

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CONSUMER FINANCIAL PROTECTION
BUREAU and STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,
Department of Legal Affairs,

Plaintiffs,

Case no. 14 CV 80931/COHN/SELTZER

vs.

MICHAEL HARPER, et al.,

Defendants.

RECEIVER'S INITIAL REPORT

Mark J. Bernet, Receiver for The Hoffman Law Group, P.A., f/k/a The Residential Litigation Group, P.A., Nationwide Management Solutions, LLC, Legal Intake Solutions, LLC, File Intake Solutions, LLC, and BM Marketing Group, LLC (the "Receiver"), files his initial report.

I. **PROCEDURAL BACKGROUND.**

The Plaintiffs, the federal Consumer Financial Protection Bureau ("CFPB") and the State of Florida, Office of the Attorney General ("FLAG") commenced this case by filing their *Complaint for Permanent Injunction and Other Relief* (doc. no. 1), in which they alleged that the Defendants operated as an "enterprise" to generate millions of dollars in illegal upfront fees by convincing consumers to pay for the opportunity to be included as a plaintiff in so-called "mass-joinder" lawsuits against their mortgage lenders. According to CFPB and FLAG, the enterprise accomplished this by falsely promising that the lawsuits would induce banks to give consumers mortgage modifications or foreclosure relief. CFPB and FLAG further alleged that, in reality the "enterprise" did little or nothing to actually assist consumers; instead, in numerous instances, the

Defendants directed consumers to avoid interactions with their mortgage lenders or servicers and, in some instances, instructed consumers to stop making their mortgage payments. CFPB and FLAG specifically charge the Defendants with violating multiple provisions of Regulation O, 12 CFR Part 1015; violating the Florida Unfair and Deceptive Trade Practices Act, Chapter 501, Part II, Florida Statutes; in the case of the Defendants Harper and Willcox, making false or incomplete statements to the Florida Department of Agriculture and Consumer Services in connection with their applications for a telemarketing license; in the case of the Defendant Harper, violating a written Assurance of Voluntary Compliance that he signed in favor of FLAG in 2009; and violating Florida's civil theft statute.

On Wednesday, July 16, 2014, this Court entered an *Ex Parte Temporary Restraining Order with Asset Freeze, Appointment of a Temporary Receiver, and Other Equitable Relief and Order Setting Hearing on Motion for Preliminary Injunction* (doc. no. 13) (the "TRO") that, among other things, appointed Mark J. Bernet as Receiver for The Hoffman Law Group, P.A., f/k/a The Residential Litigation Group, P.A. ("Hoffman Law"), Nationwide Management Solutions, LLC ("Nationwide"), Legal Intake Solutions, LLC ("Legal Intake Solutions"), File Intake Solutions, LLC ("File Intake Solutions"), and BM Marketing, LLC ("BM Marketing") (together the "Receivership Defendants"). The Court also scheduled a preliminary injunction hearing, to be held on July 29, 2014.

On July 22, 2014, Richard W. Epstein and Jennifer B. Hirschberg of the Greenspoon Marder law firm filed an appearance on behalf of the Defendants. Subsequently, on July 29, 2014, Mr. Epstein, Ms. Hirschberg and Greenspoon Marder moved to withdraw as counsel, citing a conflict of interest that, they maintained, precluded them from continuing the

representation.¹ In its order granting the motion, the Court permitted Greenspoon Marder to withdraw as counsel for the Defendants and also rescheduled the preliminary injunction hearing to September 24, 2014.

On September 5, 2014, the Defendant Hoffman, through counsel, filed an Answer denying the material allegations of the Complaint but raising no affirmative defenses. On the same day, the Defendants Harper and Willcox each filed a separate Answer that generally denied the allegations of the Complaint but raised no affirmative defenses. Harper and Willcox filed their Answers *pro se*, although Harper testified at deposition that the Answers were "ghost-written" by attorney Andrew Cove. Harper has since obtained counsel. The Receivership Defendants remain unrepresented.

II. EVENTS OF RECEIVERSHIP

A. Preparations for Taking Possession of Business Premises

The Court entered the TRO during the morning of July 16, 2014, and the Receiver was notified of his appointment at approximately 9:00 a.m.² The attorneys for the Plaintiffs subsequently provided copies of the Complaint, TRO Motion and TRO to the Receiver. At that time, the Receiver learned that the Receivership Defendants were engaging in business in offices located in the Gentry Building, 860 U.S. Hwy. 1, Suites 111, 205 and 209, North Palm Beach, Florida (together the "Gentry Offices"). In accordance with the provisions of the TRO, the Receiver determined that he would take possession of the Receivership Defendants during the afternoon of July 16, 2014, and remove their officers, managers and employees from their business premises to assure that the Receivership Defendants ceased performing the acts

¹ Greenspoon Marder's withdrawal is discussed in further detail in Section III, on pages 25 - 27, below.

² The Receiver resides in Tampa, which is approximately a 3 ½ hour drive from the Defendants' business premises. The Receiver was enroute to Palm Beach when he received notice of his appointment.

enjoined under the TRO. The Receiver's specific objectives in taking possession of the business premises were:

1. To take possession of the Receivership Defendants' business premises and to evaluate the nature of the Receivership Defendants' business practices.
2. In the event the Receiver concluded that the Receivership Defendants were operating their businesses in violation of applicable law, to cause them to cease doing so.
3. To remove the management of the Receivership Defendants from the business premises.
4. To secure the Receivership Defendants' business premises and their property located therein.
5. To take an inventory of the personal property located at the Receivership Defendants' business premises.
6. To determine whether the employees of the Receivership Defendants were necessary, and if not, to terminate their employment.
7. To obtain control of all of the Receivership Defendants' bank accounts, accounts receivable and other financial resources.
8. In the event the Receiver determined that the Receivership Defendants were operating their businesses in violation of applicable law, to take steps to notify consumers of the lawsuit and of the TRO.
9. To otherwise comply with the TRO.

B. Taking Possession of Business Premises

The Receiver, his representatives, and counsel and certain investigators for the Plaintiffs met at FLAG's offices in West Palm Beach at approximately 12:00 noon to plan the immediate access. Arrangements had been made with the US Marshall's service to assist with taking possession. The Marshalls entered the Gentry Offices at approximately 3:30 p.m. and directed all persons located within to vacate the offices. The Marshalls then let the Receiver and his representatives, and the Plaintiffs and their investigators, into the premises.

