UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION	No.: 18-cv-3309-PJM

FEDERAL TRADE COMMISSION'S OMNIBUS REPLY IN SUPPORT OF ITS MOTIONS TO HOLD ANDRIS PUKKE, PETER BAKER, AND JOHN USHER IN CONTEMPT

The Federal Trade Commission's ("FTC") contempt motions (*AmeriDebt* DE 842 ("Parcel Contempt"), 843 ("Telemarketing Contempt"), & 844 ("Loan Contempt")) are now ripe for consideration without any further evidentiary proceedings. This is so because Andris Pukke, Peter Baker, and John Usher have not contested numerous facts, have already had an evidentiary hearing raising the precise issues and elicited no testimony or facts to contradict the FTC's voluminous evidence, or simply not responded. As a result, each should be held in contempt. All three conspired to contumaciously remove the Sanctuary Parcel from this Court's jurisdiction in violation of the Turnover Order, *AmeriDebt* DE 571, as part of an effort to, in Pukke's own words, "get[] everything they stole from us back."[1] As a result, they should be ordered to return all rights to the Parcel to the Receiver on pain of incarceration. This will resolve ownership of the Sanctuary Parcel regardless of the outcome of the *Ecological Fox* complaint. Additionally, each conspired to defraud consumers, selling lots from the Sanctuary Parcel through misrepresentations, thus defying this Court's Final Order in *AmeriDebt*. *AmeriDebt* DE 473. They should be ordered to pay to the FTC all of the monies consumers paid for lots in Sanctuary

[1] Kaufman Declaration Att. 1. This new document is not necessary for the Court to rule in the FTC's favor, but strongly undercuts both Pukke and Baker's responses. This is true throughout, where the FTC cites to a limited number of new documents.

Belize as a compensatory contempt sanction (more than $100 million). Finally, Pukke has not responded at all to the FTC's motion to hold him in contempt for contumaciously repaying a loan to his long-time associate, Vipulis, which was prohibited by this Court's Release Order, *AmeriDebt* DE 625. The Court, should, therefore, enter an order requiring Pukke to turn over all funds he previously paid to Vipulis, with credit given for the amounts already returned by John Vipulis. As with its prior pleadings, the FTC will refer to the development variously known as Sanctuary Bay, Sanctuary Belize, and The Reserve as "Sanctuary Belize," and the group of companies that worked to deceptively market Sanctuary Belize as the "Sanctuary Belize Enterprise," or "SBE."

Before addressing the merits, there are two preliminary matters. First, Usher has failed to respond to any of the motions, and thus contempt findings are immediately appropriate as to him.[2] As a result, the FTC will focus on Pukke and Baker's liability in the remainder of this Reply. Second, the Court can summarily reject Baker's unfounded argument that he does not have knowledge of the relevant *AmeriDebt* orders and, therefore, cannot be held in contempt. As this Court is aware, the Court previously held Baker in contempt of the Final Order against Pukke, *AmeriDebt* DE 473. Indeed, his contempt of that order resulted in the issuance of the Turnover Order, *against Baker*, which Baker then received as a litigant in the case. *AmeriDebt* DE 571 ("Baker is in civil contempt of court for violation of the Court's . . . Final Pukke Judgment [DE 473]."). As a result, Baker has actual or constructive knowledge of the orders and their contents. *See Schwartz v. Rent-A-Wreck of Am.*, 261 F. Supp. 3d 607, 614 (D. Md. 2017) (Messitte, J.) ("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

[2] Declaration of Khouryanna DiPrima (showing that Usher was served with the contempt motions by FedEx in Belize). Furthermore, such service upon a foreign national complies with Rule 4. *See, e.g., Tracfone Wireless, Inc. v. Hernandez*, 126 F. Supp. 3d 1357, 1360-61 (S.D. Fla. 2015) (approving service of Belizean via postal service or Fedex); *Koehler v. Dodwell*, 152 F.3d 304, 307-08 (4th Cir. 1998) (Hague convention includes "liberal service options . . . which include service by mail").

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).

I. THE COURT CAN RULE WITHOUT ANY FURTHER EVIDENTIARY PROCEEDINGS.

Although both claim that they are entitled to an evidentiary hearing and significant delay in these contempt proceedings, Pukke and Baker are mistaken. Rather, contempt motions may be decided based on affidavits and declarations, without evidentiary hearings. *In re Gen. Motors Corp.*, 110 F.3d 1003, 1016 (4th Cir. 1997); *Thomas, Head & Greisen Emps. 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). Indeed, none of the contempt defendants submitted any evidence in opposition to the contempt motions. Regardless, even taking into account their oppositions to the preliminary injunction, and especially taking into account the two-week evidentiary hearing the Court just held in this consolidated matter, they have had a full opportunity to submit contrary evidence and present such contrary evidence. Nonetheless, neither Pukke nor Baker has challenged the FTC's significant documentary evidence, submitted contrary documentary evidence, or otherwise done more than put forth a few conclusory declarations. Furthermore, they have had an opportunity to address the FTC's expert witnesses, having deposed both of them and having the opportunity to cross-examine them before the Court. To the extent they have offered their own expert witness, his expertise and credibility are in serious doubt. Indeed, all of these issues are addressed in the FTC's recently filed Proposed Findings of Fact and Conclusions of Law, DE 445 ("FOF"), which provides detailed factual citations to the paper record and the live testimony before the Court. The FTC will refer to the FOF in this Reply, and will otherwise refer to the evidence before the Court using the same exhibit numbers used for the preliminary injunction proceeding.[3]

[3] For ease of reference the FTC has submitted an exhibit list showing precisely how the evidence cited by the FTC in its moving papers has been renamed. *See* DE 411-1. For instance, documents previously referred to as PXQQ (Declaration of Aaron Kaufman), are now PX 297 *et seq.*

