

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION

*In re* SANCTUARY BELIZE LITIGATION  
(proposed)

FEDERAL TRADE COMMISSION

Plaintiff,

v.

AMERIDEBT, INC. et al.

Defendants.

No: \_\_\_\_\_<sup>1</sup>

[UNDER SEAL]

DO NOT DOCKET/  
MOTION TO DELAY ECF PENDING

No: 03-cv-3317-PJM

**FEDERAL TRADE COMMISSION'S MEMORANDUM IN SUPPORT OF ITS MOTION  
TO HOLD ANDRIS PUKKE, PETER BAKER, AND JOHN USHER IN CONTEMPT  
FOR FAILING TO TURN THE SANCTUARY PARCEL OVER TO THE RECEIVER**

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<sup>1</sup> Currently pending before the Court is a motion to consolidate this matter with the related *FTC v. Ecological Fox LLC* (“*Ecological Fox*”) matter, pursuant to Rule 42, under the joint case name *In re Sanctuary Belize Litigation*.

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Andris Pukke, Peter Baker, and John Usher defied this Court’s repeated orders to turn over a parcel of land in Belize (the “Sanctuary Parcel”) to the Receiver in this matter, resulting in significant financial harm to the *FTC v. AmeriDebt* victims.<sup>2</sup> During its investigation into their current real estate scheme, the Federal Trade Commission (“FTC”) learned of Pukke, Baker, and Usher’s contumacious, continuing control of the Sanctuary Parcel. The FTC now moves to have the Sanctuary Parcel finally turned over to the Receiver on pain of coercive incarceration.<sup>3</sup>

The Sanctuary Parcel has been the subject of significant litigation in this case, including previous contempt motions and coercive incarceration. That Pukke, Baker, and Usher nonetheless continued to flout this Court’s authority is astounding. In 2005, the Court appointed a Receiver to marshal Pukke’s assets. The Receiver determined that Pukke’s assets included significant ownership of, and development rights in, the Sanctuary Parcel, a massive parcel of land in remote, southern Belize—more than 12,000 acres (nearly the size of Manhattan). Pukke, with his long-time associate, Baker, thwarted the Receiver’s efforts to take control over Pukke’s rights to the Sanctuary Parcel in 2005 and 2006. As a result, the Court found both in contempt and then incarcerated them to coerce their cooperation in 2007. Upon release, both claimed to no longer have any rights in or control over the Sanctuary Parcel. The Receiver then dealt with John Usher, who asserted competing rights over the Sanctuary Parcel. The Receiver settled with

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<sup>2</sup> They have harmed thousands of additional consumers through their continued control. As more fully detailed in the temporary restraining order filing in *Ecological Fox* and the deceptive telemarketing contempt motion in this action, their deceptive telemarketing of lots within the Sanctuary Parcel has resulted in over \$140 million in harm.

<sup>3</sup> In this motion the FTC cites to the evidence attached to its temporary restraining order filing in the *Ecological Fox* matter. The citations follow the same format, referencing the exhibit as plaintiff’s exhibit [letter], followed by paragraph [number] and attachment [number]. For example: PX[X] ¶ [X]:[X].

John Usher for a discounted payment to avoid having to litigate his right to the property in Belizean courts.

Unbeknownst to the Receiver, and the FTC, John Usher was in fact acting at Pukke and Baker's behest. Indeed, Pukke and Baker distributed documents showing they considered the "settlement" to be a payment orchestrated by Baker to buy-out Pukke's shares, rather than turning over those shares and rights to the Receiver, as they were ordered to do. In effect, the three secretly cheated AmeriDebt consumers out of significant assets that could have been used to provide redress. Because Pukke, Baker, and Usher all acted in contempt of this Court's orders, they should be forced to finally comply with the Court's orders and, for the first time, turn over the Sanctuary Parcel to the Receiver or face coercive incarceration. This will allow the Receiver to finally recoup the full value of the Sanctuary Parcel for the benefit of consumers.

## **I. BACKGROUND**

### **A. Pukke Stipulated to the Final Order, Creating A Receivership over His Assets.**

In 2003, the FTC sued Pukke, AmeriDebt Inc. ("AmeriDebt") and a related company Pukke controlled, DebtWorks Inc. ("DebtWorks"), under Section 5 of the FTC Act. DE1. The FTC alleged that the defendants promoted AmeriDebt as a "non-profit credit counseling organization dedicated to assisting consumers having difficulties with their personal finances." DE1 ¶ 10. The FTC alleged that the defendants stated they did not charge fees for their services, DE1 ¶ 15, but nonetheless took unauthorized "contributions" from consumers. DE1 ¶¶ 17-19. The Court imposed a preliminary injunction on Pukke, freezing his assets, based on a finding that the FTC was likely to prevail. *FTC v. Ameridebt, Inc.*, 373 F. Supp. 2d 558, 567 (D. Md. 2005).