Suite 111 was the office of the Defendant Hoffman Law. It consists of a total of approximately 4,000 sq. ft. (it appears to be three office suites that are joined together). Within the suite is a reception area, to the right of which is a conference room with a conference table that seats eight. Behind the reception area is an open work area containing 10 assistants'/secretarial work stations. Surrounding this open area are eight executive offices, plus a kitchen/break room. The Defendant Hoffman occupied the first office behind the reception area. Next to Hoffman's office was an office occupied by Jay Gerst, a non-lawyer who is not employed by Hoffman Law, but who is both a W-2 employee and 1099 independent contractor with Nationwide. A large corner office was occupied by two junior case management attorneys, while all but one of the remaining offices was occupied by one case management attorney. Suite 111 contained computers, telephones and copy machines/scanners appropriate for a law office. The office was largely paperless (save for Hoffman's office, as discussed below). There was, however, no central computer server, but instead client files were stored electronically on a cloud server. Hoffman was not present at the time the Receiver took possession of Suite 111, but he appeared later in the evening and spoke with the Receiver for over an hour.

Suite 205 is approximately 2,500 square feet. It consists of two office suites that are joined together (204 and 205). Suite 205 at one time was the office of all of the Receivership Defendants, including Hoffman Law, although Hoffman Law moved to Suite 111 in the fall of 2013. Suite 205 consists of an open central work area containing workstations for 6 people, and 5 separate offices which were the offices of Erica McCartney, Benn Willcox, Michael Harper (who had a "double office") and Matthew Gilbert, all of whom were employees of Nationwide, File Intake Solutions or Legal Intake Solutions. McCartney was present at the time the Receiver took possession of Suite 205, but Willcox, Harper and Gilbert were not. McCartney, who

functioned as the controller for all of the Receivership Defendants, was uncooperative and hostile.

Suite 209 is a small office leased by Nationwide. It had served as the main office for the Receivership Defendants at one time, but there was nothing material located in that office at the time the Receiver took possession.

Finally, Suite 206 is listed in the TRO as an office occupied by one or more of the Receivership Defendants. The Receiver took possession of that office along with the other office suites, but learned that the office had recently been vacated by the Receivership Defendants and that in fact it was occupied by an unrelated third party that had only recently taken possession. The Receiver chose not to retain possession of Suite 206.

To secure the Gentry Offices, the Receiver hired a locksmith to change the locks. Keys for the Gentry Offices are in the possession of the Receiver and his counsel. Also, IT professionals entered the building and cut off all outside telephone and internet access to the offices, and also made "mirror images" by copying the electronic data contained in or accessible from the offices.

Upon taking possession of the Gentry Offices, the Receiver posted a copy of the Court's TRO on the inside of the glass doors. A newspaper reporter attempted to ask questions, but due to the Court's order sealing the file, the Receiver did not respond.

C. Preliminary Investigation of the Business Operations

After securing the physical premises, the Receiver began the process of interviewing the employees and reviewing business records to try to understand the business operations. Hoffman Law was owned by Marc Hoffman although, as will be discussed below, the firm was not controlled by Hoffman. Hoffman Law represented consumers in connection

with lawsuits that the consumers would file against their mortgage lenders or servicers. Although not clearly articulated, Hoffman and the other Individual Defendants, as well as many of the employees of the Receivership Defendants, maintained that they did not provide "mortgage assistance relief services" within the meaning of the MARS Rule because, they claimed, they were not seeking to obtain mortgage modifications on behalf of their clients. As discussed below, however, this position is not credible.

At the time that the Receiver took possession of the Gentry Offices, Hoffman Law employed Hoffman and 5 Case Managers: Sean Farley, James Oster, William Harris, Brandon Barker, and Kevin Ramas. Hoffman Law also employed 5 legal assistants. The Case Managers originally had been called "Case Management Attorneys," but they changed their titles to "Case Managers" as a result of a compromise of a complaint filed against Farley with the Florida Bar regarding the unauthorized practice of law. Each of the Case Managers is an attorney licensed in one or more states, although only Hoffman, Barker and Farley were licensed in Florida.³ Farley had the title "Head Case Manager," although he said it did not give him any additional authority, or any additional pay.⁴

The relationship between the various Receivership Defendants is discussed in further detail starting on page 16 below. In a nutshell, the Receiver determined that Hoffman Law (owned by Hoffman) was a law firm that utilized Nationwide (owned by Harper and Willcox) to perform its management services. Harper and Willcox also utilized File Intake Solutions to perform marketing services for Hoffman Law. BM Marketing contributed nothing

³ Oster is licensed in Alabama, Harris is licensed in Wisconsin, and Ramas is licensed in Michigan. Farley allowed his Florida law license to lapse, but he remains licensed in Rhode Island.

⁴ Farley said that the Defendant Harper gave him the title "Head Case Manager." Hoffman did not know about Farley's title until he noticed it on Farley's e-mail signature block.

toward the business enterprise, but instead it was a company owned by Harper and Willcox and utilized as the transferee of funds that originated from Hoffman Law.⁵

The Receiver interviewed most of the employees who were present at the time he took possession of the Gentry Offices. None of the Individual Defendants was present. The Receiver obtained cell phone numbers for each of the Individual Defendants and called them. None answered, and the Receiver left messages. Hoffman is the only one who returned the call that day, and he agreed to come into the office for an interview. He arrived at about 9:00 p.m.

INITIAL HOFFMAN INTERVIEW

Hoffman, a Florida attorney, is 64 years old. He said that he got the job with Residential Litigation Group (the predecessor to The Hoffman Law Group) in December, 2011, by responding to an ad on Craigslist. At the time, he said, his life was "in the toilet," because he was not able to hold a steady job. He was getting divorced. He was behind on his bills. He said he had become an expert at eating cheap meals from the value menus at fast food restaurants. When he applied for the position with Residential Litigation Group, he said that he did not recall whether he first spoke with Geoffrey Broderick or Mike Harper, but he was clear that he interviewed for the job with Harper.⁶ He said he left the interview not knowing whether he got the job, but he said that he felt like he and Harper "clicked." He was not sure at the time whether Harper was an attorney, although he now knows that Harper is not an attorney.