Furthermore, a ruling now is also appropriate because neither Pukke nor Baker has explained what evidence, if any, they intend to develop. *In re Gen. Motors Corp.*, 110 F.3d at 1016 (further proceedings unnecessary because defendant "failed to identify any other type of evidence necessary"). Although both are undisputed principals with intimate knowledge of the business practices at issue and knowledge of key witnesses, neither has identified what additional evidence they require. As other courts have explained in similar contexts: "There is no reason to grant a continuance to a litigant who has personal and intimate knowledge of the underlying facts for the purported purpose of conducting discovery to ascertain those identical facts." *FTC v. JK Publications, Inc.*, 99 F. Supp. 2d 1176, 1199-1200 (C.D. Cal. 2000) (quoting *United States v. Private Sanitation Indus. Ass'n of Nassau/Suffolk, Inc.*, 899 F. Supp. 974, 984 (E.D.N.Y. 1994)).

This is particularly true as to Pukke, who has refused to testify as to his own involvement and presumably would like to burden the Court, parties, and third-parties with discovery to "prove" what he is unwilling to say. Indeed, Pukke's request is likely futile. Not only is the evidence of his liability overwhelming, he has already pled the 5th as to all matters at issue, thus entitling the FTC to adverse inferences on all matters relating to these contempt motions. *See infra* (citations to Pukke's assertions of the 5th Amendment); *FTC v. AmeriDebt* 373 F. Supp. 2d 558, 564 (D. Md 2005) (citing *Baxter v. Palmigiano*, 425 U.S. 308, 318-19 (1976) and *ePlus Tech., Inc. v. Aboud*, 313 F.3d 166, 179 (4th Cir. 2002)).

To the extent the Court is not inclined to grant the motions without further evidentiary proceedings, the FTC requests that the Court set an expedited schedule for the development of any additional evidence and set a new hearing in the short term to resolve the motions. Given the volume of evidence already before the Court, and Pukke and Baker's failure to even identify what evidence they believe still needs to be developed, an expedited schedule is appropriate. *See Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994) (civil contempt requires only "notice and an opportunity to be heard"). Furthermore, it makes no sense to have the contempt motions resolved *after* the *Ecological Fox* proceedings, as both Pukke and Baker would prefer. Given the factual overlap and relative burdens of proof, judicial economy counsels

having the contempt proceedings take place prior to the resolution of *Ecological Fox*. If Pukke and Baker are held in contempt, this will be *res judicata* on the same issues presented in *Ecological Fox*. Resolving the motions sooner may limit the need for further *Ecological Fox* proceedings.

II. NEITHER PUKKE NOR BAKER HAVE REBUTTED THE FTC'S EVIDENCE SHOWING THEY CONTUMACIOUSLY WITHHELD THE SANCTUARY PARCEL FROM THE RECEIVER.

The FTC has submitted significant evidence showing that Pukke and Baker used Usher to manipulate interactions with the *AmeriDebt* Receiver to maintain control over the Sanctuary Parcel, notwithstanding this Court's 2007 Turnover Order. As detailed in the FTC's moving papers and in the FOF,[4] following the 2007 Turnover Order, Usher purported to act alone in challenging the Receiver's authority, while undisputed documents and testimony show that Baker was working to structure and fund the payoff to the Receiver. FOF ¶¶ 176-80. Separately, undisputed documents show that immediately following the settlement with the Receiver, Pukke was once again marketing lots in Sanctuary Belize. PX 297 ¶ 98; PX 395; Baker Depo, 2/19/19, at 123:17 to 124:1 (Baker testifying that Pukke's ownership and involvement was reinstated "[a]s soon as we were ready to go to, call it, start marketing and sales"); PX 894 (settlement with Receiver was approved on April 15, 2008); PX 895 (emails showing Pukke was performing marketing functions no later than June 25, 2008). Testimony from third-parties confirms that Pukke presented himself as a principal in the periods following the settlement, and even included one witness recounting Pukke bragging "that he not only owned the marketing operation, but that he raised the money to purchase Sanctuary Belize (the 14,000 acres in Belize he was selling)." PX 209 ¶ 9 (emphasis added). Furthermore, significant evidence shows that Pukke and Baker have continued to control SRWR, not least of which is an email exchange introduced into evidence by Pukke. These emails show Usher admitting to Pukke and Baker that they can control who sits on the SRWR board and, thus, control the

[4] FOF Section III, in particular, provides detailed citations for the history of the Sanctuary Parcel and the prior proceedings before this Court.

Sanctuary Parcel and the Sanctuary Belize development. DX-AP-366 at 2. When questioned about this conduct, Pukke pled the 5th, thus entitling the FTC to adverse inferences. PI Hrg. Tr. 84:6-25, 3/22/19 pm.

For his part, Baker testified, at length, during the preliminary injunction hearing that Pukke was his partner, including holding a 29% stake in the Sanctuary Belize development. *See e.g.*, PI Hrg. Tr. 21:23 to 22:14, 3/13/19 pm (testifying to ownership); *id.* at 30:18 to 31:1 (identifying percentage of ownership). Baker further confirmed that Pukke paid nothing for this ownership stake. PI Hrg. Tr. 27:13-21, 3/13/19 PM. At best, Baker unconvincingly asserted that the decision to give Pukke an ownership stake happened shortly after the settlement with the Receiver and was not the result of an agreement amongst Pukke, Baker, and Usher to maintain the original ownership structure notwithstanding the Turnover Order. But, documents show: (1) Pukke was emailing regarding the development then known as "Sanctuary Bay" in 2007;[5] (2) Pukke and Baker exchanging emails regarding marketing of foreign real estate developments in early 2008, just prior to the settlement with the Receiver;[6] and (3) Pukke actively engaged in marketing for Sanctuary Bay within weeks of the 2008 settlement.[7] In light of this evidence, the other undisputed evidence discussed above and otherwise before the Court, and Baker's own credibility issues, there is no basis to credit Baker's testimony that Pukke's ownership was not continuous.