Then, one day before trial, Pukke accepted a Stipulated Final Judgment and Permanent Injunction (the “Final Order”). DE473. There, the Court entered a \$172 million judgment against Pukke. DE473 at Section III.A. The Court had already appointed a Receiver under the preliminary injunction to marshal Pukke’s assets, DE122 at Section VI., and continued this Receivership in the Final Order, DE473 at Sections III.D. and IX. The Court also ordered Pukke to “cooperate fully with the Receiver,” including its asset recovery efforts, DE473 at Section XI., and to cooperate with the FTC to “carry out the purposes of this order,” DE473 at Section III.B.3.

But, Pukke did not cooperate, resulting in multiple contempt findings for both him and his friend and cohort, Baker.

**B. Pukke Acquired the Sanctuary Parcel in 2003 and Then Hid It from the Receiver.**

**1. Pukke, With Baker as His Partner, Acquired the Sanctuary Parcel in 2003.**

Pukke formed two entities in 2003, with Baker’s and Baker’s family’s involvement: Dolphin Development LLC (“Dolphin”) and Sittee River Wildlife Reserve (“SRWR”). PXQQ ¶ 67:71 (Dolphin articles of incorporation, identifying the owners, including Pukke, Baker, and Baker’s stepparents); PXQQ ¶ 68:72 (SRWR articles of incorporation); PXQQ ¶ 70:74 at 95:5-6 (showing that the others associated with the companies include the Medhursts, Baker’s mother and stepfather); PXQQ ¶ 93:98 at 16-17. Pukke owned Dolphin through a wholly-controlled LLC with an official 60% interest in Dolphin (Baker and his stepparents held the remaining 40%). PXQQ ¶ 67:71 (Puck Key Investment L-8, LLC (“Puck Key 8”) owns 60% interest in Dolphin); PXQQ ¶ 312:336 (Pukke’s 2005 bankruptcy schedule asserting Puck Key 8 100% owned by P & P II Family Trusts); PXQQ ¶ 93:98 at 16:10-11 (The Court on 3/14/07: “There’s

no question that Andris Pukke was the 60% owner of Dolphin Development.”). Pukke also served as Dolphin’s Chairman. PXQQ ¶ 78:83 (9/21/03 Dolphin board minutes listing Pukke as “Chairman”). Pukke controlled SRWR as its “Chairman.” *Id.* (6/21/03 SRWR board minutes listing Pukke as “Director” and noting his election as “chairman”).

In 2003, Pukke loaned Dolphin and SRWR at least \$3 million to purchase the “All Pines,” “Plenty,” and “Regalia” properties comprising the Sanctuary Parcel. PXQQ ¶ 78:83 at 21 (lands purchased with loans from Pukke and Dolphin); *id.* at 25 (10/7/05 SRWR minutes: lands were purchased with “unsecured loans made by Mr. Andris Pukke”); PXQQ ¶ 68:72 at 9 (Pukke testifying that he lent a total of “three point something million dollars that they were to pay me back as they sold the piece of that land”); PXQQ ¶ 78:83 at 4 (Dolphin board minutes noting that Pukke had loaned Dolphin \$3M); PXO ¶ 4:24 (SRWR history, stating that Pukke and Baker purchased Sanctuary Belize in 2002); PXQQ ¶ 65:69, attachment ¶ 11 (Deputy Receiver Brick Kane explaining the deeds of purchase); PXQQ ¶ 93:98 at 17:2-11 (the Court describing how Pukke acquired the land).

Although Usher was not originally associated with either Dolphin or SRWR, his role evolved until he became a manager and Director in 2005. As of approximately 2003, Usher was the manager of Triton Mariculture Ltd. (“Triton”), a shrimp farming company that Pukke owned through Dolphin. PXQQ ¶ 312:336 at 6; PXQQ ¶ 78:83 at 3 (9/21/03 Dolphin board minutes discussing purchase of Triton); PXQQ ¶ 70:74 at 10 (2005 Pukke Deposition identifying Triton, stating he owned Triton and that “Johnnie” Usher was its manager). Over time, Usher served as a manager of sorts for the Sanctuary Parcel as well, becoming “General Manager” of Dolphin by May 13, 2005, and “Director” of SRWR by October 7, 2005. PXQQ ¶ 78:83 at 8 (5/13/05 Dolphin board minutes); *id.* at 24 (10/7/05 SRWR board minutes); PXO ¶ 4:24 at 11.

## 2. Pukke Hid And Otherwise Prevented the Receiver from Taking Control of the Sanctuary Parcel.

The Court entered a Preliminary Injunction on April 20, 2005, transferring all of Pukke's assets to the Receiver. Pukke, with Baker's help, nevertheless continued his direction of Dolphin and SRWR. Shortly after the Preliminary Injunction, Pukke and Baker were telemarketing lots in a planned development called "Sanctuary Bay" on the Sanctuary Parcel. PXQQ ¶ 71:75 (2005 email attaching Sanctuary Bay telemarketing script); PXQQ ¶ 302:325 (September 2005 emails by and among Pukke, Baker, and Baker's stepfather regarding Sanctuary Bay marketing); PXQQ ¶ 313:337 (August 2005 Sanctuary Bay website listing Dolphin as the developer).<sup>4</sup> Pukke directed the Sanctuary Bay marketing and development, with Baker's support. For example: Pukke helped develop the "Sanctuary Bay Estates" website, provided specific language to be used on the website, transferred an additional \$100,000 from a Latvian account to fund the development, helped develop the project's logo, coordinated lead generation, and directed land development, usually copying Baker on all related correspondence.<sup>5</sup> Furthermore, Pukke and Baker continued to participate in Dolphin and SRWR board meetings. PXQQ ¶ 78:83 at 8 (May 2005 Dolphin meeting minutes showing Pukke as Chairman, Baker as Director); *id.* at 13 (July

