UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

In re SANCTUARY BELIZE LITIGATION	No. 1:18-cv-3309-PJM

FTC'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR APPROVAL OF ITS INTERM RECEIVERSHIP MANAGEMENT PLAN

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INTRODUCTION

The *Sanctuary Belize* Receivership presents unusually complex remedial questions courts rarely encounter. By far, the most urgent issue—and the Receivership's primary purpose—is to maintain the status quo during this matter's pendency. *See, e.g.*, DE431 (Apr. 25, 2019) (explaining that preliminary injunctions exist to "preserv[e], as much as possible, the relative positions of the parties" until trial). In addition to the approximately $100,000 the Commission already made available, *see* DE355 (Mar. 26, 2019), the FTC's Plan contributes the balance of its *AmeriDebt* contempt recovery—$4 million—to cover any unfunded expenses necessary to ensure the development's safety and otherwise preserve assets. The FTC's Plan also enhances the Receiver's communication with consumers and reflects specific, immediate concerns lot purchasers expressed to the FTC through written communications and an in-person meeting. Notably, the Court-appointed Receiver supports the FTC Plan, which reflects the Receiver's input and serves the interim Receivership's purposes: preserving assets and preventing waste.

However, despite the urgent need to preserve assets and prevent waste, the purpose of the interim receivership is not to sell more lots, build missing canals and bridges, enforce contracts SBE procured through fraud, or divert assets to Pukke, Baker, or their associates. As discussed below, both Pukke and Baker ask the Court to trust them to fix the problems they caused. Allowing them to continue along the path that led to the current situation is untenable and obviously contrary to the Receivership's purpose. Their plans also improperly resume development (rather than maintaining the status quo), enforce fraudulently obtained contracts, and micromanage development affairs that the Court-appointed Receiver should address.

Additionally, a group of nine homeowner couples propose a plan ("the Nine Homeowners Plan"), although the Court denied their motion to intervene, DE311 (Mar. 13, 2019). It is unclear who they represent. Significantly, multiple lot purchasers report that the proposed intervenors wrongly identified them as endorsing the proposed intervenors' positions when, in reality, they do not. *See* PXB-D (declarations from lot purchasers the proposed

intervenors incorrectly identified as supporting their position).[1] It is also unclear what the proponents told other lot purchasers to obtain purported endorsements; suffice it to say, the Nine Homeowners Plan appears attractive if one assumes—incorrectly—that the only alternative is allowing the development to waste as the litigation continues. In any event, the Receivership cannot unfairly favor one set of consumers over another. However, the Nine Homeowners Plan does exactly that—it picks winners and losers among the lot purchasers before we even know who all the lot purchasers are,[2] let alone how much is available to address competing claims.

In short, the Commission urges the Court to implement the FTC Plan, which ensures the Receivership's stability during the case without requiring the Court to guess, prematurely, at what an equitable final resolution would be.[3]

BACKGROUND

I. The Receivership

A. The Receivership Generally

As the Court is aware, the FTC alleges that Andris Pukke and his associates control an intertwined set of entities (the Sanctuary Belize Enterprise ("SBE")) that collectively operate an enormous real estate development in remote southern Belize ("Sanctuary Belize"). The FTC alleges that SBE defrauded hundreds of consumers into buying lots based on extensive false promises about the development.[4] As the FTC explains in a pending contempt motion, SBE

[1] The FTC has also received other allegations that plan proponents have misrepresented other claimed support for the Nine Homeowners Plan, and acted to suppress views of lot purchasers who disagree in whole or in part with their proposal.

[2] The Receiver has not yet created a definitive list of lot purchasers, which is understandable given the scam's fifteen-year lifespan and the poor state of SBE's recordkeeping. *See* PX816 at 18 (discussing SBE's recordingkeeping); PXA ¶ 14:8, Hrg. Tr. (Mar. 20, 2019 PM) at 97:17-99:3; *id.* at 110:13-111:12.

[3] Because the FTC Plan now addresses any risk that the Receivership could face short-term financial distress, the FTC withdraws the concept it suggested in March and submits an accompanying proposed order reflecting the FTC Plan discussed here.

