UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, Plaintiff, v. **SEAN CANTKIER** **SCOT LADY** **JEFFREY ALTMIRE** **MICHAEL HALLER** **LISA ROYE** **ALAN LESTOURGEON** **KEAN LEE LIM** **GREG RIVERA**	**Case No. 1:09-cv-00894-CKK** **FIRST AMENDED COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

NEIL SPERRY)
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)
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Defendants.)
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Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, 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).

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).

3. Venue is proper in this District under 28 U.S.C. § 1391(b), (c), and (d) 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 - 58. The FTC is charged, *inter alia*, with enforcement 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 commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b) and 56(a).

DEFENDANTS

6. Defendant Sean Cantkier ("Cantkier") is an individual who, acting alone or in concert with others, has directed, controlled, or participated in the acts or practices set forth in this Complaint. Cantkier, in connection with the matters alleged herein, transacts or has transacted business in the District of Columbia and throughout the United States. Defendant Cantkier resides in Georgia.

7. Defendant Scot Lady ("Lady") is an individual who, acting alone or in concert with others, has directed, controlled, or participated in the acts or practices set forth in this Complaint. Lady, in connection with the matters alleged herein, transacts or has transacted business in the District of Columbia and throughout the United States. Defendant Lady resides in Florida.

8. Defendant Jeffrey Altmire ("Altmire") is an individual who, acting alone or in concert with others, has directed, controlled, or participated in the acts or practices set forth in this Complaint. Altmire, in connection with the matters alleged herein, transacts or has transacted business in the District of Columbia and throughout the United States. Defendant Altmire resides in Pennsylvania.

9. Defendant Michael Haller ("Haller") is an individual who, acting alone or in concert with others, has directed, controlled, or participated in the acts or practices set forth in this Complaint. Haller, in connection with the matters alleged herein, transacts or has transacted business in the District of Columbia and throughout the United States. Defendant Haller resides in Montana.

10. Defendant Lisa Roye ("Roye") is an individual who, acting alone or in concert with others, has directed, controlled, or participated in the acts or practices set forth in this

Complaint. Roye, in connection with the matters alleged herein, transacts or has transacted business in the District of Columbia and throughout the United States. Defendant Roye resides in Georgia.

11. Defendant Alan LeStourgeon ("LeStourgeon") is an individual who, acting alone or in concert with others, has directed, controlled, or participated in the acts or practices set forth in this Complaint. LeStourgeon, in connection with the matters alleged herein, transacts or has transacted business in the District of Columbia and throughout the United States. Defendant LeStourgeon resides in Florida.

12. Defendant Kean Lee Lim ("Lim") is an individual who, acting alone or in concert with others, has directed, controlled, or participated in the acts or practices set forth in this Complaint. Lim, in connection with the matters alleged herein, transacts or has transacted business in the District of Columbia and throughout the United States. Defendant Lim has used an address in Malaysia as his principal place of business. His residential address is unknown.

13. Defendant Greg Rivera ("Rivera") is an individual who, acting alone or in concert with others, has directed, controlled, or participated in the acts or practices set forth in this Complaint. Rivera, in connection with the matters alleged herein, transacts or has transacted business in the District of Columbia and throughout the United States. Defendant Rivera resides in California.

14. Defendant Neil Sperry ("Sperry") is an individual who, acting alone or in concert with others, has directed, controlled, or participated in the acts or practices set forth in this Complaint. Sperry, in connection with the matters alleged herein, transacts or has transacted business in the District of Columbia and throughout the United States. Defendant Sperry resides in Texas.

COMMERCE

15. At all times relevant 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.

THE FEDERAL GOVERNMENT'S EFFORTS TO ASSIST HOMEOWNERS

16. The deep contraction in the economy and in the housing market has created devastating consequences for homeowners and communities throughout the country. In response, the federal government has introduced and widely publicized a number of federal homeowner relief and financial stability programs aimed at reviving the United States economy and assisting distressed homeowners whose mortgage loans have become unaffordable. These programs are promoted through various websites, such as www.financialstability.gov and www.makinghomeaffordable.gov.

17. In the past year, two United States Presidents, the Department of the Treasury, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Department of Housing and Urban Development ("HUD"), among other federal authorities, have announced federal homeowner relief and financial stability programs that provide free online assistance to consumers.

18. Additionally, HUD has designated thousands of HUD-approved non-profit housing counseling agencies to provide assistance to consumers who are at risk of foreclosure or falling behind on their mortgage payments. These HUD-approved housing counseling agencies provide services at no cost to homeowners, negotiating with lenders to make homeowners' mortgage loans more affordable. To publicize these services, HUD has engaged in a substantial public education campaign, including joint efforts with the Treasury Department and other

federal agencies, a toll-free number, 1-888-995-HOPE, and an alliance with the Homeowner Preservation Foundation and the Hope Now Alliance.

19. On February 18, 2009, President Barack Obama announced the Making Home Affordable program, a comprehensive plan to stabilize the United States housing market. On March 8, 2009, the Administration published program guidelines and authorized servicers to begin modifications and refinancings under the plan immediately. On March 19, 2009, the Administration launched the website www.makinghomeaffordable.gov to provide consumers with information about the Making Home Affordable program and tools to determine their eligibility to participate in the program.

DEFENDANTS' BUSINESS ACTIVITIES

20. Since at least 2008, Defendants have solicited consumers to provide marketing leads for mortgage loan modification or foreclosure relief services through advertisements placed on Internet search result web pages ("search results pages").

21. Defendants purchase preferred placement for their advertisements on the search results pages provided by search engines, such as www.google.com, www.yahoo.com, www.msn.com, www.altavista.com, www.alltheweb.com, and www.bing.com.

