

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62000-CIV-ZLOCH

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

**DEFAULT FINAL JUDGMENT
AND PERMANENT INJUNCTION**

TIMESHARE MEGA MEDIA AND
MARKETING GROUP, INC. also
d/b/a TIMESHARE MARKET PRO,
INC. et. al.,

Defendants.

THIS MATTER is before the Court upon Plaintiff Federal Trade Commission's Motion And Incorporated Memorandum In Support Of Entry Of Default And Order For Permanent Injunction And Monetary Relief As To Defendants Timeshare Mega Media And Marketing Group, Inc; Timeshare Market Pro, Inc.; Tapia Consulting, Inc.; Joseph Crapella; Pasqualino Agovino; Louis Tobias Duany; And Patricia A. Walker (DE 112). The Court has carefully reviewed said Motion, Plaintiff Federal Trade Commission's proposed Default Final Judgment And Order For Permanent Injunction And Monetary Relief As To Defendants Timeshare Mega Media And Marketing Group, Inc; Timeshare Market Pro, Inc.; Tapia Consulting, Inc.; Joseph Crapella; Pasqualino Agovino; Louis Tobias Duany; And Patricia A. Walker (DE 112-1), the entire Court file and is otherwise fully advised in the premises.

Defendants Timeshare Mega Media and Marketing Group, Inc., Timeshare Market Pro, Inc., Joseph Crapella a/k/a Joseph John Philbin, Louis Tobias Duany, and Patricia A. Walker were duly served with process on October 21, 2010. See DE Nos. 20, 22, 24, 25 & 27. Said Defendants failed to file an appropriate Motion or responsive pleading within the time prescribed by law. Defendant Tapia Consulting, Inc. was also duly served with process on October 22, 2010. See DE 28. Said Defendant also failed to file an appropriate Motion or responsive pleading within the time prescribed by law. Defendant Pasqualino Agovino similarly was duly served with process by publication in the Daily Business Review once a week for four consecutive weeks beginning the week of May 23, 2011, and ending the week of June 13, 2011. See DE 86. Defendant Agovino failed to file an appropriate Motion or responsive pleading within the time prescribed by law. Default was previously entered against said Defendants. See DE Nos. 80 & 89. Plaintiff Federal Trade Commission now moves for Default Final Judgment.

The well-pleaded allegations made in Plaintiff's Complaint (DE 1) are deemed to have been admitted by Defendants by virtue of their default. Cotton v. Mass. Mut. Life Ins. Co., 402 F.3d 1267, 1277-78 (11th Cir. 2005) (citations omitted). Thus, the Court finds

that the aforementioned Defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by falsely representing, directly or indirectly, expressly or by implication, that Defendants had available buyers for the consumers' timeshare units who were willing to pay a specified price and that Defendants would refund the consumers' fees to them at the closing of the sale. The Court further finds that Defendants have violated the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a)(2)(iv) and 310.3(a)(4) in regard to the aforementioned activity. The Court finds that the Commission is entitled to equitable monetary relief against Defendants in the amount of two million, six hundred ninety-two thousand, seven hundred eighty-two dollars and forty-six cents (\$2,692,782.46), for which the aforementioned Defendants are jointly and severally liable. See FTC v. Global Mktg. Grp., 594 F. Supp. 2d 1281, 1290 (M.D. Fla. 2008) citing FTC v. Gem Merchandising Corp., 87 F.3d 466, 470 (11th Cir. 1996) (holding that the "full amount lost by consumers is an appropriate award of damages.").

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. The Court has jurisdiction over the parties hereto and the subject matter herein;

2. Plaintiff Federal Trade Commission's Motion And

Incorporated Memorandum In Support Of Entry Of Default And Order For Permanent Injunction And Monetary Relief As To Defendants Timeshare Mega Media And Marketing Group, Inc; Timeshare Market Pro, Inc.; Tapia Consulting, Inc.; Joseph Crapella; Pasqualino Agovino; Louis Tobias Duany; And Patricia A. Walker (DE 112) be and the same is hereby **GRANTED**;

3. Pursuant to Federal Rules of Civil Procedure 55 and 58, Default Final Judgment be and the same is hereby **ENTERED** in favor of Plaintiff Federal Trade Commission and against Defendants Timeshare Mega Media And Marketing Group, Inc; Timeshare Market Pro, Inc.; Tapia Consulting, Inc.; Joseph Crapella; Pasqualino Agovino; Louis Tobias Duany; and Patricia A. Walker;