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<sup>4</sup> Even at this early stage, they promised that Sanctuary Bay would have a hotel, marina, health spa, equestrian center, and investment return rates of around 500%. PXQQ ¶ 71:75 (telemarketing script). Dolphin had started selling lots by the summer of 2005. PXQQ ¶ 72:76 (August 2005 lot sale designating the "vendor" as "Dolphin Development Co., Ltd.; dba Sanctuary Bay"); PXQQ ¶ 325:348 (July 2005 Baker email attaching list of lots indicating many had already been sold).

<sup>5</sup> See PXQQ ¶ 74:79 (April 2005 email correspondence in which Pukke, writing from both his email address and Baker's email address, describes creation of Sanctuary Bay website, marketing, including lead generation, and the transfer of \$100,000 from a Latvian bank account); PXQQ ¶ 75:80 (May 2005 email seeking Pukke's comments on lot development); PXQQ ¶ 77:82 (July 2005 emails among Pukke and Baker with Pukke approving and directing payments for development).

2005 Dolphin meeting minutes showing Pukke and Baker as Directors); *id.* at 24 (October 2005 SRWR board minutes showing Pukke attending the board meeting and Baker a Director).

While doing so, Pukke hid his activities. Initially, he simply lied, submitting a financial statement to the Receiver failing to identify any interest in Dolphin or the Sanctuary Parcel. PXQQ ¶ 79:84. In July 2005, he admitted an ownership interest, but minimized the interest as a passive, minority, 30% interest rather than the actual, majority, 60% stake. PXQQ ¶ 70:74 at 108:15-25 (Pukke testifying that he had a 30% interest in Dolphin's profits); *id.* at 114:16-20 (Pukke testifying he was a 30% owner and "limited partner" in Dolphin); PXQQ ¶ 312:336 at 6 (Pukke's bankruptcy Schedules claiming only a 30% interest). His lies included a July 2005 motion to dissolve the receivership where he stated that Dolphin had "no assets" and "has never done business," while he was actively operating Dolphin and selling lots. PXQQ ¶ 80:85 (DE221, Addendum A at 4).<sup>6</sup>

While lying to the Receiver and the Court, Pukke and Baker engaged in a sham transaction to further insulate the Sanctuary Parcel from the receivership. The transaction attempted to divest Dolphin of its valuable and undisclosed assets by transferring Dolphin's rights and assets to two new entities: Starfish Development Ltd. ("Starfish") and Sanctuary Bay Ltd. The divestment unfolded as follows: In September 2005, Pukke, Baker, and Colin Medhurst (Baker's stepfather), began privately discussing the structure of a possible "NewCo" taking over for Dolphin. PXQQ ¶ 302:325.<sup>7</sup> Then, during the October 2005 board meetings for Dolphin and SRWR, they explained that the elimination and replacement of Dolphin was

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<sup>6</sup> PXQQ ¶ 312:336 at 6 (Pukke's bankruptcy schedules listing Dolphin's assets as worth "\$0.00" and stating that Dolphin "has not done business").

<sup>7</sup> Interestingly, Baker's stepfather, Colin Medhurst, was initially upset by the whole plan, and then was further upset when Pukke and Baker accused of him of trying to "steal" Pukke's money by not having Dolphin's rights assigned to a new company. *Id.* at 7-9.

necessary because of Pukke’s inability to continue to fund Dolphin and SRWR. PXQQ ¶ 78:83 at 18 (10/6/05 Dolphin board minutes, with Baker as Chairman: “Mr. Pukke’s financial position was detrimental to his efforts to attract new investors to the project. [Baker] was therefore recommending that [SRWR] be approached and asked to cancel their arrangements with [Dolphin] and to enter into a contract for the development, funding and marketing of project with a new company to be formed.”); *id.* at 25 (10/7/05 SRWR board minutes with Baker recommending that Dolphin be replaced “with a new developer acceptable to Mr. Baker” because “Mr. Pukke was unable to advance further funds and to facilitate new investors”). They originally attempted to divest Dolphin without paying for the land at all, suggesting that Dolphin merely “donate” the land and “lease” its equipment to the new companies, before their Belizean counsel told them that, even in Belize, such a transaction would be a sham. PXQQ ¶ 315:339 (Baker email discussing plan); PXQQ ¶ 82:87 (email reflecting attorney advice). Nonetheless, to paper the transaction they decided to “sell” the land titled in Dolphin’s name for \$65,320, even though Dolphin had paid \$1.5 million for the same land just two years prior. PXQQ ¶ 82:87.