[4] This filing will not review material covered elsewhere with which the Court is familiar. Unless otherwise specified, references to Plaintiff's Exhibit numbers (for instance, PX 100) refer to hearing exhibits, and references to Plaintiff's Exhibit letters (for instance, PXA) refer to

controls the development only because Pukke and co-conspirators Peter Baker and John Usher subverted *AmeriDebt* receivership orders requiring them to turn the land over to the receiver.

Most pertinent here, the Court placed SBE's assets into a Receivership. Practically speaking, this means that Sanctuary Belize is in the Receivership because the Receiver controls what SBE previously controlled—essentially, the entire Manhattan-sized development except for lots SBE sold to consumers already. Thus, unlike typical receiverships, the *Sanctuary Belize* Receivership includes miles of unpaved roads, partly-completed utilities, a portion of a marina, various other amenities and facilities, unsold lots, and an enormous amount of vacant land. What happens to these resources will substantially affect outcomes for hundreds of SBE victims, most of whom will never live in Sanctuary Belize.

B. The Three Groups of Lot Purchasers

The hundreds consumers who purchased at least one lot are divisible into three relatively discrete groups: (1) consumers were informed they were "foreclosed," were "in default," or were otherwise informed that the developer would take back their lot, but who did not receive a full refund; (2) consumers who reside in Sanctuary Belize or own a completed or partially completed home; and (3) consumers who purchased a lot, but are not in categories (i) or (ii). Significantly, although each category of consumers shares an interest in maximizing recovered funds, their interests diverge substantially regarding mid-term needs.

The first category—lot purchasers who have lost everything—no longer has any interest in living in Sanctuary Belize, so spending money on amenities reduces their recovery. The Court received declarations from these consumers and heard their live testimony; many have lost hundreds of thousands of dollars, and these losses have substantially affected their lives.[5]

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attachments to this submission. Additionally, for certain hearing exhibits with internal attachments (for instance, consumer declarations), references to those attachments are followed by a parenthetical page reference denoting the page range in the PDF file.

[5] PXA ¶ 16:10, Hrg. Tr. (Mar. 11, 2019 PM) at 107:5-19 (consumer testifying that he and his wife have spent $170,000 in payments and fees related to their lot purchase in Sanctuary Belize, which comprised "80 percent of [their] retirement nest egg . . . in 2014, so that's gone"

The second group—lot purchasers who reside in Sanctuary Belize or are about to complete a home—is, by far, the smallest group. It includes the Nine Homeowners.[6] Estimates vary, but after fifteen years, of the more than 1,300 to 1,400 lots sold,[7] purchasers have started or finished homes on only 80 lots,[8] which means only a small fraction of lot purchasers are "second category" purchasers. Although their interests are important and they are understandably the most vocal, they represent a small minority of affected lot purchasers.

The third category includes lot purchasers not in the first two groups. This group includes hundreds of consumers who did not experience a claimed "default" or "foreclosure," but who do not currently live in Sanctuary Belize or plan to move soon. Some of these purchasers would sell their lots immediately if they had any material value, some have adopted a "wait and see" approach, and some still hope to build a Sanctuary Belize home eventually.

Although long-term solutions likely exist that both treat everyone fairly and maximize all categories' overall welfare, any Court-approved interim receivership management plan should balance the interests of each lot purchaser category.

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and has had "a huge impact on when we can retire and what quality of life we will have in retirement"); PX186 ¶ 1 (consumer stating that he and his wife "paid at least $310,000 to Sanctuary Belize, but we have nothing to show for it); PX183 ¶ 2 (consumer stating that she and her husband "spent approximately $233,000 on the lot [in Sanctuary Belize], but received nothing of value in return"); PX181 ¶ 1 ("We paid at least $125,000 to Sanctuary Belize, but we have little to show for it[.]").