4. Plaintiff Federal Trade Commission's proposed Default Final Judgment And Order For Permanent Injunction And Monetary Relief As To Defendants Timeshare Mega Media And Marketing Group, Inc; Timeshare Market Pro, Inc.; Tapia Consulting, Inc.; Joseph Crapella; Pasqualino Agovino; Louis Tobias Duany; And Patricia A. Walker (DE 112-1) be and the same is hereby approved, adopted, and ratified;

5. Plaintiff Federal Trade Commission does have and recover from Defendants Timeshare Mega Media And Marketing Group, Inc; Timeshare Market Pro, Inc.; Tapia Consulting, Inc.; Joseph

Crapella; Pasqualino Agovino; Louis Tobias Duany; and Patricia A. Walker the sum of two million, six hundred ninety-two thousand, seven hundred eighty-two dollars and forty-six cents (\$2,692,782.46) together with interest thereon at a rate of 0.18% per annum, for all of which let execution issue;

6. The Court shall retain jurisdiction solely for the purpose of entertaining a Motion For Attorney's Fees that comports with the dictates of Local Rule 7.3; and

7. To the extent not otherwise disposed of herein, all pending Motions are hereby **DENIED** as moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 9th day of March, 2012.



WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

All Counsel of Record

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 10-62000-CIV-ZLOCH

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TIMESHARE MEGA MEDIA AND
MARKETING GROUP, INC., a Florida
corporation, also d/b/a Timeshare Market
Pro, Inc., *et al.*,

Defendants.

**DEFAULT JUDGMENT AND ORDER FOR PERMANENT
INJUNCTION AND MONETARY RELIEF AS TO DEFENDANTS
TIMESHARE MEGA MEDIA AND MARKETING GROUP, INC.;
TIMESHARE MARKET PRO, INC.; TAPIA CONSULTING, INC.;
JOSEPH CRAPELLA; PASQUALINO AGOVINO;
LOUIS TOBIAS DUANY; AND PATRICIA A. WALKER**

On October 19, 2010, Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed a Complaint for Permanent Injunction and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101-6108, 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 the FTC’s Trade Regulation Rule entitled “Telemarketing Sales Rule” (“TSR”), 16 C.F.R. Part 310.

The Court, having found Defendants Timeshare Mega Media and Marketing Group, Inc.; Timeshare Market Pro, Inc.; Tapia Consulting, Inc.; Joseph Crapella; Pasqualino Agovino; Louis Tobias Duany; and Patricia A. Walker (hereinafter referred to as “Defaulting Defendants”) in default, and the Commission, having moved for entry of default judgment on all counts of the Complaint against Defaulting Defendants, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This is an action by the Commission instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310. Pursuant to these Sections of the FTC Act and the Telemarketing Act, the Commission has the authority to seek the relief contained herein.

2. The Complaint states a claim upon which relief may be granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b).

3. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over Defaulting Defendants.

4. Venue in the United States District Court for the Southern District of Florida is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

5. The activities of Defaulting Defendants are “in or affecting commerce” as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defaulting Defendants were served with process in this matter. Defaulting Defendants thereafter failed to file an answer to the Complaint within the time set forth by Rule 12(a) of the Federal Rules of Civil Procedure, or to otherwise defend this action. On March 31,

2011, and August 26, 2011, the Clerk of Court entered orders of default as to Defaulting Defendants. The Commission now is entitled to a default judgment, pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, as to Defendants Timeshare Mega Media and Marketing Group, Inc.; Timeshare Market Pro, Inc.; Tapia Consulting, Inc.; Joseph Crapella; Pasqualino Agovino; Louis Tobias Duany; and Patricia A. Walker.

7. The factual allegations in the Commission's Complaint are taken as true against Defaulting Defendants. Those allegations and the evidence supporting them establish that Defaulting Defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

8. The Court now finds that, in connection with the advertising, marketing, promotion, offering for sale, or sale of timeshare resale services, Defaulting Defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by falsely representing, directly or indirectly, expressly or by implication, that (a) Defendants have a buyer for the consumer's timeshare unit who will pay a specified price; and (b) Defendants will refund their fee to the consumer at the closing of a sale of the consumer's timeshare unit.

9. The Court further finds that, in the course of telemarketing their goods and services, Defaulting Defendants have violated the TSR, 16 C.F.R. §§ 310.3(a)(2)(iv) and 310.3(a)(4), by making false or misleading statements, directly or by implication, to induce consumers to pay for goods or services, including, but not limited to, misrepresentations that (a) Defendants have a buyer for the consumer's timeshare unit who will pay a specified price; and (b) Defendants will refund their fee to the consumer at the closing of a sale of the consumer's timeshare unit.