⁵ Hoffman Law derived all of its revenues from a \$6,000 "up-front" fee and \$495 monthly maintenance fees it charged its 1,200 or so clients. Nationwide derived all of its revenues from Hoffman Law. File Intake Solutions derived all of its revenues from Nationwide. BM Marketing likewise derived all of its revenues from Nationwide.

⁶ Broderick is a Connecticut attorney who owned a law firm he called "The Resolution Law Group, P.C.," (not to be confused with "The Residential Litigation Group, P.A."). The Resolution Law Group marketed to individual consumers who had problems with their mortgage lenders and servicers, promising to sue mortgage lenders and servicers to facilitate a resolution of consumers' mortgage defaults. Harper and Willcox were heavily involved with Broderick, providing marketing services through Legal Intake Solutions. Broderick formed The Residential Litigation Group, P.A. to serve as its Florida operations. Broderick and his law firms presently are defendants in a lawsuit styled *State of Florida, Office of the Attorney General, etc. v. The Berger Law Group, P.A.*, case no. 8:14-cv-01825-T-30MAP, pending in the United States District Court for the Middle District of Florida.

According to Hoffman, subsequently confirmed by Willcox and others, the original business plan for Hoffman Law was to file "mass action" lawsuits in New York. The thinking, apparently, was that there was "strength in numbers."⁷ In other words, Hoffman Law thought that, if it were to bring a lawsuit against mortgage lenders or servicers in which there were 60 or more plaintiffs, they would have a better chance of success. There were significant delays in filing the lawsuits; many clients complained that they continued to pay their \$495 monthly maintenance fee for a year or more without any lawsuit being filed.⁸ And, Hoffman said that the lawsuits generally were not successful, but instead were dismissed, or all plaintiffs were severed save for the lead plaintiff.

Hoffman said that the structure of the businesses – separate marketing, limited involvement by Hoffman, the attorney – always bothered him. He said that Harper assured him that the structure was proper; Hoffman said that Harper claimed to have an “ethics opinion” from a female former New York judge. He said he asked Harper for a copy of the opinion, but he said that Harper never gave it to him. After he got the job with Resolution Litigation Group, Hoffman was paid \$1,000 per week. He told the Receiver that he felt “like a Rockefeller” at the time because it was a steady paycheck that allowed him to pay his bills.

Hoffman said that shortly after he started working for the Residential Litigation Group, he was encouraged by Harper and Willcox to start his own firm to provide the same legal services that Residential Litigation Group had provided. He said that Harper and Willcox assured him that they would be able to generate clients for him, utilizing their marketing expertise. He then opened Hoffman Law, but he said that he was not in control of the firm. He had little information concerning Hoffman Law's trust accounts, and he was not aware that

⁷ This was the same model that Harper and Willcox had utilized when they were providing marketing services, through Legal Intake Solutions, for Broderick and The Residential Litigation Group. *See* note 6, *supra*.

⁸ The Receiver received many communications from clients who claimed to have paid \$15,000 or more.

Willcox or Harper had made a stamp of his signature that was used to sign checks. He said he did not personally authorize any checks to be signed with his signature stamp, and there was no system or procedure in place for that to occur. *See* note 15, *infra*.

Hoffman said that he did not review bank statements concerning his firm's trust accounts. He did not know what money was put into the trust accounts, and he does not know what checks were written on his trust accounts. He said that Willcox and Harper handled all of that under a contract between Nationwide and Hoffman Law. He does not know if there was a written contract – he does not remember one (the Receiver has been unable to locate any such contract). Hoffman did not know the rate, or basis, for payments to be made by Hoffman Law to Nationwide. He did not know how much had been paid to Nationwide.

Hoffman was formally served with copies of the Complaint, the Plaintiff's motion for the TRO (and all of its supporting materials), and the TRO on July 16, 2014. He was clearly shaken. He left the Gentry Offices at around 10:30 p.m. The Receiver contacted him the next morning to confirm that he had made it safely to his home after he left.

WILLCOX INTERVIEW

Willcox returned the Receiver's call on July 17, 2014, and agreed to meet with the Receiver at the Gentry Offices on Friday, July 18, 2014. Willcox's version of events differed from Hoffman's. Willcox said that he has a concealed weapons permit and he admitted that he was carrying a gun when he met with the Receiver, although he never threatened the Receiver in any way.⁹ Willcox said that he and Harper had formed Legal Intake Solutions to provide marketing services to The Resolution Law Group, the Connecticut law firm owned by Geoffrey Broderick. *See* note 6, *supra*. Legal Intake Solutions provided marketing services, including direct mail solicitations and internet marketing. Willcox claimed that Hoffman, who in late 2011

⁹ Willcox agreed to the Receiver's request that he not have a firearm with him in future meetings.

was working for The Residential Litigation Group in its West Palm Beach office as a Case Manager (then called a "Case Management Attorney"), approached Harper and Willcox and asked them if they would work with him when he formed his own law firm. Willcox said that separately he and Harper had decided that they did not wish to continue their business relation with Broderick because they thought he mismanaged his clients. Willcox said that he and Harper flew to California to meet with Broderick, to tell him that Legal Intake Solutions was terminating its relationship with Broderick/Residential Litigation Group.¹⁰

Willcox and Harper decided that Legal Intake Solutions was "damaged goods" due to its association with The Resolution Law Group, and so they decided to stop using that company. They formed Nationwide for the purpose of providing management and logistical services to Hoffman Law. These services also included marketing. Willcox said that Hoffman was in charge of all decisions concerning the operation of Hoffman Law – Willcox told this to the Receiver on July 18, 2014, and he stated so again, under oath, at his deposition held on September 4, 2014. He said that Hoffman personally supervised Nationwide's telemarketers who were speaking to potential customers (these would be "fronters"), and that Hoffman and Harper prepared the scripts that were utilized by both the fronters and the closers (Willcox denied having any role in the telemarketing aspect of the businesses).¹¹ Willcox claimed that his role was simply to supervise the accounting department. The Receiver notes that Willcox is the only person who believes that his role was so limited.¹²

¹⁰ Gary DiGirolamo, a non-attorney who managed Broderick's offices, claimed that Harper and Willcox were "a couple of cowboys" who engaged in marketing practices that Broderick did not authorize. DiGirolamo disputes much of what Willcox said.