22. Defendants purchase ad placement by means of pay-per-click bidding processes conducted by Internet search engines, such as those run by Google, Yahoo!, and Microsoft. Defendants identify "keywords" on which they wish to bid, the maximum price-per-click they are willing to pay when their ads appear and consumers click on them, and the similarity of the consumer's query to their keywords that will include them in the bidding to place an ad on those consumers' search results pages (*e.g.*, an "exact" match that will trigger a bid only when the consumer's query exactly matches the keywords, a "phrase" match that will trigger a bid even if

a consumer enters words in addition to the keyword phrase into their query, or a "broad" match that will trigger a bid even when a consumer's query contains different spelling or words related to the keywords).

23. In response to a consumer search query, the search engines present sponsored ads in preferred placement based upon advertisers' bids and other factors, such as consumers' click-through-rates in response to the ads. These ads typically appear at the top and on the right margin of the search results pages. The sponsored sites are distinct from the "organic search results" – unpaid websites – that the search engines identify as related to the consumer's query from their vast index and archive of Internet websites. The search engines typically identify pay-per-click advertisements with a designation of "sponsored results," "sponsored sites," or "sponsored links," and/or a shaded background.

24. The search engines specify a specific ad format for pay-per-click advertising. The "title" is typically in the upper left of the ad, underlined, and in a larger font than the rest of the ad. The "description" is one to three lines of text that appear below or to the right of the title. The "display URL" typically contains a domain name presented to the right of the title or below the description.

25. Defendants create ads within the search engines' specified formats that appear to be search results that identify federal homeowner relief or financial stability programs and include as titles domain names or other identifying terms of such programs. In some cases, Defendants use a feature of the search engines that inserts a consumer's search terms as the title of the Defendant's pay-per-click advertisement (called a "dynamic" or "keyword insertion feature"), and the title inserted is a domain name or other identifying term of the federal homeowner relief or financial stability program.

26. As one example, Defendants placed advertisements that appeared on search results pages when consumers searched for "making home affordable" or similar phrases that made it appear that the advertisements were links to the official website of the Making Home Affordable program. Examples of these advertisements include, but are not limited to:

> MakingHomeAffordable.gov - makinghomeaffordable.gov Sponsored sites
> **Making** Your **Home Affordable**. Let Us Fight For You And Save Your **Home**.

and

> **Makinghomeaffordable**.gov
> **Making** Your **Home Affordable**. Let Us Fight For You And Save Your **Home**.
> www.**howcanistopaforeclosure.com**

27. Consumers who clicked on the hyperlink labeled "MakingHomeAffordable.gov" in these advertisements were directed to Internet websites ("lead-collecting websites") that collected marketing leads for mortgage loan modification or foreclosure relief services. The websites required consumers to enter personal identifying and confidential financial information. The persons who operate these websites sold consumers' confidential information as marketing leads to persons who sell mortgage loan modification or foreclosure relief services.

28. Defendants have promoted lead-collecting websites through advertisements that represent that the advertisement is sponsored by other federal homeowner relief and financial stability programs, including ads with titles of "financialstability.gov, "1-888-995-HOPE," and "NACA.com" (the website of a HUD-approved housing counseling agency). For example, the following advertisement appeared on Google and Microsoft search results pages in response to searches on "financialstability.gov:"

> **Financialstability.gov** Sponsored Links
> EZForeclosureHelp.info You Don't Have to Lose Your Home Find Out How For Free-1 Simple Form

Clicking on the title "Financialstability.gov" leads initially to a website ezforeclosurehelp.info, which advises consumers in large red letters:

But Don't Talk to Your Bank Until You Talk to Our Loan Modification Specialists

and offers a "Start Now" button that, when clicked, leads to a lead-collecting website.

29. Defendants are not part of or affiliated with the United States government, the Making Home Affordable program, www.makinghomeaffordable.gov, www.financialstability.gov, or any federal homeowner relief or financial stability program. The website www.makinghomeaffordable.gov offers free information and counseling about the Making Home Affordable program; Defendants' advertisements, on the other hand, direct consumers to commercial websites marketing purported mortgage loan modification or foreclosure relief services.

30. The placement of Defendants' advertisements in responses to Internet searches for "making home affordable" and other federal homeowner relief or financial stability programs, and the inclusion in the text of such advertisements of "makinghomeaffordable.gov" and other terms that identify federal homeowner relief or financial stability programs is likely to mislead consumers who are attempting to obtain information about federal homeowner relief or financial stability programs. Although Defendants sometimes include a second website address on their advertisements, this website is displayed in a smaller font and less prominently than terms that identify federal homeowner relief or financial stability programs and is inadequate to

dispel the overall impression that the site advertised is affiliated with the United States government program.

VIOLATIONS OF THE FTC ACT

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

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

Count I

Misrepresentations Concerning Government Status

33. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of mortgage loan modification or foreclosure relief services, Defendants represent, directly or indirectly, expressly or by implication, that:

A. Defendants operate www.makinghomeaffordable.gov, www.financialstability.gov, or other federal homeowner relief or financial stability programs; and

B. Defendants are the United States government or are affiliated with the United States government.

Such representations are material to consumers seeking mortgage relief.

34. In truth and in fact:

A. Defendants do not operate www.makinghomeaffordable.gov, www.financialstability.gov, or other federal homeowner relief or financial stability programs; and

B. Defendants are not the United States government and are not affiliated with the United States government.

35. Therefore, Defendants' representations as set forth in Paragraph 33 of this Complaint are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

36. Consumers likely have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. 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

37. 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 the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission of contracts and restitution, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(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 by entering a temporary restraining order and a preliminary injunction.

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

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

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: June 18, 2009

Respectfully submitted,

DAVID C. SHONKA
Acting General Counsel

/s/ *Lawrence Hodapp*

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