10. Defaulting Defendants are likely to continue to engage in the acts and practices alleged in the Complaint unless they are permanently enjoined from such acts and practices.

11. Defendants' net sales (total sales minus refunds, returns, and chargebacks) amounted to two-million, six-hundred ninety-two thousand, seven-hundred eighty-two Dollars and forty-six Cents (\$2,692,782.46) from the conduct alleged in the Commission's Complaint. *See, FTC v. Gem Merch. Corp.*, 87 F.3d 466, 470 (11th Cir. 1996); *FTC v. Global Mktg. Grp.*, 594 F. Supp. 2d 1281, 1290 (M.D. Fla. Dec. 24, 2008) (the appropriate measure of consumer damages is the total loss suffered at the hands of defendants).

12. The Commission is therefore entitled to equitable monetary relief against Defaulting Defendants in the amount of two-million, six-hundred ninety-two thousand, seven-hundred eighty-two Dollars and forty-six Cents (\$2,692,782.46), for which Defaulting Defendants are jointly and severally liable.

13. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

14. Entry of this Order is in the public interest.

15. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon Defaulting Defendants, their officers, agents, servants, employees, attorneys, corporations, successors and assigns, and upon those person or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise.

DEFINITIONS

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

1. “**Asset**” or “**Assets**” means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” or “notes,” (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

2. “**Assisting Others**” includes, but is not limited to: (a) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any sales script or other marketing material; (c) providing names of, or assisting in the generation of, potential customers; (d) performing or providing marketing or billing services of any kind; or (e) acting as an officer or director of a business entity.

3. “**Corporate Defendants**,” “**Corporate Defaulting Defendants**,” or “**Receivership Defendants**” means Timeshare Mega Media and Marketing Group, Inc., also d/b/a Timeshare Market Pro, Inc.; Timeshare Market Pro, Inc.; and Tapia Consulting, Inc., and their successors and assigns, as well as any subsidiaries, and any fictitious business entities or business names created or used by these entities, or any of them.

4. “**Defaulting Defendants**” mean Timeshare Mega Media and Marketing Group, Inc., also d/b/a Timeshare Market Pro, Inc.; Timeshare Market Pro, Inc.; Tapia Consulting, Inc.; Joseph Crapella, a/k/a Joseph John Philbin; Pasqualino Agovino; Louis Tobias Duany; and Patricia A. Walker.

5. “**Defendants**” means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

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

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

8. “**Individual Defaulting Defendants**” means Joseph Crapella, a/k/a Joseph John Philbin; Pasqualino Agovino; Louis Tobias Duany; and Patricia A. Walker, and by whatever other names each may be known.

9. “**Individual Defendants**” means Joseph Crapella, a/k/a Joseph John Philbin; Pasquale Pappalardo; Lisa Tumminia-Pappalardo; Pasqualino Agovino; Louis Tobias Duany; and Patricia A. Walker, and by whatever other names each may be known.

10. “**Material**” means likely to affect a person’s choice of, or conduct regarding, goods or services.

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

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

13. “**Receiver**” means the Permanent Equity Receiver David R. Chase, Esq., and David R. Chase, P.A., appointed over the Corporate Defendants by the October 29, 2010,

Preliminary Injunction with Asset Freeze as to Corporate Defendants Timeshare Mega Media and Marketing Group, Inc., also d/b/a Timeshare Market Pro, Inc.; Timeshare Market Pro, Inc.; Tapia Consulting Inc. and Defendant Louis Tobias Duany [DE 18].

14. “**Telemarketing**” means any plan, program, or campaign (whether or not covered by the TSR, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services or a charitable contribution by use of one or more telephones.

15. “**Timeshare**” means any right of ownership or occupancy in any vacation property or properties (including, but not limited to, condominiums, resorts, campgrounds, and cruise ships) that provides rights-holders with periodic usage or occupancy rights. The term shall include “points-based” programs that provide similar ownership or occupancy benefits.

16. “**Timeshare Resale Service**” means any good, service, plan or program represented, expressly or by implication, to assist an individual in advertising, marketing, promoting, offering for sale or rent, or selling or renting the individual’s timeshare.

ORDER

I.

PERMANENT BAN ON TELEMARKETING

IT IS THEREFORE ORDERED that Defaulting Defendants, whether acting directly or through any Person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from Telemarketing, or Assisting Others engaged in Telemarketing.