Pukke and Baker also erroneously state that the Receiver received a fair payment for the Sanctuary Parcel, and so the settlement should not be unwound. But, as the Receiver explained to the Court when seeking approval for the settlement, this was not a fair market sale. Instead, it was a settlement with a party that would contest the Receiver's rights to ownership in court in Belize, with that contesting party represented by the law partner of the Prime Minister of Belize. *AmeriDebt* DE 682 at 4 ("However, it became clear to the Receiver that the Receiver would face

[5] Kaufman Declaration Att. 6.
[6] Kaufman Declaration Att. 7.
[7] PX 895.

significant resistance to the Receiver controlling the Sanctuary Bay Estates Project from SRWR even after Baker's involvement in the project ceased."). As the Receiver notes in the motion, they were compromising and, as a result, recovering less than Pukke had invested in the asset. Notably, enforcement in Belize would only have been necessary if Pukke and Baker were not involved in the transaction. Both Pukke and Baker were subject to this Court's authority and could have been coercively incarcerated if known to have been manipulating the discussions to deprive the Receivership of value. *AmeriDebt* DE 614 (providing for the "immediate re-incarceration of Baker" if he did not comply with the Turnover Order); *AmeriDebt* DE 625-1 ("Pukke is subject to re-incarceration if he fails to fully and strictly comply with his duties under the Contempt Order to fully purge his contempt by fulfilling Pukke's turnover duty. . . .").

Although not necessary for this Court's ruling, documents uncovered since the FTC filed this case show that this was part of a plan of action by Pukke and Baker to thwart the *AmeriDebt* Receivership and otherwise reacquire all of the valuable assets. For example, in 2012 the *AmeriDebt* Receivership was winding down but still unloading assets such as Long Cay, an island off the coast of Belize. A cache of emails shows that although the Receiver believed it was dealing with an independent John Usher and a man named Gordon Barienbrock,[8] Usher and Barienbrock were acting at Pukke and Baker's behest in negotiating and obtaining the funds for the purchase of Long Cay. Kaufman Declaration Atts. 1-2, 9-15. After this Court approved the sale of the island to Usher and Barienbrock (*AmeriDebt* DE 821), Pukke gloated:

> **It's taken some time buddy but we're getting everything they stole from us back!!**

Kaufman Declaration Att. 1 (emphasis added). Also of note, this activity occurred *after* this Court had already convicted Pukke of obstruction of justice for manipulating the *AmeriDebt* Receivership. *See United States v. Pukke*, 10-cr-734-PJM (D. Md.). The FTC, of course,

[8] As has been noted in other filings, it is now known that Barienbrock is a close associate of Pukke and Baker. As the Receiver reported, Barienbrock has lent in excess of $4 million to the SBE. PX 816 at 7 (Receiver documenting loan). Additionally, Barienbrock has submitted a declaration ostensibly supporting Peter Baker in the context of the preliminary injunction hearing. DE 290-2.

reserves the right to bring a contempt action to unwind this transaction, and other similar transactions.

As a result, it is beyond doubt that Pukke, Baker, and Usher defied this Court's Turnover Order and should now be ordered to return the Sanctuary Parcel to the Receiver, to be administered and liquidated for the benefit of consumers.

III. BOTH PUKKE AND BAKER VIOLATED THIS COURT'S ORDER PRECLUDING PUKKE AND HIS COHORTS FROM DECEPTIVE MARKETING.

The overwhelming evidence also establishes that both Pukke and Baker violated the Final Order by deceptively telemarketing Sanctuary Belize lots. Their oppositions do not present any issues precluding the Court from ruling immediately. First, both make specious legal arguments regarding the application of a TSR exemption even though that exemption is not included in the Final Order, and then baselessly assert that the sale of lots is not the sale of goods or services. Second, both assert the FTC has not established their ownership and control over the SBE, or that they did not participate in the conduct. But, Pukke offers no evidence in support of his assertions, while Baker's own testimony confirmed both his and Pukke's ownership, control, and participation. Third, they generally challenge that the deceptive claims at issue were not made, or claim they were not false. But, neither has challenged the FTC's voluminous evidence showing the claims were both made and false, aside from Baker's own self-serving testimony and some uncorroborated and conclusory declarations. This is not sufficient to rebut the FTC's voluminous evidence. Furthermore, the Court has before it recordings of SBE staff making the precise claims at issue to FTC professionals posing as consumers. Fourth and finally, although both claim they did not have "knowledge," the overwhelming evidence shows that they had the relevant knowledge.

A. Both Raise Irrelevant Issues Concerning the Application of the TSR, and Erroneously Assert That the Sanctuary Belize Lots Are Not "Goods or Services."

Both Pukke and Baker assert that the TSR's face-to-face exemption has some application to the Telemarketing Contempt. But, the Final Order does not include any such exemption. To

the contrary, the Final Order prohibits deceptive sales of goods or services "in connection with" "telemarketing," which the Final Order expressly defines to include sales activities where telemarketing is not the exclusive method of marketing. DE 473 at Definition 15 (defining "Telemarketing" to mean "any business activity . . . that involves attempts to induce consumers to purchase any item, good, or service, or to enter a contest for a prize, by means of telephone sales presentations either exclusively or in conjunction with the use of other forms of marketing"). DE 473 at Definition 15.

