liabilities of the Receivership Defendants, if appropriate; and (d) any other matters which the Temporary Receiver believes should be brought to the Court's attention. Provided, however, if any of the required information would hinder the Temporary Receiver's ability to pursue

receivership assets, the portions of the Temporary Receiver's report containing such information may be filed under seal and not served on the parties.

XVI. TEMPORARY RECEIVER'S BOND

IT IS FURTHER ORDERED that no bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by Defendants, or by the Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities.

XVII. COMPENSATION OF THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the Temporary Receiver, and all persons or entities retained or hired by the Temporary Receiver as authorized under this Order, shall be entitled to reasonable compensation for the performance of duties undertaken pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them from the assets now held by or in the possession or control of, or which may be received by, the Receivership Defendants. The Temporary Receiver shall file with the Court and serve on the parties a request for the payment of reasonable compensation at the time of the filing of any report required by Section XV. The Temporary Receiver shall not increase the fees or rates used as the bases for such fee applications without prior approval of the Court.

**XVIII. TEMPORARY RECEIVER AND FTC ACCESS TO
BUSINESS PREMISES AND RECORDS**

IT IS FURTHER ORDERED that Plaintiff, the Temporary Receiver, and their respective representatives, agents, contractors, or assistants, are permitted and the Defendants shall allow immediate access to any business premises and storage facilities of the Receivership Defendants. Such locations include, but are not limited to, the offices and facilities of the Receivership Defendants at or in the vicinity of 951 Broken Sound Parkway, Ste. 200, Boca Raton, FL 33487; 700 Hillsboro Blvd., Ste. 2, West Palm Beach, FL 33411; 4770 N.W. 2nd Ave., Ste. C, Boca Raton, FL 33431; and 804 Windward Way, Unit 521, Lantana, FL 33482 (official business address of record for Defendant Lower My Debts.Com, if not a personal residence).

- A. Plaintiff and the Temporary Receiver are authorized to employ the assistance of law enforcement officers, including, but not limited to, local law enforcement, the United States Marshals Service, Office of the Special Inspector General for the Troubled Asset Relief Program, United States Postal Inspection Service, Internal Revenue Service, and Federal Bureau of Investigation, to effect service, to implement peacefully the provisions of this Order, and keep the peace. The Temporary Receiver shall allow Plaintiff into the premises and facilities described in this Section and shall allow Plaintiff and its representatives, agents, contractors, or assistants to inspect, inventory, and copy documents relevant to any matter contained in this Order. Counsel for Plaintiff and the Temporary Receiver may exclude Defendants and their agents and employees from the business premises and facilities during the immediate access.

- B. Defendants and all agents or employees of Defendants shall provide counsel for Plaintiff and the Temporary Receiver with any necessary means of access to documents, including, without limitation, the locations of Receivership Defendants' business premises, keys and combinations to business premises locks, computer access codes of all computers and mobile devices used to conduct Receivership Defendants' business, and storage area access information.
- C. The Temporary Receiver and counsel for Plaintiff shall have the right to remove any documents related to Defendants' business practices from the premises in order that they may be inspected, inventoried, and copied. The materials so removed shall be returned within three (3) business days of completing said inventory and copying.
- D. If any property, records, documents, or computer files relating to the Receivership Defendants' finances or business practices are located in the residence of any Defendant or are otherwise in the custody or control of any Defendant, then such Defendant shall produce them to the Temporary Receiver within forty-eight (48) hours of service of this Order. To prevent the destruction of computer data and any data on mobile devices, upon service of this Order upon Defendants, any such computers and mobile devices shall be powered down (i.e., turned off) in the normal course for the operating systems used on such computers and mobile devices and shall not be powered up or used again until produced for copying and inspection, along with any codes needed for access.