[6] *See* DE286 (Mar. 8, 2019) at 3-4. The proposed intervenors identify themselves as nine couples, eight of whom reside in Sanctuary Belize or own a completed home there. *See id.* The ninth couple owns a lot, and has rented completed homes for the past two years. *See id.*

[7] Determining the exact number of lot purchasers is difficult because, among other things, couples buy lots together, some lot purchasers bought more than one lot, and SBE resold dozens of lots multiple times. SBE sold 1,314 lots from 2009-2018, *see* DE219 at 24, and it likely sold a relatively small number of lots from 2005-08, before the Receivership has records, *see*, *e.g.*, *see also* PX 634 (2005 Baker email showing lot sales had already occurred). Thus, most likely, SBE sold around 1,400 lots.

[8] DE347-2 (Mar. 22, 2019) at 1 (proposed interveners' filing claiming there are "over 40 completed homes" and "40 in various stages of construction"); DX-AP-01 at 5 (claiming "over 50" homes).

C. Numerous Unresolved Issues Remain

Not only did SBE break the specific promises that are the subject of this litigation, SBE has no expertise in large-scale real estate development. Its dishonest and haphazard management left Sanctuary Belize and the Receivership with problems too numerous to summarize here. By way of example only, three warrant mention. First, substantial infrastructure remains incomplete. Pukke's own purported expert acknowledged that 40% of lots lack power, water, or both.[9] Lot purchasers have contacted the FTC about myriad issues, including SBE's broken commitments to complete canals and roadways. As the Nine Homeowners explain, more than 80% of lots are in Sanctuary Belize subdivisions with unfinished roads or no roads at all. DE347-2 (Mar. 22, 2019) at 6. Three subdivisions are missing canals, and one (Sapodilla Ridge) is missing bridges. *See id.* Significantly, as the Receiver testified, it could not locate any SBE plan to complete the development's infrastructure.[10]

Attempting to address these problems now does little for the third group of lot purchasers and nothing at all for the first group. Put differently, funding specific development projects—for instance, digging a particular canal or grading a specific road—does nothing for the first group of purchasers and little for the third because such purchasers will never move to Sanctuary Belize, or at least not anytime soon. In fact, building a particular canal or grading a specific road favors purchasers with lots near the canal or the road at the expense even of other consumers who live in the development, as these other lot purchasers likely would prefer improvements to their area or that have a wider benefit. Furthermore, whatever approach is ultimately taken to complete portions of the development, creating a plan to do the work would, at minimum, require knowing approximately what resources are likely available and what work it makes sense to do. At the moment, no party is in a position to address these complex questions.

[9] DX-AP-1 at 4 (PDF 5).

[10] PXA ¶ 15:9, Hrg. Tr. (Mar. 21, 2019 AM) at 33:4-11, 34:18-35:7.

Second, SBE repeatedly sold lots it lacked the right to sell. Specifically, SBE would "foreclose" on a lot and add it to its inventory for resale without extinguishing the rights to the lot the prior purchaser had. As the Receiver explains, "**191** lots have been sold more than one time. These 191 lots were sold to 423 buyers. One lot was sold five times, four lots were sold four times, thirty lots were sold three times, and 156 lots were sold two times." DE219 (Feb. 22, 2019) at 23 (emphasis added). One consumer explains how SBE resold a lot he owns to another lot purchaser who subsequently built a home on the lot:

> My wife and I purchased two lots at Sanctuary Belize, paid for them in full, and obtained title to both lots. We sold one of our lots back to the developer under a 30-year Resale Contract. I am aware that the developer sold that lot to a new purchaser and that purchaser built a home on that lot. However, I still hold title to the lot because the Resale Contract has not yet been fully paid and will not be until approximately 2040.

PXB ¶ 3. In fact, "twenty-two consumers who are disputing claims of other consumers to their lots" have contacted the Receiver. DE219 at 23. Suffice it to say, the 191 lots SBE sold multiple times present difficult questions, and the development cannot move forward until questions regarding who owns which lot—and what to do about cases like this—are resolved.