¹¹ A typical telemarketing business employs both "fronters" and "closers." A "fronter" is the telemarketer who has the initial contact with a potential customer; the fronter's job is to obtain the interest of the potential customer and to gauge whether the potential customer has the ability to pay the price for the goods or services that are being marketed. The "closer" will receive potentially interested customers from the fronter and "close" the transaction.

¹² Willcox's statement that he was "just the money guy" is not credible. At the July 17 interview, Willcox challenged the Receiver's assertion that the "mass action" cases likely suffered misjoinder defects. Willcox

Willcox acknowledged that he and Harper formed File Intake Solutions in July 2013, for the purpose of conducting internet marketing for its clients. Its only client, ever, was Hoffman Law. At the time File Intake Solutions was created, Nationwide shifted its focus to providing management and consulting services. File Intake Solutions' only source of revenues was Nationwide; in turn, Nationwide's only source of revenues was Hoffman Law.

Willcox was fully aware that Hoffman Law derived its revenues from its clients' \$6,000 up-front fee and the \$495 monthly maintenance fees. He pointed out that under Hoffman Law's standard retainer agreement, Hoffman Law was entitled to charge its clients a contingency fee of 40 percent of any amounts it recovered, including any principal reductions it obtained from a client's mortgage lender or servicer. He also said, however, that Hoffman Law never charged a contingency fee. When asked why not, he responded "that's not the business model." The Receiver found it troubling that Willcox was comfortable discussing Hoffman Law's "business model," particularly because Hoffman was not able to do so.

Willcox was damning of Hoffman. He said that Hoffman "is frequently confused." Willcox said that Hoffman has "borderline personality disorder." He claimed that Hoffman did not know how to manage a business and that when Hoffman had employees who did a good job, Hoffman would make fun of them and call them names. He said that Hoffman is a "hoarder," that his house is significantly more littered and disorganized than his office (Hoffman's office in Suite 111 is cluttered with all kinds of paper, most of which appears to be trash). Willcox said that Hoffman is quite intelligent but that he "likes to play dumb" and that

demanding to know how the Receiver could make such a statement, and he commented that just because nobody had tried it before or succeeded at it did not mean that it could not be done. The exchange caused the Receiver to conclude that Willcox had participated in the decisions to proceed with mass action cases, even though he is not an attorney.

Hoffman did not spend much time in the office (Hoffman said that neither Harper nor Willcox spent much time in the offices either). Willcox stated repeatedly that Hoffman was responsible for all legal work and legal decisions.

The Receiver also discussed with Willcox the role of Hoffman Law's Case Managers. Case Managers were, essentially, "closers" (*see* note 11, *supra*) and customer service representatives. Their responsibilities were, first and foremost, to turn "potential" clients into "actual" clients, and then to report to the clients as to the status of their cases, and to calm clients down when they became frustrated by the lack of progress of their lawsuits. Case Managers kept electronic logs of their discussions with potential and actual clients, and their other activities, utilizing a software program called "LeadTrac." Willcox thought that there was no effort at Hoffman Law for Case Managers to be assigned to clients who were located or had their residences in the states in which the Case Managers were licensed attorneys. The Case Managers confirmed this.

INTERVIEWS WITH CASE MANAGERS OTHER THAN OSTER

Case Managers' notes in LeadTrac were accessible by Nationwide's employees, as well as by "outside litigation counsel." Although all Case Managers were attorneys, they did not participate in any of the litigation, including in particular the drafting of complaints. In practice, many clients could not make the initial \$6,000 payment charged by Hoffman Law; the Case Managers would work with clients to help them make arrangements to break that \$6,000 payment into three or four monthly payments. Also, when clients would state that they could not afford to continue to make the monthly maintenance fee payment Case Managers would help the clients negotiate a change to their due date, a restructure of the payment, or even allow clients to go on "hiatus."

Sean Farley, the "Head Case Manager," told the Receiver that Harper is in charge of Hoffman Law and the other companies – not Hoffman. He said that Hoffman had "personality issues," and that Hoffman was not in the office very often. He acknowledged that he, and the other Case Managers, had no role in litigation, but that all litigation decisions for Hoffman Law were handled by "outside litigation counsel." In practice, all pleadings were prepared by attorneys employed by The Law Firm of Michael E. Herskowitz, Esquire ("Herskowitz Law Firm"), located in New York. The Herskowitz Law Firm filed a number of lawsuits in New York, but curiously, in the signature blocks on their pleadings, their attorneys listed themselves as "Of Counsel" to Hoffman Law, showing a New York address, even though Hoffman Law had no offices in New York. The Herskowitz Law Firm also worked with other local counsel, located throughout the United States, who actually signed and filed pleadings and other papers in other states, again as "Of Counsel" to Hoffman Law. In addition, the Herskowitz Law Firm prepared pleadings for lawsuits filed in federal courts in Florida, signed by Marc Hoffman as counsel.¹³ The Herskowitz Law Firm prepared pleadings and otherwise handled the litigation purely from the Case Managers' notes contained in LeadTrac – the Herskowitz Law Firm did not have contact with clients, unless a case was settled.

INTERVIEW WITH JAMES OSTER

At the time that the Receiver took possession of the Gentry Offices Harper and Willcox were engaged in setting up a new venture with James Oster. Oster, an Alabama attorney, was one of the Case Managers for Hoffman Law. However, he was running a "side business" within Hoffman Law. Specifically, when clients of Hoffman Law would mention to any of the Case Managers that their homes were in foreclosure, the call would be referred to

¹³ Hoffman said he had no role in preparing the pleadings in the approximately 12 Florida lawsuits. He said he "wouldn't know how."