Additionally, while both Pukke and Baker assert that the lots in Sanctuary Belize are not "goods or services," neither offers a rationale for this position, because there is none. Pukke and Baker, in their communications with consumers, characterized the sales as sales of goods or services. PX 196 ¶ 38 and Atts. 41 & 42; PX 297 ¶ 170; PX 456; PX 457 (representing in marketing materials that GST is "charged on [the sale of] goods and services"); PX 458 (stating, in a "Sanctuary Bulletin" marketing email, that GST "is a consumer tax (12.5%), applied to most goods and services"); PX 459; PX 460. Furthermore, the FTC has historically regulated the sales of real estate,[9] and courts around the country have uniformly held that sales of land in developments, where there are services or construction to be performed, constitute the sale of goods or services. *Polonetsky v. Better Homes Depot, Inc.*, 760 N.E.2d 1274, 1278 (N.Y. 2001); *Fogelson v. Wallace*, 405 P.3d 1012, 1031 (N.M. 2017); *Brown v. Liberty Clubs, Inc.*, 543 N.E.2d 783, 786-87 (1989); *McKinney v. State*, 693 N.E.2d 65, 71 (Ind. 1998); *State ex rel. Brady v. Wellington Homes, Inc.*, No. Civ. A. 99C-09-168, 2003 WL 22048231, *4 (Del. Super. Ct. Aug. 20, 2003).

[9] *See, e.g., Southwest Sunsites, Inc. v. FTC*, 785 F.2d 1431, 1437-39 (9th Cir. 1986) (affirming an administrative order enjoining a seller of lots in West Texas from misrepresenting land purportedly usable for "homesites" and other purposes as a "low risk investment" and that consumers "could expect to double or triple their money"); *AMREP Corp. v. FTC*, 768 F.2d 1171, 1175 (10th Cir. 1985) (affirming the FTC's "jurisdiction to regulate interstate land sales").

B. Pukke and Baker's Control and Participation is Undisputed.

As to Pukke, the FTC has put forth voluminous evidence showing that he controlled every aspect of the SBE. The FTC included unchallenged declarations from former employees[10] and third-parties who did business with the SBE[11] confirming Pukke's central role. Unchallenged documentary evidence further corroborates this testimony, showing Pukke in control of all operations, even during the time period when he was incarcerated by this Court for obstruction of justice. FOF ¶¶ 507-523. Defendant Costanzo also testified that he was a high-level advisor to Pukke and that "[b]ased on my observations, everyone, whether in the United States or in Belize, ultimately reported to Andris Pukke." PX 814 ¶ 18; *see also* FOF ¶¶ 528-549 (detailing additional evidence of Pukke's control and participation). Furthermore, Pukke himself marked and offered into evidence an email from him to a SBE employee, with Pukke attaching a sales script along with the note: "Here it is with a few more tweaks." DX-AP-324. The script explicitly made most of the misrepresentations at issue.[12] Importantly, when questioned on his control and participation, Pukke pled the 5th, thus informing the Court that his truthful answers

[10] FOF ¶¶ 468-73 (Tricia Kaelin confirming Pukke's control and participation, including testimony that he was "the person who ran everything"); FOF ¶¶ 474-85 (Jimmy Moore testifying that as an employee he knew that "Pukke ran Buy Belize, Eco-Futures, and Global Property Alliance," and that Pukke controlled "sales strategy" and "hires and fires anyone he wants"); FOF ¶¶ 486-89 (Paige Reneau, a former employee and Pukke associate, declared that Pukke "control[led] Sanctuary Belize," "controlled all of the money coming in and out of Sanctuary Belize," and had authority over "sales and marketing questions").

[11] FOF ¶¶ 490-96 (Curtis Pickering, who wanted to coordinate marketing for a development with Pukke, identifying Pukke as the owner and decision maker); FOF ¶¶ 499-506 (IGY officials testifying to Pukke's involvement, with Pukke claiming to run sales and marketing and with his interests in the development itself "growing relative to Usher's").

[12] Among other things, the script claims: lots will double in value in less than three years; there will be an international airport that will create additional appreciation in value; there will be a "250-slip, 40-acre, deep water marina – the ONLY one in all of Belize;" there will be a "Marina Village" that will be "the crown jewel of Sanctuary Belize" that will prevent anyone from having to travel to get the "basic necessities" and will feature "restaurants, cafes, live entertainment, grocery stores, a farmers market, medical clinic, spa and fitness center, a first response team and a property management company," "like nothing else in all of Belize;" lots "will quickly be million dollar lots;" and the development is "DEBT FREE," which "is a HUGE advantage for you because it basically eliminates the biggest risk when buying property in a pre-construction development" and, as a result "Sanctuary Belize has created a real estate investment opportunity with huge upside appreciation and very little risk."

would tend to incriminate him. PI Hrg Tr. 77-114, 3/22/19 pm. This entitles the FTC to adverse inferences.

For his part, Baker testified during the recent hearing that both he and Pukke had control, having entered into an "equal partnership," with Baker regularly communicating with Pukke regarding sales and marketing. PI Hrg. Tr. 27:4, 3/13/19 pm (Baker and Pukke entered into an "equal partnership");[13] PI Hrg. Tr. 66:2-20, 3/13/19 pm (Baker testifying to regular phone calls with Pukke regarding "sales and marketing"); PI Hrg. Tr. 63:8-12, 3/13/19 pm ("Because I was in contact with Mr. Pukke via phone on a daily basis. Q: And you were talking about the business of GPA? A: Yes, sir."). Furthermore, Baker authenticated documents showing that he made presentations to investors that parroted the precise claims at issue in this motion, and admitted that he took part in the sales tours, including negotiating the terms of sales. DX-AP-344 (document showing Baker gave presentation to investors and attaching sales presentation); PI Hrg. Tr. 78:18 to 80:21 (authenticating DX-AP-344); DX-AP-88 & 89 (documents showing Baker's participation in sales tours); PI Hrg. Tr. 101:21 to 104:20, 3/13/19 pm (authenticating DX-AP-88 & 89).