Following the October 2005 board meetings, Baker instructed Belizean law firm Barrow & Williams (“B&W”) to form Starfish to take over for Dolphin as the development and sales arm for the Sanctuary Bay development and to create Sanctuary Bay Ltd. to take over Dolphin’s real estate holdings. PXQQ ¶ 81:86 (October 2005 email instructing B&W to create entities);<sup>8</sup> PXQQ ¶ 316:340 (Starfish formed in October 2005);<sup>9</sup> PXQQ ¶ 317:341 (October 2005 emails regarding creation of Sanctuary Bank Ltd.); PXQQ ¶ 318:342 (Sanctuary Bay Ltd. taking

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<sup>8</sup> Belizean attorney Rodwell Williams apparently performed the work. His partner at Barrow & Williams, Dean Barrow, became Prime Minister of Belize in 2008, and remains Prime Minister. DE681 at 4 fn.1.

<sup>9</sup> Peter Baker registered “Starfish Development Limited” as an Orange County, California Fictitious Business Name (“FBN”). PXQQ ¶ 89:94.

Dolphin's real estate). On paper, Baker owned controlling interests in both. PXQQ ¶ 319:343 (Baker is 99% holder of Sanctuary Bay Ltd.); PXQQ ¶ 81:86 (Baker instructing B&W to create both companies with Baker as the 99% shareholder and his uncle, Max Jobson, as a nominal 1% shareholder). In short, to help keep the Sanctuary Parcel from the FTC and the Receiver, Pukke transferred his interests to Baker, who attempted to insulate the dubious transactions through newly formed shell companies.

**C. As a Result of Pukke and Baker's Conduct, This Court Held Them in Contempt and Explicitly Ordered Them to Turn Over Pukke's Rights to the Sanctuary Parcel.**

On October 23, 2006, the Receiver moved to hold both Pukke and Baker in contempt for hiding certain assets, including the Sanctuary Parcel. DE525. The FTC joined the motion, noting that Pukke "lied repeatedly to the Receiver, the FTC, and this Court." DE321 at 3. The Court agreed, referring to the attempt to divest Dolphin as a "sham," and ruling that "the transaction is null and void." PXQQ ¶ 93:98 at 20:11-24. The Court, therefore, held that the Receiver retained rights to the Sanctuary Parcel as the 60% owner of Dolphin, *id.* at 21:3-11, and ordered Pukke and Baker to turn over those rights to the Receiver. DE571 (Mar. 30, 2007) ("Turnover Order").<sup>10</sup> Doing so, the Court emphasized Pukke's "flat out false" statements, PXQQ ¶ 93:98 at 23:7-15, as well as Baker's complicity in these lies, stating: "They were lies that were made not once, but multiple times by Mr. Baker under oath, under penalties of perjury when he signed these statements. *There's a casualness about Mr. Baker's statements and, indeed, about Mr. Pukke's as if the truth doesn't really matter.*" *Id.* at 25:20-24 (emphasis added).

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<sup>10</sup> To facilitate the Receiver's ability to control the Sanctuary Parcel, the Court issued a second order (the "Revesting Order"), *see* DE572 (Mar. 30, 2007), unwinding the sham transaction and ordering Pukke's interests re-vested in Dolphin. *See id.*

**D. Nonetheless, Pukke and Baker Defied the Court’s Turnover Order, Resulting in Their Incarceration.**

Neither Pukke nor Baker turned over the Sanctuary Parcel. Therefore, the FTC and Receiver moved the Court to incarcerate Pukke and Baker to coerce their compliance. *See* DE596; DE597. Baker’s noncompliance included refusing to direct various third parties, including Usher, to effectuate the transfer. DE596 at 3-4; PXQQ ¶ 320:344, attachment ¶¶ 3-4 (initial cooperation); *id.* ¶ 7 (subsequent noncooperation). Shortly after Baker stopped cooperating, Usher sent letters to the Receiver stating that the SRWR board had met and terminated all rights held by Pukke and Baker in the Sanctuary Parcel in the “past *and future*.” *See* DE596 (Apr. 30, 2007) at 4; PXQQ ¶ 88:93, attachment ¶ 5 and Exhibits 3 & 4 (Exhibit 4 specifies that SRWR is terminating all “past *and future*” involvement with Dolphin, Starfish, and Peter Baker) (emphasis added). Baker refused to take any steps to countermand Usher’s letters or undo the apparent act by SRWR. PXQQ ¶ 321:345, attachment ¶ 7. As a result, the Court held Pukke and Baker in contempt and ordered them incarcerated, DE604, noting that the pair had lied “dozens” of times, PXQQ ¶ 94:99 at 101:16-20, and commenting: “The mendacity of these two men throughout the history of this receivership is something to behold.” PXQQ ¶ 95:100 at 27:7-8.