Oster. Oster would then offer to find the client an attorney in the client's home state to represent the client in a mortgage foreclosure action. For this service, Oster charged \$600. When a client made the \$600 payment, Oster would refer the matter to The Friedman Law Group, which purports to have a nationwide network of foreclosure defense attorneys, and which would then attempt to locate an attorney. The \$600 payment was not refundable, even if counsel could not be found. Oster engaged in this "side business" during normal working hours, utilizing Hoffman Law's computers, telephones and client base, but none of the \$600 was paid to Hoffman Law.

Harper and Willcox encouraged Oster to expand this business, because it was a new business model but also because they viewed Hoffman as being unstable. Harper and Willcox rented an office for him at 760 US Hwy 1 North, Suite 200, and moved some of Hoffman Law's desks, chairs and computers into the new office. Harper and Willcox arranged to have the Oster Office outfitted with telephone lines and internet connections. The cost of setting up the office was paid by Nationwide. Oster's new venture was to be called "Consumer Relief Attorneys" ("CRA"), and it was to engage in the business of assisting clients, nationwide, to find foreclosure defense attorneys. In a text message from Harper to Willcox, sent on June 3, 2014, Harper estimated that "the new group" (meaning CRA) should generate cash flow enough to achieve \$75,000 per month. Harper estimated that CRA should generate \$200,000 per month by January, 2015, which he reasoned would yield a profit, for Willcox and Harper to split, of \$140,000 per month.¹⁴

¹⁴ Given that Hoffman Law provided (i) Oster's time, (ii) Oster's computers and desks, and (iii) Oster's clients, it is difficult to understand how Oster was not misappropriating Hoffman Law's potential business. Of course, the Receiver is not comfortable with Oster's business model, or whether it complies with the MARS Rule or other aspects of state or federal law.

RELATIONSHIP AMONG THE RECEIVERSHIP DEFENDANTS

Nationwide is owned 70/30 by Harper and Willcox. Hoffman Law contracted with Nationwide for Nationwide to provide management, payroll and personnel services. Neither Willcox, nor Harper, nor Hoffman, knew whether there was any written contract between Hoffman Law and Nationwide, and despite an extensive search, the Receiver has been unable to locate any contract. Also, there did not appear to be any set fee that was charged by Nationwide. Willcox, who had the title "CFO" for Nationwide, authorized Nationwide's bookkeeper, Erica McCartney, to transfer funds from Hoffman Law to Nationwide "as needed." Hoffman, the sole owner of Hoffman Law, had no knowledge of the finances of Hoffman Law; he did not know when it received funds, or from whom it received them, or the amounts, nor did he know how much money Hoffman Law transferred to Nationwide. He claims he requested this information, but it was given to him only sporadically.¹⁵ Nationwide had no source of income, other than Hoffman Law.

In addition to providing management, payroll and personnel services, Nationwide also, at least initially, provided marketing services. Harper and Willcox developed the marketing program that included direct mail marketing campaigns, inbound and outbound telemarketing calls, and internet marketing. Willcox said that they discontinued the direct mail marketing campaign because, he said, it was "illegal."¹⁶ He did not recall whether they prepared a

¹⁵ Hoffman said that he noticed one day that he had signed his own paycheck. He did not recall doing so, and when he investigated, he discovered that Nationwide had made a stamp of his signature and that its controller, Erica McCarthy, was stamping signatures on checks from Hoffman Law without his knowledge. Hoffman said that he discovered that the stamp was used, among other things, on checks drawn on Hoffman Law's trust account. Hoffman never personally balanced Hoffman Law's operating accounts or trust accounts; in fact, he did not know where those accounts were held, or how many there were, or how much money ever was contained in them.

¹⁶ In point of fact, Legal Intake Solutions, which is also owned by Harper and Willcox, engaged in a direct mail marketing campaign on behalf of Geoffrey Broderick and his law firm, The Resolution Law Group, P.C., a Connecticut law firm. Broderick claims he fired Harper and Willcox because they engaged in marketing practices for his law firm that he did not approve, include a direct mail campaign that drew the attention of the Connecticut

television commercial (there is evidence that they did). The bulk of the marketing was through the internet, where they employed a company called The Blackstone Group, which was owned by Thomas Bussey. Bussey was able to improve Hoffman Law's search engine visibility,¹⁷ and thereby prompted potential clients to call or email for further information. The target market was consumers experiencing difficulties with their mortgage lenders or servicers.¹⁸

File Intake Solutions is owned by Harper and Willcox. It engaged in file intake activities; in particular, it employed telemarketers who took incoming telephone calls from potential clients. File Intake Solutions' employees read from a prepared script and essentially attempted to persuade potential clients that Hoffman Law could assist them. If a customer was determined to be a viable potential client (meaning, if the potential client demonstrated an ability to pay a fee), File Intake Solutions would schedule the potential client for a "consultation" with one of the Case Managers from Hoffman Law. Almost all potential clients were deemed to be "viable" if they showed an ability to pay. File Intake Solutions received revenues solely from Nationwide.

BM Marketing is owned by Harper and Willcox. According to Willcox, BM Marketing "is just a company Michael and I created to take money out of the companies without anyone knowing." Unlike the rest of the Receivership Defendants, BM Marketing's financial information was not contained on the companies' QuickBooks accounting program. According to Harper, BM Marketing simply took money from Nationwide as Harper and Willcox

Bar. For their part, Harper and Willcox claim that they terminated their relationship with Broderick because they felt he did not provide adequate customer service. *See* notes 6 and 10, *supra*.

¹⁷ In internet marketing, companies strive to have their names appear in response to Google or other searches by potential customers, and to have their names appear "higher on the list" of searches. This is known as "search engine optimization."

¹⁸ Bussey also had an American Express card from Nationwide, on which he had a \$10,000 credit limit. Willcox admitted that he authorized this, but he could not remember why.

determined. BM Marketing had no business purpose, other than to serve as the recipient of transfers of funds from Nationwide. It received funds from no other source.

D. Shutting Down the Businesses

The TRO directs the Receiver to shut down the Receivership Defendants if the Receiver concludes that they are not operating in compliance with state and federal law. On this point, the Receiver carefully considered the nature of the businesses. All of the businesses are dependent upon the revenues generated by Hoffman Law – none of the Receivership Defendants derived any revenues from any other sources. The Plaintiffs allege that Hoffman Law is engaged in providing "Mortgage Assistance Relief Services," but that it is not complying with the MARS Rule. The Defendants, on the other hand, contend that they are not providing "Mortgage Assistance Relief Services" and that as a result they were not governed by the MARS Rule.