II.

PERMANENT BAN ON TIMESHARE RESALE SERVICES

IT IS FURTHER ORDERED that Defaulting Defendants, whether acting directly or through any Person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from engaging in, participating in, or Assisting Others in the advertising, marketing, promotion, offering for sale, or sale of any Timeshare Resale Service.

III.

PROHIBITED PRACTICES RELATING TO ANY GOODS OR SERVICES

IT IS FURTHER ORDERED that Defaulting Defendants, and their officers, agents, servants, employees, and attorneys, and all other Persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any Person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service, are hereby permanently restrained and enjoined from misrepresenting, or Assisting Others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

- A. The total cost to purchase, receive, or use the good or service;
- B. Any Material restriction, limitation, or condition to purchase, receive, or use the good or service;
- C. Any Material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the good or service; and

D. Any Material aspect of the performance, efficacy, nature, or central characteristics of the good or service.

IV.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in favor of the Commission and against Defaulting Defendants, jointly and severally, for equitable monetary relief, including, but not limited to, consumer redress, in the amount of two-million, six-hundred ninety-two thousand, seven-hundred eighty-two Dollars and forty-six Cents (\$2,692,782.46);

B. Upon entry of this Order, this monetary judgment shall become immediately due and payable by Defaulting Defendants, and interest, computed pursuant to 28 U.S.C. § 1961(a), as amended, immediately shall begin to accrue upon the unpaid balance;

C. Payment shall be made to the Commission by wire transfer in accordance with the directions provided by counsel for the Commission, or by certified check or other guaranteed funds payable to and delivered to the Commission;

D. The Commission shall be entitled to immediately exercise any and all rights and remedies against Defaulting Defendants and their Assets to collect the judgment and interest thereon, less any amounts already paid; and

E. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief. If the Commission determines, in its sole discretion, that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply

any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defaulting Defendants shall have no right to challenge the Commission's choice of remedies under this Section. Defaulting Defendants shall have no right to contest the manner of distribution chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment or forfeiture.

V.

TURNOVER OF ASSETS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that, in order to partially satisfy the monetary judgment set forth in Section IV above, any financial or brokerage institution, escrow agent, title company, commodity trading company, automated clearing house, network transaction processor, payment processor, business entity, or person that holds, controls, or maintains custody of any account or asset of any Defaulting Defendant, or any account or asset held on behalf of, or for the benefit of, any Defaulting Defendant, or any account or asset frozen pursuant to (a) the *Ex Parte* Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, and Order Setting Evidentiary Hearing Re: Issuance of Preliminary Injunction [DE 13]; (b) the Preliminary Injunction with Asset Freeze as to Corporate Defendants Timeshare Mega Media and Marketing Group, Inc., also d/b/a Timeshare Market Pro, Inc.; Timeshare Market Pro, Inc.; Tapia Consulting Inc. and Defendant Louis Tobias Duany [DE 18]; and (c) Preliminary Injunction with Asset Freeze as to Defendants Joseph Crapella and Patricia Walker [DE 52], previously entered in this matter, shall turn over such account or asset to the Commission, by wire transfer in accordance with the directions provided by counsel for the Commission, or by certified check or

other guaranteed funds payable to and delivered to the Commission, within ten (10) business days of receiving notice of this Order by any means, including, but not limited to, via facsimile.

The accounts and assets to be turned over to the Commission pursuant to this Section include, without limitation, the following: (1) funds remaining in the accounts of Louis T. Duany at JPMorgan Chase Bank, N.A.; (2) funds remaining in the accounts of Louis T. Duany at Wachovia National Bank, N.A.; (3) funds remaining in the accounts of Louis T. Duany at Regions Bank; (4) funds remaining in the accounts of Patricia Walker at Regions Bank; (5) funds remaining in the accounts of Pasqualino J. Agovino Wachovia National Bank, N.A.; (6) funds remaining in the accounts of Joseph Crapella at BankAtlantic; (7) funds remaining in the accounts of Patricia Walker at BankAtlantic; (8) funds remaining in the accounts of Pasqualino Agovino at Bank of America, N.A.; (9) funds remaining in the accounts of Joseph Crapella at Regions Financial Corporation; (10) funds remaining in the accounts of Patricia Walker at Wachovia National Bank, N.A.; and (11) funds remaining in the accounts of Louis T. Duany at JPMorgan Chase Bank, N.A., formerly Washington Mutual, Inc.

VI.