**E. Even Upon Release From Incarceration, Pukke and Baker Conspired To Maintain Pukke’s Control Over the Sanctuary Parcel.**

Pukke and Baker were released, with Pukke making a significant payment to the Receiver and both pledging to take steps to comply with this Court’s orders, including the turnover of the Sanctuary Parcel. DE614 (Baker release); DE622 (Pukke release). Although neither took any further steps to transfer the Sanctuary Parcel, the Receiver believed he had separated them from the Sanctuary Parcel. But the Receiver faced a new problem: SRWR claimed the development

for itself, DE682 at 3-4,<sup>11</sup> and the Receiver could not easily enforce its rights in Belize. DE682 (Mar. 27, 2008) at 4 (“[I]t became clear to the Receiver that the Receiver would face significant resistance to the Receiver controlling the Sanctuary Bay Estates project from SRWR even after Baker’s involvement in the project ceased.”) (emphasis added). At this point Usher was SRWR’s Chairman, and SRWR had engaged B&W to contest the Receiver’s claims, shortly after Dean Barrow (the “B” in B&W) had been elected prime minister of Belize. *Id.* at 4 n.1. The Receiver thus calculated that, even without Baker (or Pukke), the Receiver faced a costly and challenging battle in Belize to control the Sanctuary Parcel. Consequently, the Receiver agreed to abandon its rights to the Sanctuary Parcel in exchange for a \$2 million payment from SRWR. DE682. The settlement agreement references the Turnover Order. DE682-4 at 2. Because Usher signed the settlement agreement, *see id.* at 9, he knew about the Turnover Order, and was thus bound by it under FRCP 65(d). No party objected to the proposed sale, and the Court approved it without comment. DE686.

**F. Pukke and Baker Controlled SRWR at the Time of the Settlement, and Control it to This Day.**

Unbeknownst to the Receiver, the FTC, and the Court, Baker and Pukke had in fact maintained control, using Usher as their front man. In 2016, for the first time, they began to lift the veil of fraud and disclose their active role in the settlement. During the November 2016 SRWR board meeting where Baker was once again SRWR’s Chairman,<sup>12</sup> SRWR distributed a

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<sup>11</sup> Usher made a related claim during his testimony at the 2007 contempt hearing, contending that Dolphin (and, thus, Pukke) had no rights to most of the Sanctuary Parcel. *See* PXQQ ¶ 322:346 at 73:4-15 (describing SRWR as “owned by no one in particular” and in charge of approximately 12,000 acres), and 80:7-13 (SRWR was distinct from Dolphin).

<sup>12</sup> This, despite the letter to the Receiver in 2007 in which SRWR claims it was terminating any future relationship with Baker. Also, a “Mark Romeo” was a Director in 2016. As this Court may recall, Pukke has at times used the name Mark (or Marc) Romeo, and testified to this Court in 2015 as part of his supervised release hearing that the real Romeo ceased all connections with the Sanctuary Parcel and its various related corporate entities in 2011. PXQQ ¶

document describing SRWR’s history, including insider details on the settlement with the Receiver, disclosing that the settlement was actually the result of Baker finding “another investor” to buy Pukke’s “shares,” which were then transferred to Baker. In their own words:

The development limped along while Rodwell (Williams of Barrow & Williams) tried to negotiate a settlement with the Receivers [sic]; however, he was unable to do so. Luckily, Peter Baker surfaced another investor who agreed to invest \$2 million into the project. With those funds, Rodwell was able to successfully negotiate a settlement with the Receivers [sic] on April 23, 2008. With the settlement payment made, **Andris’ [Pukke’s] equity shares were conveyed to Peter Baker** and the original core development investors<sup>13</sup> (this should be noted to show he [Pukke] has no involvement)[.]<sup>14</sup>

PXO ¶ 3:24 at 12 (emphasis added). This insider transfer was corroborated during the FTC’s undercover investigation, with Frank Costanzo, an officer of the current developer of the Sanctuary Parcel, telling an FTC employee that Baker bought the Sanctuary Parcel. Specifically:

At some point obviously, Mr. Pukke got into problems I think with the Securities and Exchange Commission, et cetera, on other issues and the receiver seized this property.

So Mr. Baker then, seeing that, you know, his family’s dream [of the development] is about to collapse, went out, found some other real estate investors that raised the capital . . . and made the deal with the receiver to basically buy the—buy the development out of receivership. So at that point then it was Peter Baker was the executive and there were, I think, a handful of original investors that really were like—loaned the money to Peter.

PXQQ ¶ 48:41 at 15:23-16:10 (emphasis added). Baker, of course, had been ordered to turn over any rights he held in Pukke’s share of the Sanctuary Parcel. Instead, he converted Pukke’s shares for himself with Usher serving as a straw man, thus defrauding the Court and the Receiver.

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148:141 at 285:5-14.

<sup>13</sup> The document does not identify “the original core development investors,” but they are Baker, and Baker’s stepfather and mother, Colin and Joan Medhurst, as discussed earlier.

<sup>14</sup> Notably, Pukke was still involved. Usher, the SRWR Chairman at the time of the settlement, has even assisted Pukke in using false names to hide his continued involvement. *See* PXQQ ¶ 148:141 at 278:7-279:1.