Third, the eventual scope of the Receivership is unclear. The FTC has already amended its complaint to encompass lots SBE sold in a neighboring development (Laguna Palms) using the same misrepresentations. SBE later took back those lots and gave the purchasers lots in Sanctuary Belize instead. Additionally, SBE's sales operation used similar claims to sell lots in the adjacent Kanantik development in which Pukke, Defendant Atlantic International Bank Limited ("AIBL"), and Defendant Luke Chadwick all apparently have interests.[11] The FTC has received numerous requests from consumers that it take action concerning Kanantik, but it is

[11] *See* PX816 at 73-74 (discussing Kanantik's holding companies as "potential related entities"). The nature of these interests is beyond the scope of this filing, but we note (preliminarily) that Chadwick disputes Pukke's interest, *see* DE219 at 76, and Pukke has not addressed this issue because he has not testified at all. AIBL (or the Liquidator) holds an interest because Kanantik secures loans Chadwick did not repay. Additional discovery is necessary to understand these relationships.

premature to assess whether the Receiver can and should ultimately assume control over it. Regardless, designing any long-term plan to move the development (or developments) forward involves clearly understanding what real property and other assets it contains.

Viewed overall, significant and complicated issues remain unresolved and cannot be resolved in the near term. Simply put, the issues this Receivership presents are not only numerous, they are a complicated and not amenable to quick or simple solutions.

D. The Evidence Against Peter Baker

1. Baker Has a Track Record of Dishonesty and Disregard for the Court's Orders

Peter Baker proposed a plan, DE346 (Mar. 22, 2019), which makes both his role in this matter and the substantive evidence against him important here. Baker touts his long history with the development, but his dishonesty and contumacious behavior cloud that history. As the Court is aware, Pukke and Baker are childhood friends,[12] and Baker owned Dolphin Development LLC, the original Sanctuary Belize developer.[13] Following the *AmeriDebt* Receivership, Baker continued his ownership through "an arrangement, an agreement . . . via handshake" with Pukke, John Usher, and Stephen Choi.[14]

Contempt proceedings ensued regarding Baker's efforts to help Pukke hide assets, the Court found Baker (and Pukke) in contempt for their refusal to turn over receivership assets, including the development.[15] Among other things, the Court also found "lies" related to assets "that were made not once, but multiple times by Mr. Baker under oath, under penalties of perjury[.]"[16] Concerning their efforts to hide Pukke's wealth, the Court noted that "[t]here's a

[12] PXA ¶ 11:5, Hrg. Tr. 77:4-9.

[13] PXA ¶ 11:5, Hrg. Tr. 12:4-13:14.

[14] PXA ¶ 11:5, Hrg. Tr. 21:23-22:14.

[15] DE571 (Mar. 30, 2007).

[16] PX385, Tr. (Mar. 14, 2007) at 25:13-20 (calling Baker's claims "incredible" and "outlandish").

casualness about Mr. Baker's statements and, indeed, about Mr. Pukke's as if the truth doesn't really matter."[17] The Court concluded that both Pukke and Baker acted with "real mendacity," and that their credibility was "zero."[18] Despite the contempt finding, neither Pukke nor Baker would comply with turnover orders. The Court subsequently reiterated that they had lied "dozens" of times,[19] including "when [they] took the stand under oath."[20]

The Court granted motions to incarcerate Pukke and Baker.[21] It later denied Pukke and Baker's motions to stay pending appeal,[22] emphasizing that their stories about Pukke's assets were "absurd" and "ludicrous."[23] As the Court put it, "[t]he mendacity of these two men throughout the history of this receivership is something to behold."[24]

2. Overwhelming Evidence Shows Baker's Liability

a. Baker Had Authority to Control SBE's Deceptive Practices.

In the Fourth Circuit, individuals are liable for monetary relief if they "(1) participated directly in the deceptive practices **or** had authority to control those practices, and (2) had or should have had knowledge of the deceptive practices." *FTC v. Ross*, 743 F.3d 886, 892 (4th Cir. 2014) (Fourth Circuit's emphasis). Significantly, the FTC has already advanced substantial evidence that Baker had authority to control SBE's deception, that he participated in the deceptive practices, and that he knew or had reason to know about SBE's deception. As a result, the likelihood that the FTC will prevail against Baker is extremely high.