XIX. DEFENDANTS' ACCESS TO PREMISES AND RECORDS

IT IS FURTHER ORDERED that the Temporary Receiver shall allow the Defendants and their representatives reasonable access to the premises of the Receivership Defendants. The purpose of this access shall be to inspect, inventory, and copy any and all documents and other property owned by or in the possession of the Receivership Defendants, provided that those documents and property are not removed from the premises. The Temporary Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

XX. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants, and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or finances of any Defendant, including, but not limited to, any contracts, accounting data, correspondence, advertisements, computer tapes, disks or other computerized records, books, written or printed records, handwritten notes, recordings, telephone logs, telephone scripts, communications to or from any mobile device, including Short Message Service (SMS) text messages and Multimedia Messaging Service (MMS), and data stored on Subscriber Identity Module

(SIM) cards; receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state, or local business or personal income or property tax returns.

**XXI. PROHIBITION ON RELEASE OF
CUSTOMER INFORMATION OR CUSTOMER LISTS**

IT IS FURTHER ORDERED that Defendants, and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are temporarily restrained and enjoined from 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 any mortgage assistance relief service.

XXII. CREDIT REPORTS

IT IS FURTHER ORDERED that Plaintiff may obtain credit reports concerning any of the Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from which such reports are requested shall provide them to Plaintiff.

XXIII. NOTIFICATION OF BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that:

- A. The Individual Defendants are temporarily restrained and enjoined from directly or indirectly creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first serving on counsel for Plaintiff a written statement disclosing the following: (1) the name of the business entity; (2) the address and telephone number 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 or actual activities.
- B. The Individual Defendants shall notify Plaintiff at least three (3) days prior to affiliating with, becoming employed by, or performing any work for any business that is not a named Defendant in this action. Each notice shall include the Individual Defendant's new business address and a statement of the nature of the business or employment and the nature of his duties and responsibilities in connection with that business or employment.

XXIV. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that the FTC is granted leave to conduct certain expedited discovery, and that, commencing with the time and date of this Order, in lieu of the time periods, notice provisions, and other requirements of Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, expedited discovery as to parties and non-parties shall proceed as follows:

- A. The FTC may, upon seven (7) calendar days notice, take the deposition of any person or entity, whether or not a party, in any judicial district, for the purpose of discovering: (1) the assets of Defendants; (2) location of documents; and (3) compliance with this Order. Depositions may be conducted telephonically or in person. Deposition transcripts that have not been signed by the witness may be used at the preliminary injunction hearing in this matter. Provided that, notwithstanding Federal Rule of Civil Procedure 30(a)(2), this Section shall not preclude any future depositions by the FTC. Provided further, that any deposition taken pursuant to this Section shall be in addition to, and not subject to, the presumptive limits on depositions set forth in Federal Rule of Civil Procedure 30(a)(2)(A).
- B. The FTC may serve interrogatories for the purpose of discovering: (1) the assets of Defendants; (2) location of documents; and (3) compliance with this Order. Defendants shall respond within five (5) calendar days after the FTC serves such interrogatories. Provided that, notwithstanding Federal Rule of Civil Procedure 33(a)(1), this Subsection shall not preclude any future interrogatories by the FTC.
- C. The FTC may, upon five (5) calendar days notice, including through the use of a Rule 45 Subpoena, demand the production of documents from any person or entity, whether or not a Defendant, relating to: (1) the assets of Defendants; (2) location of documents; and (3) compliance with this Order.
- D. The FTC is granted leave to subpoena documents immediately from any financial institution, account custodian, or other entity or person that holds,

controls, or maintains custody of any account or asset of any Defendant(s), or has held, controlled or maintained custody of any account or asset of any Defendant(s) concerning the nature, location, status, and extent of Defendants' assets, and compliance with this Order, and such financial institution, account custodian or other entity shall respond to such subpoena within five (5) business days after service.

For purposes of discovery upon a Defendant pursuant to this Section, service shall be sufficient if made by facsimile or by overnight courier.