Baker tried to challenge this evidence through his own sworn statements in an ever shifting and contradictory story. As noted above, Baker asserts he is an owner of the Sanctuary Belize development. He initially submitted a declaration that he was an owner of "Eco Futures" and "Global Property Alliance" but was not a part of the management. DE 216-1 ¶ 2. He then provided confused and shifting testimony during the preliminary injunction hearing, downplaying or denying his ownership in various entities, in contradiction to his prior sworn testimony before this Court and courts in Belize. *See, e.g.*, PI Hrg. Tr. 63:16 to 64:2, 3/13/19 pm

[13] *See also* PI Hrg. Tr. 26:18 to 27:6, 3/13/19 pm; *id.* at 10:14-20 (Baker testifying that Pukke was "my partner"); *id.* at 43:21-24 ("How do I know [Pukke's] the partner? Per our agreement in 2009 where he became my partner"); *id.* at 45:15-20 (describing Pukke as his "partner" in connection with Global Property Alliance, one of the SBE's marketing entities); *see also id.* at 27:13-18 ("[Pukke]—per his suggestion and per his—I would say it was per his—his terms were that it would be considered as sweat equity, that his 30 percent would be considered sweat equity, and that I would hold his shares until such time that he—that the development was, call it, in profit phase.").

(Baker stating "I have to change my answer, sir, because I realize there was another company involved called Buy Belize" to which the Court responded, "We're having a little trouble getting a straight answer here"). Similarly, although he testified during the hearing that he "[n]ever knew [Defendant Foundation Development Management Inc.] existed until [he] saw it on the FTC filing November 7th," PI Hrg. Tr. 36:2-10, 3/15/19 am, multiple documents show Baker knew Foundation Development Management Inc. was a part of the SBE, Kaufman Declaration Atts. 30-33.[14] More recently, he has moved the Court to re-open the preliminary injunction hearing to provide further testimony contradicting his prior sworn statements. DE 429 & 436. Notably, Baker has admitted to previously providing false testimony to this Court. PI Hrg. Tr. 78:20 to 81:14, 3/13/19 pm (admitting Pukke and associates had convinced him to lie to this Court). Taken as a whole, the Court is entitled to consider whether he has perjured himself through his "uncorroborated and confused testimony," and is further "entitled to consider whatever it concluded to be perjured testimony as affirmative evidence of guilt." *Wright v. West*, 505 U.S. 277, 296 (1992).

C. Unrebutted Testimony Confirms That The Misrepresentations Were Made, and That They Were False.

The FTC has presented voluminous evidence that Pukke, Baker, and Usher, through the SBE, made six core misrepresentations to sell lots in Sanctuary Belize: (1) that Sanctuary Belize's "no debt" model lowers the risk to buyers (in reality, it increases it), FOF ¶¶ 247-79; (2) that every dollar from consumers' lot payments would go back into the development (millions went to repay a personal loan from John Vipulis, other companies, and personal expenses), FOF ¶¶ 280-308; (3) that SBE would complete the development within two to five years (this is obviously false as to hundreds of consumers who bought more than two or five years ago), FOF ¶¶ 309-39; (4) that Sanctuary Belize would include numerous luxury amenities (which do not exist, would be exorbitantly expensive, and make no economic sense to complete), FOF ¶¶ 340-

[14] The FTC offers these emails as additional evidence of Baker's mendacity, but the Court can reach the appropriate conclusion without considering this new evidence.

427; (5) that Sanctuary Belize lots would rapidly appreciate in value (when in fact consumers cannot realize any equity through resales), FOF ¶¶ 428-44; and (6) that there is a robust resale market (when in fact consumers cannot sell lots and the SBE actively hampers their ability to try to resell lots), FOF ¶¶ 445-60. Similarly, the FTC has submitted significant, unchallenged evidence that Pukke, Baker, and Usher, lied to consumers about Pukke's involvement, leading consumers to believe Pukke either had no involvement or very limited involvement in Sanctuary Belize. FOF ¶¶ 461-527. Although the FTC has proven all seven of these claims, the FTC prevails if the Court finds that any one of these claims were made and that they were false.

When questioned at the recent hearing regarding each of these claims, Pukke pled the 5th, thus entitling the FTC to adverse inferences. PI Hrg. Tr. 100:3 to 112:6, 3/22/19 pm (Pukke taking the 5th as to whether (1) marketers made the claims, (2) marketers made those claims at Pukke's direction, and (3) Pukke knew the claims were false at the time they were made).

1. They Made the "No Debt" Claim and It Is False.

There can be no dispute they made the "no debt" claim.[15] Furthermore, undisputed evidence, and Baker's own testimony before the Court, shows that Pukke and Baker knew that the claim was false. FOF ¶¶ 261-74; Baker Depo, 2/19/19, 300:12-301:25 (confirming he knew that consumers were told that the development had no debt and that this made the development less risky). For instance, Baker, at Pukke's behest, gave a presentation seeking an investor (*i.e.* debt), explaining that the development could only be completed in a timely manner with further investment because the income from lot sales would be insufficient. DX-AP-344.