SRWR further explains that following the fraudulent settlement, they created Eco Futures Belize Ltd. (“Eco Futures (BZ)”) to take on Dolphin’s previous role: “[T]o accommodate the new investors/shareholders, Eco-Futures was formed and contracted with SRWR to become the new development company with the same terms that were in the previous [Dolphin and Sanctuary Bay] development agreements.” PXO ¶ 3:24 at 12 (emphasis added). SRWR then explains that Baker created Global Property Alliance Inc. (“GPA”) to serve as the United States-based marketing arm for the development. PXO ¶ 2:23 at 8 and ¶ 3:24 at 13; *see also* PXQQ ¶ 148:141 at 197:6-12 (testimony from GPA employee that GPA “is doing business as Eco Futures”); *id.* at 202:10-22 (further testimony that other marketing entities, such as “Buy Belize” operate from GPA’s offices at GPA’s direction). They continued sales as before. Within months of the settlement, they had resumed selling lots and giving tours based on the same misrepresentations Pukke and Baker were making in 2005. PXQ ¶¶ 2-6; PXR ¶¶ 2-5. They subsequently changed the name of the development from Sanctuary Bay to Sanctuary Belize, and then to The Reserve (hereafter “Sanctuary Belize” for ease of reference). As in the other motions pending before this Court, the FTC refers to this scheme and its participants as the Sanctuary Belize Enterprise (“SBE”).

Substantial evidence confirms that Pukke controls the entire SBE, with Baker and Usher as front men. Although Pukke has avoided being a “paper owner,” multiple former SBE employees confirm that Pukke is and has been the ultimate control person for the entire enterprise. PXEE ¶ 5 (former “Director of Finance/Accounting” stating “Pukke was the person who ran everything”); PXZ ¶¶ 3 & 6 (former sales representative stating “Pukke ran everything,” including “Buy Belize, Eco Futures, and Global Property Alliance”); PXBB ¶ 3 (former sales representative stating: “While I was working there, I saw no distinction between Sanctuary

Belize, Buy Belize, Global Property Alliance, Sittee River Wildlife Reserve and Eco Futures Development. Everyone who worked for those entities took orders from and reported to Pukke.”). Third-party business partners also identify Pukke as the ultimate control person. PXFF ¶¶ 8-9 (real estate developer met with Pukke, stating: “Pukke characterized himself as the ‘CEO’ and ‘owner’ of Sanctuary Belize. Pukke made a point to emphasize that he not only owned the marketing operation, but that he raised the money to purchase Sanctuary Belize. . . . Pukke was clear that he was the owner of the property.”); PXGG ¶¶ 31-33 (business executive of international marina management company stating that it was apparent Pukke was a control person and that Pukke confided in him that he in fact had an equity interest in Sanctuary Belize). Internal SBE Documents corroborate this testimony. For instance, Pukke has authority over communications with lot owners about corporate structure,<sup>15</sup> legal affairs,<sup>16</sup> lot ownership structure,<sup>17</sup> refunds to consumers,<sup>18</sup> dissolution of SBE-related entities,<sup>19</sup> payments for equipment shipped to Belize,<sup>20</sup> reviewing lot sale contracts,<sup>21</sup> authorizing commissions for telemarketers,<sup>22</sup> and dealing with consumers who want to sell their lots.<sup>23</sup> Tellingly, Pukke ran

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<sup>15</sup> PXQQ ¶ 150:142 (employees relying on Pukke’s advice in communications to consumers).

<sup>16</sup> Pukke directed Greenfield to wire \$20,000 to Belizean attorney Fred Lumor. PXQQ ¶ 151:143.

<sup>17</sup> While incarcerated, Pukke directed employees to research “fractional ownership,” which would, in theory, enable more than one party to own a lot. PXQQ ¶ 152:145.

<sup>18</sup> Pukke directed Greenfield to send a \$10,000 check to a dissatisfied lot owner, R.P. Taylor. PXQQ ¶ 153:147.

<sup>19</sup> In a 2014 email, it is explained that “in discussion with Andi [Pukke] and Luke [Chadwick], it was determined that the SBHOA [Sanctuary Belize HOA] would be terminated.” PXQQ ¶ 154:149.

<sup>20</sup> In an email regarding payment for a shipment to Belize, an SBE subordinate wrote that they would “look into” the issue and “I think Andi was suppose[d] to . . . wire to them” payment. PXQQ ¶ 155.

<sup>21</sup> Regarding a lot sale contract, Greenfield told a subordinate to “get a copy for Andi [Pukke] to review.” PXQQ ¶ 156:155.

<sup>22</sup> PXQQ ¶ 157:156 (email train in which Pukke is decision maker on commissions, including challenging an employee’s claim to an unusual commission structure).

<sup>23</sup> Pukke directed a subordinate “to verbally follow up with all emails or requests” about

the SBE during his stint in prison for obstruction of justice in this case. *See* PXQQ ¶ 152 (an email showing Pukke’s continued control during his period of incarceration); PXQQ ¶ 105:115 (SBE paying for Pukke’s Wall Street Journal subscription while he was incarcerated); PXQQ ¶197:207 (SBE employees arranging for email correspondence with Pukke while he was incarcerated).

Baker on the other hand, continues to serve as Pukke’s front man. As shown above, Baker was an SRWR founder and was the SRWR Chairman as of 2016. Additionally, Baker is the purported owner or officer of several SBE members. PXQQ ¶¶ 187, 217, 219, 231, 233, 236; PXO ¶ 3:24 at 13 (GPA). He even had access to SBE bank accounts, using them for personal purchases. PXQQ ¶ 303. Also, as discussed above, another SBE member told the FTC in an undercover call that Baker “owns [the] development.”