While not articulated precisely by Hoffman or the Individual Defendants, or by Hoffman's lawyer, the Defendants seem to take the position that they offered to clients to sue mortgage lenders and servicers under "mass action" theories to recover damages. The MARS Rule, cited at 16 CFR Part 322, is a rule that regulates "Mortgage Assistance Relief Services." According to the Federal Trade Commission, the rule concerns "the practices of for-profit companies that, in exchange for a fee, offer to work on behalf of consumers to help them obtain modifications to the terms of mortgage loans or to avoid foreclosure on those loans."

Under the MARS Rule, the term "Mortgage Assistance Relief Service" means any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

- (1) Stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the

consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession;

(2) Negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;

(3) Obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;

(4) Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:

(i) Cure his or her default on a dwelling loan,

(ii) Reinstate his or her dwelling loan,

(iii) Redeem a dwelling, or

(iv) Exercise any right to reinstate a dwelling loan or redeem a dwelling;

(5) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or

(6) Negotiating, obtaining or arranging:

(i) A short sale of a dwelling,

(ii) A deed-in-lieu of foreclosure, or

(iii) Any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

Thus, when determining whether the Receivership Defendants needed to be shut down, the Receiver analyzed whether they were governed by the MARS Rule, and if so, whether their operations complied with that rule. The Receiver's conclusions are (i) the MARS Rule applies to the businesses being operated by the Receivership Defendants, and (ii) the Receivership Defendants were not complying with the rule.

The Receiver considered whether the Defendants' stated business -- suing mortgage lenders and servicers -- would be governed by the MARS Rule. In this case, however,

it is clear that the objective of Hoffman Law's business model was to sue mortgage lenders for the specific purposes of (i) obtaining mortgage loan modifications, (ii) postponing or setting aside foreclosure judgments or sales, or (iii) otherwise to assist in the defense of mortgage foreclosure actions. The Receiver has communicated with dozens of Hoffman Law's clients, many if not most of whom report that they contacted Hoffman Law to obtain the firm's assistance in dealing with a mortgage default or foreclosure lawsuit. Most of these clients were less interested in obtaining monetary relief from their mortgage lenders or servicers, but rather were more interested in saving their homes from foreclosure. Clients report that Hoffman Law's representatives told them that by filing lawsuits, the clients could obtain leverage against their mortgage lenders and servicers that would help the clients' resolve foreclosure actions or obtain loan modifications. Significantly, the Receiver could not locate a single instance in which Hoffman Law obtained a judgment against a mortgage lender or servicer. Further, while cases were settled, the Receiver could not locate a single instance in which the settlement involved any payment of money by the mortgage lender or servicer to the client. Instead, all settlements reviewed by the Receiver involved some combination of (i) setting aside a foreclosure sale or foreclosure judgment, (ii) permitting a reinstatement of a defaulted mortgage loan, (iii) principal or interest reductions to mortgage debts, or (iv) a restructure of a mortgage loan involving a lower interest rate, a new loan term, or some other modification to the terms of the underlying mortgage loan. The Receiver found it particularly troubling that Willcox pointedly told the Receiver that Hoffman Law had no interest in collecting contingency fees that it was entitled to collect under its engagement letter with its clients, for the reason that collecting contingent fees "was not the business model." The Receiver concluded that "the business model" was to charge

an upfront fee and monthly maintenance fees, and hope to obtain a loan modification. Given all of this, the Receiver believes that Hoffman Law's business is governed by the MARS Rule.

The Receiver also has concluded that Hoffman Law did not comply with the MARS Rule. The MARS Rule:

1. Prohibits providers of Mortgage Assistance Relief Services from making false or misleading claims.
2. Requires that providers disclose certain information about these services.
3. Bars the collection of advance fees for these services.
4. Prohibits anyone from providing substantial assistance or support to another they know or consciously avoid knowing is engaged in a violation of the Rule.
5. Imposes recordkeeping and compliance requirements.

Hoffman Law charged and collected advance fees for its services. While the MARS Rule recognizes an exception for attorneys, that exception applies only if the attorneys are licensed to practice law in the state in which the client is located or in which the consumer's home is located. Also, if an attorney collects an advance fee, the funds must be deposited into a trust account prior to performing any legal services, and then funds can be paid to the lawyer only as permitted under state law. Hoffman Law failed to comply with either of these conditions.

Additionally, the Receiver also was concerned over the dysfunctional nature of the Receivership Defendants. If Hoffman Law were to continue in business and represent its 1,200 clients, Hoffman necessarily would need to be in charge. Hoffman, however, was not in charge; Harper and Willcox had control of the income of the firm, and with the income they controlled its business operations.¹⁹ Hoffman said that he did not even receive mail addressed to

¹⁹ In fact, Harper and Willcox were setting up Oster, the Alabama attorney, in a new legal business venture that they also intended to control.

Hoffman Law; Hoffman told the Receiver that when Hoffman Law received complaints from state attorney general offices or from the Florida Bar, he frequently did not even know it until he would see a copy of a response prepared on his behalf by the Greenspoon Marder law firm.²⁰ Hoffman has no background in litigating against mortgage lenders. He was unaware of the network of "local counsel" recruited by Harper, or what they did. He had only a vague notion of the nature of the lawsuits that his firm filed. He was not invited to attend weekly meetings scheduled by Harper and Willcox to discuss the businesses. E-mail traffic necessitates the conclusion that Hoffman, the attorney, was marginalized, ignored, and even mocked by Harper and Willcox, and that Hoffman knew it and resented it. An e-mail from Hoffman to Harper with the subject "Miscellaneous," dated April 10, 2014, is telling:

1. I would like to call Robbi [Birnbaum of Greenspoon Marder] to get him started on the "divorce" paperwork.

2. When you look around in whatever time it takes to sever my relationship w/ you and wonder why I'm no longer here, you can think of today as a prime example: A) You're relying (as I'm told) to find attorneys in Chicago (and maybe elsewhere) upon Jay Gertz, as opposed to asking me, an attorney, if I have recommendations to make, notwithstanding that I've told you on numerous occasions to consult with me regarding attorneys out of our immediate jurisdiction; B) You continue to be insulting and belittling (if there's such a word). And you want to know why I shake my head and roll my eyes!