Importantly, the FTC has also submitted expert testimony confirming that the "no debt" claim is false because a lack of debt increases the risk of failure. FOF ¶¶ 261-73. Pukke and Baker incorrectly argue that because Pukke has also submitted an "expert," that the Court cannot

[15] As explained in the FOF, this claim is documented not just by testimony, but through scripts used by SBE sales people and recordings of SBE sales people making the claim. FOF ¶¶ 247-260. For instance, an SBE sales person explained the "no debt" model to an FTC professional posing as a consumer. The SBE sales person said that because there was no debt, "there's absolutely no way for you to lose your money." PX 297 ¶ 45; PX 335 at 28:9 to 29:8.

find in favor of the FTC. To the contrary, having heard testimony from both witnesses, the Court is free to weigh their testimony, including expertise and credibility, and draw a conclusion. *In re Lipitor*, 892 F.3d 624, 632 (4th Cir. 2018) (expert testimony is to be evaluated by trier of fact and, even if witness is qualified, that does not render opinion "irrefutable or certainly correct") (quoting *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 261 (4th Cir. 1999)); *FTC v. Lane Labs-USA, Inc.*, 624 F.3d 575, 583-84 (3rd Cir. 2010) (reversing district court's denial of contempt motion based on competing expert testimony); *Abbot Labs. v. TorPharm, Inc.*, 503 F.3d 1372, 1379 (Fed. Cir. 2007) (even in patent infringement cases where both parties will rely on experts, contempt proceedings are still appropriate and subject to the determinations of the trier of fact). Indeed, in *Abbot Labs.*, the Federal Circuit affirmed a contempt finding by a district court where the district court ruled that one side's experts were less credible. *Abbot Labs.*, 503 F.3d at 1381.

Importantly, the Court questioned the relevant expertise of Pukke's "expert," Eric Sussman, ruling during the hearing that his expertise was limited to "[r]eal estate in general and [] real estate finance," PI Hrg Tr. 82:1-6, 3/21/19 pm, while the FTC's expert, Professor Richard Peiser, was qualified as an expert in "real estate," real "estate development finance," as well as "new towns and large scale plan[ned] communities" like Sanctuary Belize. PI Hrg. Tr. 53:6-11, 3/12/19 am. While Professor Peiser is a preeminent expert in the field of real estate development and large scale planned communities, Mr. Sussman admitted that he had published no articles, taught no classes, and had no relevant degree on a similar topic. PI Hrg Tr. 54:1-3, 3/21/19 pm (highest degree is an M.B.A.); *id.* at 59:10-11 (no articles); *id.* at 60:8-12 (same); *id.* at 59:13 to 60:3 (no classes). There is, therefore, no basis to discount Professor Peiser's expert opinion that the "no debt" model increases risk to consumers, rather than reduces risk.

2. They Made The "Every Dollar" Claim, and It Is False.

There can also be no doubt that Pukke and Baker made the "every dollar" claim, and that it was false. As with the "no debt" claim, the FTC has shown that SBE made this claim through scripts and recordings of SBE sales people, in addition to declarations and live testimony. FOF

¶¶ 280-84. Similarly, the FTC has shown its falsity through unchallenged evidence that little money was spent on Sanctuary Belize while significant amounts of lot payments were diverted for personal expenses, typically for Pukke. Most powerfully, the Receiver reported to the Court that Pukke alone received nearly as much money, $15.9 million, as was spent on development, $17.4 million (just 14% of revenue). PX 816 at 9, 11. Additionally, expert testimony, including Pukke's "expert," determined that spending less than 20% of revenue on development, as SBE did, is neither standard nor appropriate developer behavior. PI Hrg. Tr. 77:14-79:19, 3/12/19 pm; PI Hrg. Tr. 77:7-79:22, 3/22/19 am.

3. They Made The Amenities Claims, And They Were False.

The FTC has also put forth voluminous evidence showing that Pukke, Baker, and Usher, through the SBE, promised consumers numerous luxury amenities, including a world class marina, bustling marina village, hotel, hospital, golf course, airport, and completed infrastructure. FOF ¶¶ 340-427. Furthermore, the evidence is overwhelming that they promised to complete these amenities in a short period of time, typically in less than five years. FOF ¶¶ 309-339. Documents show sales people were reprimanded if they did not promise the development would be completed in a short period of time. PX 204 ¶ 2:1. There is also no dispute that the marina is incomplete, there is no marina village, no hotel, no hospital, no golf course, no airport, and incomplete infrastructure, and that there are neither plans to complete many of these amenities nor economic reasons for these amenities to exist. FOF ¶¶ 340-59.[16]

Pukke and Baker's response is that consumers could not have been misled by these claims because no reasonable consumer would believe them. Not only is this response contrary to the law, it is offensive and displays their callous disregard for their victims. Consumers are entitled to rely on express claims by marketers. *FTC v. Five–Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) (quoting *FTC v. Int'l Computer Concepts, Inc.*, No. 5:94CV1678, 1995 WL 767810, *3 (N.D. Ohio Oct. 24, 1995); *see also FTC v. Crescent Pub. Group, Inc.*, 129

[16] Pukke's "expert," Mr. Sussman, and lay witness, Anthony Mock, have testified before the Court and do not credibly challenge the FTC's evidence. FOF ¶¶ 730-757.

F. Supp. 2d 311, 321 (S.D.N.Y. 2001); *FTC v. Alcoholism Cure Corp.*, No. 3:10-cv-266, 2011 WL 13137951, *27 (M.D. Fla. Sept. 16, 2011) ("Reliance may be presumed when it is in response to an express claim[.]"), *aff'd sub nom. FTC v. Krotzer*, No. 12-14039-AA, 2013 WL 7860383 (11th Cir. May 3, 2013). Furthermore, they cannot defeat an express claim by saying it defies common sense. Notably, in *FTC v. Tashman*, 318 F.3d 1273 (11th Cir. 2003), the Eleventh Circuit addressed just such an argument and reversed the district court for concluding that consumers could not have been deceived by the defendants' express claims because they should have had some "walking around common sense." *Id.* at 1278. The Eleventh Circuit strongly disagreed, ruling that there is no "'extravagant claim' defense." *Id.* at 1277. The law is clear: marketers must live up to their claims.