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[17] *Id.* at 25:22-24.

[18] *Id.* at 26:5-6.

[19] *Id.* at 101:19.

[20] *Id.* at 101:14-15.

[21] DE604 (May 4, 2007).

[22] DE607 (May 4, 2007).

[23] PX387, Tr. (May 4, 2007) at 26:3-8; *id.* at 26:12-13.

[24] *See id.* at 27:7-8; 27:9-10.

Among other evidence, Baker had authority to control SBE's deceptive practices because he stated under oath that he owns Defendants Global Property Alliance and Eco-Futures (BZ).[25] He was also CEO of Buy Belize,[26] and he held board positions for Defendants Buy International, Sittee River Wildlife Reserve, and Foundation Development Management.[27] He served as bank signatory for SBE entities,[28] and Fictitious Business Names ("FBNs") SBE used are in Baker's name.[29] Baker signed leases for SBE's office space,[30] and (along with Pukke) his name appears at the top of SBE's internal telephone directory.[31] Baker also testified that he owns 29% of SBE (without regard to any specific entity).[32]

Most important, despite Baker's newfound ignorance about owning SBE entities or serving as their officer, before the FTC filed this action, Baker routinely acknowledged his role. As Baker **himself** wrote in an email in 2016, he knew the "[c]ompanies were in his name."[33] Baker also provided a sworn statement that he was the "Sales Manager of Global Property Alliance Inc. (GPA)" as of 2014.[34] Furthermore, as SRWR Chairman, Baker attached a history of Sanctuary Belize to the 2016 SRWR Board Meeting Minutes, in which Baker himself wrote that he "formed [GPA]" and hired SBE Defendant Rod Kazazi.[35] In 2018, when Baker needed to

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[25] DE 216-1 (Feb. 21, 2019) ¶ 2.

[26] PX538.

[27] PX541; PX544; PX688 (CEO of Buy International); PX 358 (SRWR Director); PX370 at 21 (Baker as Director in 2003 seconding Pukke to be SRWR Chairman); PX192 ¶ 3:24 at 15 (Baker as SRWR Chairman in 2016).

[28] PX46 at 83 (GPA account); *id.* at 85 (GPA account); *id.* at 46 (GPA account); *id.* at 89 (GPA account); *id.* at 101 (GPA 5846 "commissions" account); *id.* at 103 (GPA account d/b/a Sittee River Wildlife Reserve);

[29] PX54-58.

[30] PX 160-61.

[31] PX 455.

[32] PXA ¶ 11:5, Hrg. Tr. 21:23-22:14; *id.* at 24:11-17.

[33] DX-AP-366; PXA ¶ 11:5, Hrg. Tr. 22:5-7 (Baker testifying that he wrote this email).

[34] PX896 at 5; Hrg. Tr. (Mar. 15, 2019 PM) at 36:13-37:4 (Baking testifying that he signed the document); *id.* at 38:10 ("I am not denying that I signed it, no.").

[35] PX192 ¶ 3:24 (at PDF 27).

provide AIBL with information about a wire transfer, he caused an SBE employee to send AIBL a letter confirming that Baker is the "Owner and Managing Director of Eco-Futures Development."[36] These roles show that Baker had authority to control, and it strains credulity to accept that that Pukke installed Baker in these functions without his knowledge or consent.

b. Baker Directly Participated in SBE's Deception.

It is unclear how or why Baker would have acknowledged his ownership interests and officer roles if he didn't have any, but even if the Court accepted Baker's farfetched explanations, Baker is liable because he "directly participated" in the deceptive practices. For instance, Baker was one of the original marketers of the Sanctuary Belize development, prior to the *AmeriDebt* receivership. He directed marketing activities[37] and was the sales contact on marketing materials.[38] Baker was copied on emails containing sales scripts boasting various amenities as early as 2005,[39] and he conferred with Pukke daily regarding SBE's operations, including marketing.[40] Indeed, Baker admitted that he was involved with SBE's marketing at least until 2009, when SBE hired Chadwick.[41]

Even after 2009, Baker admitted he was an "active participant."[42] Baker worked for SBE from Europe, marketing to potential investors and attempting to start a European marketing

[36] PX892.