Similarly, Usher is still present, serving key roles for members of the SBE. Usher is a director of the Sanctuary Belize Property Owner’s Association (“SBPOA”), PXQQ ¶ 201: 213. He is a bank signatory on Eco Futures (BZ)’s U.S. bank account. PXQQ ¶ 204. Furthermore, numerous marketing communications directed to U.S. residents identify Usher as the “chairman,” “owner,” or “principal” of the development. PXQQ ¶ 205.

## **II. ARGUMENT**

The FTC has established each of the elements of contempt by clear and convincing evidence: “(1) The existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) that the decree was in the movant’s ‘favor’; (3) that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and (4) that the movant suffered harm as a result.”

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owners who want to sell, including requests sent to apparent SBE executives. PXQQ ¶ 158:159.

*Schwartz v. Rent-A-Wreck of America*, 261 F. Supp. 3d 607, 612 (D. Md. 2017) (J. Messitte) (citing *Ashraft v. Conoco, Inc.*, 218 F.3d 288, 301 (4th Cir. 2000)); *United v. Ali*, 874 F.3d 825, 831 (4th Cir. 2017). Although the FTC must prove “knowledge,” “[w]illfulness is not an element of civil contempt.” *Schwartz*, 261 F. Supp. 3d at 612-13 (quoting *Redner’s Markets, Inc. v. Joppatown G.P. Ltd. P’ship*, 608 Fed. Appx. 130, 131 (4th Cir. 2015)).

All four elements are easily satisfied. Elements 1, 2, and 4 can be dealt with summarily. Pukke, Baker, and Usher had knowledge of this Court’s Turnover Order. Pukke and Baker have knowledge because they have been incarcerated for violating it once already. Usher signed documents submitted to this Court recounting his knowledge of the Turnover Order. The Turnover Order was in the FTC’s favor because the turnover and liquidation of Pukke’s assets, including the Sanctuary Parcel, was to benefit the FTC and consumers, who in turn were harmed by Pukke, Baker, and Usher’s contumacious activity in secretly refusing to give up the Sanctuary Parcel. The FTC in fact gave redress to consumers in this matter. Therefore, reducing the value of the Sanctuary Parcel directly reduced the redress payments the FTC made to Pukke’s victims—thus multiplying Pukke’s fraud on American consumers.

Regarding element 3, as described below, Pukke, Baker, and Usher’s conduct in hiding the Sanctuary Parcel from the Receiver and then taking steps to thwart the Receiver’s control violate the Court’s Turnover Order. Additionally, even as a nonparty, Usher is subject to the Turnover Order under Rule 65(d).<sup>24</sup> As a result, each should be ordered to finally turn over the Sanctuary Parcel or face incarceration until they comply.

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<sup>24</sup> For purposes of the Turnover Order, Baker is a party. He is explicitly subject to the order and has already litigated its applicability before this Court. Even if he were not explicitly a party to the Turnover Order, Baker would be bound by the Turnover Order for the same reasons as Usher.

**A. Pukke, Baker, and Usher Defied this Court's Turnover Order, Harming Consumers.**

The Court required Pukke and Baker to turn over all of Dolphin's rights to the Receiver. DE571 at 5-6. Upon Pukke's and Baker's release from prison, the FTC and Receiver believed Pukke and Baker no longer had authority to transfer any of the relevant assets, and so were left to deal with Usher in Belize, who claimed all of the Dolphin rights as his in his capacity as SRWR chairman. Without a U.S. defendant subject to the Court's coercive sanctions, the Receiver recognized the reality of enforcing his rights before the Belizean court and, therefore, struck the only, albeit poor, deal he could.

However, as disclosed in the 2016 SRWR board minutes, Pukke and Baker's lack of involvement was a sham. In fact, Baker, and by extension Pukke, were still in charge. Usher was just the front man with Baker orchestrating the settlement through which rather than turn over the land he convinced the Receiver to accept only a fraction of the Sanctuary Parcel's value. That Pukke and Baker were in fact directing SRWR's behavior is further strengthened by them continuing to run the Sanctuary Belize scheme to this day. Given each had knowledge of the Turnover Order, they meet the "knowledge" requirement, particularly when their acts cannot be interpreted in any way other than to subvert this Court's explicit Turnover Order. *See Schwartz*, 261 F. Supp. 3d at 614 (violations with "actual or constructive" knowledge of the terms of the order sufficient); *Colonial Williamsburg Found. v. Kittinger Co.*, 38 F. 3d 133, 136-37 (4th Cir. 1994) (one with knowledge of an order cannot defeat contempt by stating they did not know the terms of the order or otherwise take steps to confirm they are acting in compliance with the order). This is especially so because SRWR claimed, in a letter Usher provided to the Receiver, that Pukke and Baker would not have any "future" rights in the Sanctuary Parcel.