PROHIBITION ON COLLECTING ON ACCOUNTS

IT IS FURTHER ORDERED that Defaulting Defendants, and their officers, agents, servants, employees, and attorneys, and all other Persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from attempting to collect, collecting, selling, assigning, or otherwise transferring any right to collect payment from any consumer who purchased or agreed to purchase any Timeshare Resale Service from any Defendant.

VII.

PROHIBITIONS REGARDING CONSUMER INFORMATION

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

A. 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 the marketing or sale of any Timeshare Resale Service; and

B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed. *Provided, however,* that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VIII.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defaulting Defendants obtain acknowledgments of receipt of this Order:

A. Each Defaulting Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For five (5) years after entry of this Order, each Individual Defaulting Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls, and each Corporate Defaulting Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities. In any other business, such as those in which the Individual Defaulting Defendant is an employee without any ownership or control, such Defendant must deliver a copy of this Order to all principals and managers of the business before participating in conduct related to the subject matter of this Order.

C. From each individual or entity to which a Defaulting Defendant delivered a copy of this Order, that Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

IX.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defaulting Defendants make timely submissions to the Commission:

A. One (1) year after entry of this Order, each Defaulting Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Defaulting Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with Defaulting Defendant; (b) identify all of that Defaulting Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defaulting Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defaulting Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, each Individual Defaulting Defendant must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For twenty (20) years following entry of this Order, each Defaulting Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of

any change in the following:

1. Each Defaulting Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defaulting Defendant or any entity that Defaulting Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defaulting Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any.

C. Each Defaulting Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defaulting Defendant within fourteen (14) days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or

sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. [name of Defaulting Defendant]; FTC File No. X110002.

X.

RECORD KEEPING

IT IS FURTHER ORDERED that Defaulting Defendants must create certain records for twenty (20) years after entry of the Order, and retain each such record for five (5) years. Specifically, Corporate Defaulting Defendants and each Individual Defaulting Defendant for any business in which that Individual Defaulting Defendant, individually or collectively with any other Defendants, is a majority owner or directly or indirectly controls, must maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Customer files showing the names, addresses, telephone numbers, dollar amounts paid, and the quantity and description of goods or services purchased;
- D. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

F. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

XI.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defaulting Defendants' compliance with this Order and any failure to transfer any assets as required by this Order:

A. Within fourteen (14) days of receipt of a written request from a representative of the Commission, each Defaulting Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defaulting Defendant. Defaulting Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defaulting Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defaulting Defendants or any individual or entity affiliated with Defaulting Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful

use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XII.

DISSOLUTION OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the Assets of Defaulting Defendants shall remain in effect until the Commission has received the total amount required by Section IV above, *provided, however*, that Defaulting Defendants may transfer funds to the extent necessary to make all payments required by Section IV. Upon payment to the Commission of the total amount required by Section IV above, the freeze against the assets of Defaulting Defendants shall be lifted permanently.

XIII.

COMPLETION OF RECEIVERSHIP

IT IS FURTHER ORDERED that the appointment of David R. Chase, Esq., and David R. Chase, P.A., as Permanent Equity Receiver (“Receiver”) over Timeshare Mega Media and Marketing Group, Inc., also d/b/a Timeshare Market Pro, Inc.; Timeshare Market Pro, Inc.; and Tapia Consulting, Inc., pursuant to Section IX of the Preliminary Injunction With Asset Freeze as to Corporate Defendants Timeshare Mega Media and Marketing Group, Inc., Also d/b/a Timeshare Market Pro, Inc.; Timeshare Market Pro, Inc.; Tapia Consulting Inc. and Defendant Louis Tobias Duany entered on October 29, 2010, is hereby continued as modified by this Section.

- A. The Receiver is directed and authorized to accomplish the following:
 - 1. Complete, as necessary, the liquidation of the assets of the Receivership Defendants;

2. Prepare and submit a final report describing the Receiver's activities pursuant to this Order, and a final application for compensation and expenses; and

3. Distribute to the Commission any remaining liquid assets at the conclusion of the Receiver's duties, in partial satisfaction of the monetary judgment set forth in this Order.

B. Upon completion of the above tasks, the duties of the Receivership shall terminate, and the Receiver shall be discharged.

XIV.

SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

XV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

JUDGMENT IS THEREFORE ENTERED in favor of the Plaintiff and against Defaulting Defendants, pursuant to all the terms and conditions recited above.

IT IS SO ORDERED.

Dated: _____

HONORABLE WILLIAM J. ZLOCH
United States District Judge