4. They Made the Appreciation and Resale Claims, And They Were False.

Again, Pukke and Baker blithely assert that this claim was not made, while the undisputed evidence shows the contrary. Consumers were told, repeatedly, that that their lots would appreciate and that they would be able to resell them. FOF ¶¶ 428-44 (appreciation), 445-60 (resale market). As shown by the same evidence, consumers could do nothing of the sort. FOF ¶¶ 435-40 (no appreciation), 450-55 (no resale market). Neither Pukke nor Baker have provided the Court with evidence showing consumers were able to resell lots, let alone for amounts greater than they paid.[17] Instead, Pukke and Baker argue that the lots in fact appreciated, either through evidence of the increasing prices that *SBE* was selling lots for, or Mr. Sussman's unfounded valuation of Sanctuary Belize lots. Dealing with the first assertion, SBE's sales are not relevant to this claim at all. Consumers were promised *they* would realize the appreciation through resales. It is of no import, or consolation, to them that SBE may be able to sell similar lots for significant sums if consumers cannot do so themselves. Similarly, although Mr. Sussman valued the lots at $800,000/acre, he admitted that this was not a price a consumer

[17] At most, they offer one example of a single consumer that may have been able to sell lots for a profit. But, as Baker testified, "there wasn't a lot of people who originally first bought who then flipped for a profit like her." Baker Depo., 2/19/19, at 344:22-344:24.

could have actually realized through a sale prior to the FTC's lawsuit. PI Hrg. Tr. 102:5-18, 3/22/19 am. Again, this valuation has no meaning if consumers could not realize it through an actual sale.[18]

Since the hearing, the FTC has uncovered additional evidence supporting liability against Pukke and Baker. For instance, in a series of emails from 2017, consumers complain to Pukke and Baker about being unable to resell lots. As the owners recount: "selling owners on investment lots has been a major element in sales presentations for years." Kaufman Declaration Att. 3. While not necessary for the Court to hold Pukke and Baker in contempt, the email provides further support for the proposition that Pukke, Baker, and the rest of SBE were thwarting consumers' efforts to resell lots and were otherwise aware that consumers were having great difficult selling lots. *Id.*

5. They Misled Consumers About Pukke's Involvement.

Neither Pukke nor Baker even respond to extensive proof that they lied to consumers about Pukke's involvement. Nonetheless, the evidence is extensive, and undisputed. FOF ¶¶ 461-527. As detailed in the FOF, Pukke hid his involvement, including using aliases such as Marc Romeo and Andy Storm. Furthermore, Baker knew Pukke was hiding his involvement. In fact, Baker helped Pukke hide by holding Pukke's shares in the development in his name. *See, e.g.,* PI Hrg. Tr. 27:13-18, 3/13/19 pm (Baker explaining he held Pukke's shares).

Although that evidence is sufficient, since the preliminary injunction hearing the FTC has uncovered emails in which Baker affirmatively misled the public as to Pukke's involvement. In 2017, the Wall Street Journal published a negative article regarding Sanctuary Belize, including recounting allegations that Pukke had been hiding his ownership over the development. *See* PX 811. In response, Pukke, Baker, and other SBE principals coordinated a response to the article's

[18] Furthermore, Mr. Sussman's valuation is not credible. As he admitted on cross examination, he did not follow standard real estate appraisal practices when valuing the land. PI Hrg. Tr. 84:22 to 86:17, 3/22/19 am; *id.* at 87:13 to 88:24 (admitting that one should look at comparable properties but that he did not do so and, furthermore, was unaware of any particular consumer who had sold a lot for a profit). He also admitted that he relied on listing prices rather than actual sales prices when creating his valuation. PI Hrg. Tr. 82:11 to 84:17, 3/22/19 am.

author. The emails show that Pukke had final approval and that Baker was to send the response to the article's author. Even though Baker has testified before this Court that Pukke was in fact an owner of the development, and the documentary evidence confirms Pukke's control, Baker agreed to send an email stating: "Mr. Pukke was a paid employee of the third party company that handles our sales and marketing, period! He is neither an owner, shareholder or director of any of the development companies, nor the marketing and sales companies involved with Sanctuary Belize." Kaufman Declaration Atts. 4-5. There can be no dispute that SBE was hiding Pukke's involvement, or that Pukke and Baker were party to this aspect of the fraud.

6. Pukke and Baker's Witnesses Cannot Change the Result.

To the extent any of these allegations have been countered, it has been through conclusory declarations. However, uncorroborated, conclusory declarations should be given no weight. *Simard v. Unify, Inc.*, No. 1:15CV1649(JCC/TCB), 2016 WL 3854451, at *5 (E.D. Va. July 15, 2016), *aff'd*, 688 F. App'x 228 (4th Cir. 2017) ("Where assertions made by affidavits or declarations prepared for the motion for summary judgment are conclusory or conflict with prior statements or deposition testimony, the affidavit or declaration is insufficient to create a genuine issue of material fact.") (citing *Barwick v. Celotex Corp.*, 736 F.2d 946, 959 (4th Cir. 1984)). This is so because these conclusory declarations cannot change the existence of the *voluminous documentary evidence* showing the relevant claims were made and that they were false, as detailed in the FTC's FOF.

Additionally, Pukke and Baker's live witnesses, Michael Curley and Simon Nathan, showed how unreliable these declarations are. In contrast to the FTC's witnesses, neither Mr. Curley nor Mr. Nathan provided any documentary evidence to substantiate their testimony. Notably, Mr. Nathan testified that he did not participate in any of the sales phone calls before visiting Sanctuary Belize (his wife did), and that he does not know what may have been said during those sales calls. PI Hrg. Tr. 33:23 to 34:8, 3/22/19 pm. Although Mr. Nathan recalled there being printed sales materials, he did not have any of those materials with him, or recall what they included. PI Hrg. 35:20-22. But, when presented with examples of sales materials

containing representations of luxurious amenities that other consumers testified to receiving, he stated that he "recall[ed] seeing [] document[s] like" them. PI Hrg. Tr. 36:25 to 37:8, 3/22/19 pm. When confronted with specific claims about the development that contradicted his prior testimony, Mr. Nathan attempted to explain "it wasn't something of particular interest; therefore, I wasn't concentrating on it." PI Hrg. Tr. 38:23-25, 3/22/19 pm. Notably, Mr. Nathan did admit that he was promised a commercial Marina Village, including a hotel. PI Hrg. Tr. 39:3 to 40:11, 3/22/19 pm. Mr. Nathan also admitted that he bought two lots based on the claim that the lots would appreciate in value such that he could sell one lot and use the profit to build on the other. PI Hrg. Tr. 42:13-24, 3/22/19 pm. Furthermore, having heard live testimony from both the FTC's witnesses and Pukke and Baker's witnesses, the Court is entitled to make credibility determinations to the extent Curley and Nathan's testimony conflicts with that of the FTC's witnesses and the other evidence before the Court.