XXV. BANKRUPTCY PETITIONS

IT IS FURTHER ORDERED that, in light of the appointment of the Temporary Receiver, the Receivership Defendants are hereby prohibited from filing a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, without prior permission from this Court.

XXVI. STAY OF ACTIONS

IT IS FURTHER ORDERED that:

- A. Except by leave of this Court, during the pendency of the Receivership ordered herein, Receivership Defendants and all customers, principals, investors, creditors, stockholders, lessors, and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of Receivership Defendants, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and

their deputies, and their respective attorneys, servants, agents, and employees be and are hereby stayed from:

1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;
2. Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody, or control of any asset; attempting to foreclose, forfeit, alter, or terminate any interest in any asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;
3. Executing, issuing, serving, or causing the execution, issuance or service of, any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not; or
4. Doing any act or thing whatsoever to interfere with the Temporary Receiver's taking custody, control, possession, or management of the assets or documents subject to this receivership; or to harass or interfere with the Temporary 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.

B. This Section does not stay:

1. The commencement or continuation of a criminal action or proceeding;

2. The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;
3. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;
4. The commencement of any action by the Secretary of the United States Department of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five (5) or more living units; or
5. The issuance to a Receivership Defendant of a notice of tax deficiency.

XXVII. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission or email, by employees or agents of the FTC or the Temporary Receiver, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Defendants, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

XXVIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant, within two (2) business days of receipt of this Order, must submit to counsel for Plaintiff a truthful sworn statement acknowledging receipt of this Order.

XXIX. PROOF OF DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to their agents, servants, employees, consultants, and any affiliated businesses, and other persons and entities subject in any part to their direct or indirect control. Within five (5) business days of receipt of this Order, Defendants must submit to counsel for Plaintiff a truthful sworn statement identifying those persons and entities to whom this Order has been distributed.

XXX. CORRESPONDENCE

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

Jessica D. Gray
Barbara E. Bolton
FEDERAL TRADE COMMISSION
Southeast Regional Office
225 Peachtree Street, N.E., Suite 1500
Atlanta, Georgia 30303
404-656-1362_(Gray)
202-650-9806 (Bolton)
404-656-1379 (Facsimile)
jgray@ftc.gov
bbolton@ftc.gov

XXXI. ORDER TO SHOW CAUSE

IT IS THEREFORE ORDERED that

- A. Pursuant to Fed. R. Civ. P. 65(b), Defendants shall appear on the 16th day of February, 2011, at 1:30 p.m. at the United States Courthouse, Courtroom 203, 299 E. Broward Blvd., Fort Lauderdale, Florida 33301, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the complaint, against Defendants, enjoining them from further violations of the FTC Act and the Telemarketing Sale Rule, and imposing such additional relief as may be appropriate.
- B. Defendants shall file any answering affidavits, pleadings, or legal memoranda with the Court and serve the same on counsel for the FTC no later than two (2) business days prior to the preliminary injunction hearing in this matter.
- C. The question of whether this Court should enter a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the Defendants during the pendency of this action shall be resolved on the pleadings, declarations, exhibits, and memoranda filed by, and oral argument of, the parties. Live testimony shall be heard only on further order of this Court on motion filed with the Court and served on counsel for the other parties at least two (2) business days prior to the preliminary injunction hearing in this matter. Such motion shall set forth the name, address, and telephone number of each proposed witness, a detailed summary or affidavit revealing the substance of

each proposed witness's expected testimony, and an explanation of why the taking of live testimony would be helpful to this Court.


XXXII. DURATION OF ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on the 18th day of February, 2011, at 5:00 p.m., unless within such time, the Order, for good cause shown, is extended for an additional period not to exceed ten (10) calendar days, or unless it is further extended pursuant to Federal Rule of Civil Procedure 65.

XXXIII. JURISDICTION

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

DONE AND ORDERED this 9th day of FEBRUARY, 2011, at 3:00 ~~a.m.~~/p.m.



JAMES I. COHN
UNITED STATES DISTRICT JUDGE