3. I was here shortly after 4 this afternoon; I was under the impression that we were to meet then because you wanted to "bring me up to date." Silly me, of course.

4. I understand that the Tuesday, 9:00 AM meetings have been switched to Wednesdays at 9:00. I was not notified, so I guess that I am just an afterthought. The same w/ bringing Sean [Farley] to the meetings. Why not do away with the sham and designate him managing attorney and replace my name with "Farley" wherever. You also have time to plan how to explain "what happened" when you next get word that your managing attorney was arrested again for trying to buy coke.

²⁰ E-mail traffic confirms that Harper and Willcox primarily concerned themselves with these issues and with communications with the Greenspoon Marder law firm.

5. I've changed my mind: I will be content to not come in and yet collect full pay until such time as I am no longer involved with you. You might mention that to Benn; I already have. If I'm going to be a whore, may as well be a whore all the way. Besides, personal integrity was long ago pushed to the curb here, so I needn't try to swim upstream; it's useless.

6. Have a nice life.

Accordingly, the Receiver concluded that Hoffman Law, with the assistance of Harper and Willcox and their companies Nationwide, File Intake Solutions, and BM Marketing, were operating Hoffman Law in violation of federal law. The Receiver also concluded that Hoffman Law could not be rehabilitated or operated in a fashion to comply with federal law. In making these conclusions, the Receiver gave significant weight to the fact that non-attorneys Harper and Willcox were running Hoffman Law. For these reasons, and as directed by the TRO, the Receiver chose to shut down the business operations of the Receivership Defendants.

E. Removing Management and Securing Business Premises

Upon taking possession of the Gentry Offices the Receiver directed that all employees, including managers, to vacate the premises (they were permitted to retrieve their personal belongings). The Receiver coordinated steps to secure the assets of the Receivership Defendants, including changing the locks and eliminating all outside access to electronically stored information. Also, the Receiver coordinated the copying of ESI located in the Gentry Offices.

F. Inventory of Personal Property Located in Gentry Offices.

The Receiver coordinated an inventory of the personal property located at the Gentry Offices. A copy of the inventory is attached as Exhibit "A."

As noted above, desks, computers and other items of personal property owned by Hoffman Law were transferred to 760 US Highway 1, Suite 200, an office suite leased by The Oster Law Group. The property had been transferred at the direction of Willcox and Harper, and

Oster, as part of their plan to set Oster up in a new legal business venture that also would cater to consumers experiencing difficulties with their home mortgages. Oster has agreed to return that personal property.

G. Employees of Receivership Defendants.

Given the Receiver's decision, based on his analysis described above, to shut down the business operations of the Receivership Defendants, the employees were told not to return to the offices.

H. Receivership Defendants' Financial Resources.

As of September 16, 2014, the Receiver had collected the following funds:

<u>Date</u>	<u>Source</u>	<u>Account No.</u>	<u>Amount</u>
08/19/2014	Florida Community Bank		70.00
08/19/2014	Florida Community Bank		70.00
08/22/2014	Regions Bank	XXXXXX5724	530.00
08/22/2014	Regions Bank	XXXXXX5783	530.00
08/22/2014	Regions Bank	XXXXXX5791	379.86
08/22/2014	Regions Bank	XXXXXX6267 ²¹	20.00
08/22/2014	Regions Bank	XXXXXX5732	530.00
08/25/2014	Florida Community Bank		15,434.72
08/25/2014	Florida Community Bank		70.00
09/09/2014	BB&T (Hoffman personal funds, per court order)		73,022.55
09/16/2014	TD Bank (funds held by AMC Investment Group) ²²	XXXXXX8395	1,375.00
09/16/2014	TD Bank (funds held by MCH Titanium Holding) ²³	XXXXXX8402	449,985.00
09/16/2014	TD Bank (funds held by Benn and Amy Willcox)	XXXXXX5814	<u>1,324.93</u>
		TOTAL	\$543,342.06

²¹ IOTA

²² AMC Investment Group, a Delaware limited liability company, is owned by Harper. Harper said that the funds in its account derived from Nationwide.

²³ MCH Titanium Holdings, a Delaware limited liability company, is owned by Harper. Harper said that the funds in its account derived from Nationwide.

Additionally, the Court has ordered Harper to turn over \$225,000 cash that he admitted was in his possession as of the commencement of this lawsuit.

I. Notifying Clients

After determining that he would shut down the Receivership Defendants, the Receiver was faced with the problem of how to notify Hoffman Law's clients. The Receiver contacted the Florida Bar, which has initiated proceedings against Hoffman,²⁴ and which may be able to appoint an "inventory attorney" to review the various files. Additionally, pursuant to this Court's instructions, the Receiver filed notices in all lawsuits in which Hoffman Law has appeared, either directly or through local counsel. Many of the courts in which those cases are pending have stayed the cases pending further developments in this case.

The Receiver also set up a website, located at www.bernet-receiver.com, on which he has posted relevant pleadings and orders from this case, along with narrative descriptions appropriate for consumers. The Receiver updates the website periodically. Also, consumers are able to send e-mails to the Receiver through the website, and the Receiver periodically reviews and responds to those e-mails.

III. EFFORTS TO RECOVER ASSETS/FUNDS

As described in Section II.H. above, the Receiver has attempted to recover funds that properly belong to the Receivership Defendants. Among those funds is \$225,000 in cash that was in the possession of the Defendant Harper as of the commencement of this case. The Receiver demanded that Harper turn over that cash, but he refused to respond, and so the Receiver moved for an order from the Court directing Harper to do so. The Court entered the

²⁴ As of the commencement of the case the Florida Bar had initiated one proceeding against Hoffman, pertaining to advertising materials sent out by Harper and Willcox on behalf of Hoffman Law. Subsequently, the Florida Bar initiated a new investigation based upon this lawsuit and based upon dozens of complaints filed by consumers.

requested order on September 11, 2014, and directed Harper to turn over the funds by September 18, 2014.