D. Both Pukke and Baker Had Knowledge of Their Violations.

Not only did they violate the Final Order, they did so with "knowledge (at least constructive knowledge) of such violations." *Schwartz*, 261 F. Supp. 3d at 612 (citing *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 301 (4th Cir. 2000)). As with FTC Act violations, this does not require "[w]illfulness." *Schwartz*, 261 F. Supp. 3d at 612-13 (quoting *Redner's Markets, Inc. v. Joppatown G.P. Ltd. Pship*, 608 Fed. Appx. 130, 131 (4th Cir. 2015)). It is enough to show that they had knowledge of violative conduct, which both plainly did given their control over and direct participation in the conduct. Again, this is very similar to FTC Act jurisprudence, under which knowledge can be shown by the degree of participation in the conduct. *FTC v. Affordable Media*, 179 F.3d 1228 (9th Cir. 1999) (dismissing claims by principals that they had done due diligence to determine the lawfulness of the conduct, reasoning: "The extent of an individual's involvement in a fraudulent scheme alone is sufficient to establish the requisite knowledge for personal restitutionary liability.").

Furthermore, as the FTC has detailed in its FOF, significant evidence shows that they knew that their conduct was fraudulent or otherwise had knowledge of complaints of deceptive

conduct. FOF ¶¶ 550-58 (Pukke) & 605-23 (Baker). Notably Baker gave presentations in which he admitted the "no debt" model touted to consumers was not viable (DX-AP-344), had significant knowledge that Pukke was unlawfully siphoning funds from the development, knew that there were not current plans to complete Sanctuary Belize as promised, and actively assisted Pukke in hiding his role through the alias Marc Romeo. Additionally, Baker took part in an effort to scrub Internet searches of negative articles accusing SBE of fraud. PI Hrg Tr. 90:8-92:9, 3/15/19 am (describing relationship with Lark Gould, a woman hired to eliminate negative online articles from search results); DX-AP-343 (email correspondence regarding efforts). Although Baker has minimized this activity in his recent court filings, the Court can take comfort that his protestations are baseless and nothing more than further evidence of Baker's lack of credibility given that the FTC has uncovered numerous additional documents showing Baker's deep involvement in this effort. Kaufman Declaration Atts. 16-29.

For his part, Pukke, as the head of sales, directed sales people to make the violative claims, and thus knew precisely what claims were being made, while taking steps to hide his own involvement. *United States v. Burgos*, 94 F.3d 849, 872 (4th Cir. 1996) (use of alias relevant to proving guilt); *United States v. King*, 577 Fed. Appx. 701, 704 (9th Cir. 2014) (intentional concealment of identity is relevant to guilty knowledge); *United States v. Birges*, 723 F.2d 666, 672 (9th Cir. 1984) (same). The FTC details evidence showing his knowledge in the FOF. FOF ¶¶ 550-57. Furthermore, Pukke pled the 5th when questioned about his knowledge of the deceptive conduct, therefore determining that his truthful answers would tend to incriminate him. PI Hrg. Tr. 100:3 to 112:6, 3/22/19 pm (Pukke taking the 5th as to whether (1) marketers made the claims alleged herein, (2) marketers made those claims at Pukke's direction, and (3) Pukke knew the claims were false at the times they were made). The FTC is entitled to adverse inferences.

IV. PUKKE IS LIABLE FOR IMPROPERLY REPAYING A LOAN TO JOHN VIPULIS.

Pukke has not challenged the FTC's evidence that he improperly repaid the loan to John Vipulis from SBE funds. Although the FTC has received some payment from John Vipulis, the motion is not moot. Vipulis himself agreed that if the FTC determines that he was paid more than he has turned over, the FTC may pursue him for those extra monies. DE 326. The same must also be true as to Pukke. A finding of contempt based on the unchallenged evidence will simplify any such later process if it turns out that the FTC is owed additional payment.

V. CONCLUSION

The motions are ripe and Pukke, Baker, and Usher are liable for civil contempt, having violated the Court's orders by conspiring to withhold the Sanctuary Parcel from the *AmeriDebt* Receiver and selling Sanctuary Belize lots based on misrepresentations. Pukke is also liable for civil contempt for repaying a loan to Vipulis, in violation of this Court's order. Pukke, Baker, and Usher should, therefore, be ordered to turnover the Sanctuary Parcel to the Receiver and compensate consumers for their deceptive conduct. Pukke should also be held in contempt and ordered to pay any outstanding funds he improperly paid to Vipulis.

Dated: May 17, 2019

Respectfully Submitted,

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Certificate of Service

I, Benjamin J. Theisman, hereby certify that on May 17, 2019, I served the foregoing FEDERAL TRADE COMMISSION'S OMNIBUS REPLY IN SUPPORT OF ITS MOTIONS TO HOLD ANDRIS PUKKE, PETER BAKER, AND JOHN USHER IN CONTEMPT, and all related documents through ECF and otherwise by email to the following people and entities:

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