**B. Usher is Bound by the Turnover Order.**

Rule 65(d) specifies that all individuals with notice of the order “in active concert or participation” with a party or a party’s agent are bound by the relevant injunction. Otherwise parties could “nullify a decree by carrying out prohibited acts through aiders and abettors.” *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14 (1945); *K.C. ex rel. Africa H. v. Shipman*, 716 F.3d 107, 115 (4th Cir. 2013) (same). Therefore, those in privity with or acting at the parties’ behest are subject to the Court’s jurisdiction and contempt remedies. Indeed, the FTC is frequently required to pursue nonparties who take steps to violate court orders entered in the Commission’s favor. *See, e.g., FTC v. Leshin*, 618 F.3d 1221, 1236 (11th Cir. 2010) (holding nonparty businesses controlled by a party in contempt); *FTC v. Neiswonger*, 494 F. Supp. 2d 1067, 1078-79 (D. Mo. 2007), *aff’d*, 500 F.3d 769 (8th Cir. 2009) (nonparty business partner with knowledge of the order subject to contempt sanctions); *FTC v. Gill*, 183 F. Supp. 2d 1171, 1184 (C.D. Cal. 2001) (holding nonparty nonprofit in contempt). By facilitating Baker and Pukke’s continued efforts to prevent the transfer to the Receiver and retain rights for themselves, Usher was “in active concert or participation” with Baker and Pukke, and is thus bound by the Turnover Order.

**C. Pukke, Baker, and Usher Should Be Ordered to Finally Turnover the Sanctuary Parcel or Face Coercive Incarceration**

Because of their contumacious conduct, this Court has broad authority to ensure the FTC and consumers are fully compensated. The only way to ensure this compensation is for the Receiver to control the Sanctuary Parcel so that he can manage or sell it for the benefit of consumers.<sup>25</sup> The Court has broad authority to compensate the FTC’s and consumers’ losses.

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<sup>25</sup> Although the Receiver has been discharged in this action, this Court can re-empower the Receiver. *FTC v. Gill*, 183 F. Supp. 2d 1171, 1186 (C.D. Cal. 2001) (appointing receiver as part

*United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947); *In re Gen. Motors Corp.*, 61 F.3d 256, 259 (4th Cir. 1995) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193-94 (1949)). The FTC is entitled to “full remedial relief.” *McComb*, 336 U.S. at 193 (1949). Furthermore, this Court is empowered to coerce a contemnor’s compliance, including through turnover orders and coercive incarceration. *See, e.g., Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828 (1994) (“The paradigmatic coercive, civil contempt sanction, as set forth in *Gompers*, involves confining a contemnor indefinitely until he complies with an affirmative command such as an order ‘to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance.’”) (quoting *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 442 (1911)); *Shillitani v. United States*, 384 U.S. 364, 370–71 (1966) (“The conditional nature of the imprisonment—based entirely upon the contemnor’s continued defiance—justifies holding civil contempt proceedings absent the safeguards of indictment and jury. . . .”); *Hicks v. Feiock*, 485 U.S. 624, 632-35 (1988) (civil contempt remedies include conditional incarceration whereby contemnor can avoid incarceration with prompt compliance); *Enovative Techs., LLC v. Leor*, 110 F. Supp. 3d 633, 637 (D. Md. 2015) (“Incarceration, like other contempt sanctions, is proper upon a finding of civil contempt as long as the purpose is to coerce compliance with a court's order, rather than to punish for the contemnor’s failure to comply.”).<sup>26</sup> Indeed, this Court has already taken both steps, in this case, against two of these three contemnors. Including coercive incarceration in the turnover order is necessary because of

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of civil contempt sanctions). Additionally, the FTC is seeking a receivership in *Ecological Fox* and has recommended the Court appoint the same receiver it previously appointed in this matter.<sup>26</sup> Unlike in a criminal case, civil contempt requires only notice and an opportunity to be heard. Like with summary judgment, the Court is not required to hold an evidentiary hearing if the defendant does not meaningfully challenge the facts. *Thomas, Head & Greisen Employees Trust v. Buster*, 95 F.3d 1449, 1458-59 (9th Cir. 1996); *Commodity Futures Trading Comm'n v. Premex, Inc.*, 655 F.2d 779, 782 n. 2 (7th Cir.1981).

the contemnors' history of defiance. Contempt remedies are required to be the "least possible power to the end proposed," *Spallone v. U.S.*, 493 U.S. 265, 276 (1990), and Pukke, Baker, and Usher have shown that absent coercive incarceration, they will not comply with a court order.<sup>27</sup> The FTC should not be forced to come before this Court again on a motion to have them held in contempt if they, as is very likely, ignore a bare turnover order. Instead, their incarceration should be triggered by a filing, under oath, from the FTC or the Receiver informing the Court of their failure to turn over the land.

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<sup>27</sup> Other coercive sanctions, such as a fine, will be meaningless. The FTC is already seeking to have their assets frozen in *Ecological Fox*. As a result, a fine is unlikely to be coercive or enforceable.

**III. CONCLUSION**

As a result of Pukke, Baker, and Usher's contumacious conduct, they should be given ten (10) days to fully transfer the Sanctuary Parcel to the Receiver and, if they fail, be incarcerated until they comply. Additionally, each should be incarcerated immediately if they take any steps to prevent the transfer to the Receiver to prevent further such acts, and then they should remain incarcerated until the Sanctuary Parcel is fully transferred to the Receiver.

Respectfully submitted,

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