Harper, through his deposition testimony and through his new counsel, reports that he will be unable to comply with the Court's order. Harper claims that \$50,000 of the \$225,000 cash that was in his possession was paid, indirectly, to the Greenspoon Marder law firm. Harper said that, prior to the commencement of this lawsuit, attorney Robby Birnbaum of Greenspoon Marder advised Harper to withdraw cash from the businesses. Harper said that Birnbaum told him that if a lawsuit were to be filed against the companies, there likely would be a TRO that would preclude him from taking money out of his personal or his company's bank accounts, and that for that reason it would be best if he had cash on hand that would not be frozen.

Harper claims that he spoke to Birnbaum the day that the Receiver took possession of the companies' business facilities. He said he was aware of the TRO and spoke to Birnbaum about it. Birnbaum was on vacation, and because the matter had turned into litigation, Harper said that Birnbaum referred him to his partner, Richard Epstein. Harper said that he spoke to Epstein, who told him that Greenspoon Marder would require a \$75,000 retainer to represent the defendants. Harper said that he told Epstein that \$75,000 was too much, and so they agreed on \$50,000. Harper said that he also told Epstein that he did not have any money that was not frozen; Harper claims that Epstein responded that he needed to have the money paid by a family member. Harper said that he told Epstein that any such arrangement would be a short-term loan that Harper would need to repay, using the cash that was in his possession that Birnbaum had advised him to take out of the companies. Harper said that he flew from Massachusetts (where he was on vacation) to Florida. He said he put \$175,000 into his car and drove to his brother-in-law's house in Philadelphia, and gave the money to him. He said that his brother-in-law arranged

to transfer \$50,000 to Greenspoon Marder, via wire. His brother-in-law also signed an affidavit stating that the funds did not originate with Harper. His brother-in-law, however, had possession of the \$175,000 cash that Harper delivered to him.

Harper said that in the 11 days Greenspoon Marder worked on the file, it charged \$66,000.²⁵ Harper said that after he protested the amount, Greenspoon Marder reduced the bill to approximately \$44,000. Harper claims that the \$6,000 or so that remains of the \$50,000 is still in Greenspoon Marder's account.

Harper has filed a motion seeking to modify the Court's order directing him to pay \$225,000 to the Receiver. As grounds, he recited what is written above. The Receiver attempted to discuss the matter with Greenspoon Marder on September 15, 2014, but apart from vague denials, Greenspoon Marder declined to provide any substantive responses. Additionally, the Receiver provided this portion of this report to Greenspoon Marder prior to filing. The Receiver notes that Epstein apparently was out of the office from mid-September through October 3, 2014, and that Greenspoon Marder otherwise was given only two days to respond. Greenspoon Marder's in-house general counsel provided an e-mail response on September 17, 2014, that essentially denied the material parts of Harper's allegations. Harper's allegations are troubling, but the Receiver has formed no conclusions at this time.²⁶

IV. FEES AND COSTS

Through August 31, 2014, the Receiver personally has recorded 132 hours on this matter. At his agreed discounted hourly rate of \$325.00, his fees would total \$42,900. Additionally,

²⁵ Greenspoon Marder filed its appearance on July 22, 2014, and then moved to withdraw on July 29, 2014, citing a conflict of interest. On July 21, 2014, when the Receiver learned that Greenspoon Marder intended to file an appearance on behalf of all of the Defendants, he sent a letter to Epstein in which he pointedly noted that in his opinion, Greenspoon Marder could not represent all of the Defendants because of a conflict of interest. A copy of the Receiver's July 21, 2014 letter is attached as Exhibit "B."

²⁶ The Court denied Harper's motion by order entered September 17, 2014, and directed Harper to turn over \$225,000 to the Receiver by September 26, 2014. The Court's order did not address the substance of Harper's allegations relating to the Greenspoon Marder law firm.

expenses on this file, which include funds advanced personally for a locksmith and to cover contract labor and utility bills, as well as mileage costs, postage and delivery charges, and copy costs, total \$2,674.17. The Receiver's fees and costs are described in further detail on the attached Exhibit "C."

Additionally, through August 31, 2014, the Receiver's law firm has recorded 99.7 hours to this file for fees totaling \$25,638.50. This computes into a blended hourly rate of approximately \$257.16. The Receiver anticipates filing formal fee applications within the next few days seeking authority to pay himself and his firm for the services rendered and to reimburse them for the costs incurred.

V. CONCLUSION

The Receiver invites the questions and comments of the Court and the parties.

Dated: Tampa, Florida
September 18, 2014

/s/ Mark J. Bernet

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was served by CM/ECF to Melissa Guidorizzi, Esquire, 1700 G Street NW, Washington, DC 20552, e-mail melissa.guidorizzi@cfpb.gov; Zach Mason, Esquire, 1700 G Street NW, Washington, DC 20552, e-mail zach.mason@cfpb.gov; Benjamin Konop, Esquire, 1700 G. Street NW, Washington, DC 20552, e-mail benjamin.konop@cfpb.gov; Amanda Arnold Sansone, 3507 E. Frontage Road, Suite 325, Tampa, Florida 33607, e-mail amanda.sansone@myfloridalegal.com; Richard Colin Nathan Schiffer, Esquire, 3507 E. Frontage Road, Suite 325, Tampa, Florida 33607, e-mail richard.schiffer@myfloridalegal.com; and Hector E. Lora, Esquire, The Lora Law Firm, LLC, 174 N.E. 106th Street, Miami Shores, Florida 33138, e-mail hectorlora@bellsouth.net; and by mail to Benn Willcox, 15342 83rd Way N, Palm Beach Gardens, Florida 33418 (and via e-mail to bennwillcox@yahoo.com); and Michael Harper, 1679 Juno Isles Boulevard, North Palm Beach, Florida 33408 (and via e-mail to michaeljharper80@yahoo.com), and John A. Richert, Esquire, Hornstine, Pelloni & Hornstine, LLC, 13575 58th Street North, Clearwater, Florida 33760, e-mail john@hornstine.com, this 18th day of September, 2014.

/s/ Mark J. Bernet, Receiver

cc: Andy Cove, Esquire (via e-mail to ANC@covelaw.com)
(*Mr. Cove has not appeared as counsel to any party herein*)