[37] PX611 (email from Baker describing his "zeal" in driving the marketing).

[38] PX623 (Sanctuary Bay website listing Peter Baker as the sales contact).

[39] PX362.

[40] PXA ¶ 11:5, Hrg. Tr. 66:2-20 (Baker testifying to regular phone calls with Pukke regarding "sales and marketing"); *id.*, Hrg. Tr. 63:8-12 ("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.").

[41] PX611 (email from Baker describing his "zeal" in driving the marketing as of 2005); PX623 (2005 Sanctuary Bay website listing Peter Baker as the sales contact); DE216-1 ¶ 2 (was involved in marketing until 2009); PXA ¶ 11:5, Hrg. Tr. 45:7-14 (Baker did sales until Chadwick came on board); PX395 (email showing Baker was involved in sales as of 2009).

[42] DX-AP-366.

operation.[43] In fact, one of Baker's presentations to potential investors included information about the Sanctuary Belize website and SBE's TV campaign.[44] It also reiterated many of SBE's core claims: it promised amenities including a "250 slip marina," a "Marina Village containing commercial and retail elements, including hotel, yacht club, [and] promenade," and a "[s]tate-of-the-art hospital providing US standard-of-care treatment."[45] The presentation Baker provided also repeated the claim that SBE would finish the development quickly, touting an "expected development timeline of 3-5 years."[46] Among other things, Baker also helped reduce or eliminate negative articles about Sanctuary Belize from online search results,[47] and he approved claims that SBE could make online.[48]

Beginning in 2016, Baker resumed an active management role in Belize. For instance, he intervened on Pukke's behalf in a dispute between Pukke and Usher regarding who would manage and operate the development.[49] The end result was Baker assuming a larger role,[50] and Usher assuming a smaller one that Pukke and Baker jointly determined.[51] More recently, Baker

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[43] PXA ¶ 9:3, Hrg. Tr. (Mar. 14, 2019 AM) at 124:1-13; DX-AP-344.

[44] DX-AP-344.

[45] DX-AP-344 at 9.

[46] DX-AP-344 at 21.

[47] PXA ¶ 12:6, Hrg. Tr. (Mar. 15, 2019 AM) at 90:17-91:17 (describing relationship with party hired to eliminate negative online articles from search results); DX-AP-343 (correspondence regarding efforts).

[48] DX-AP-343 at 3.

[49] PXA ¶ 11:5, Hrg. Tr. 83:17-84:19 (describing meeting in 2016 in which Usher accused Pukke of taking $24 million out of the development); *id.*, Hrg. Tr. 85:4-12 (Baker, on his and Pukke's behalf, travelled to Belize to confront Usher when Usher attempted to wrest total control); PX836 (email in which Baker recounts his confrontation with Usher, calling Usher a "thief," and prior email from Usher indicating that Pukke and Baker can run things in Belize directly moving forward); PXA ¶ 11:5, Hrg. Tr. 90:13-91:7 (Baker testifying that following the dispute with Usher he took a hands-on role in Belize); DX-AP-366 (email exchange among Pukke, Usher, and Baker following the 2016 meeting regarding the plan moving forward, with Pukke and Baker directly controlling activities in Belize).

[50] PXA ¶ 11:5, Hrg. Tr. 90:13-16 (Baker became SRWR Chairman in 2016); *id.* at 39:1-11 (took on "Managing Director" role in 2017); PX192 ¶ 3:24 (at PDF 16) (2016 SRWR meeting minutes).

[51] DX-AP-366 (email exchange between Pukke and Baker regarding Usher's new,

resumed a role with SBE sales tours.[52] He coordinated with SBE sales staff and decided which sales personnel would work with which consumers.[53] Throughout the tours, Baker interacted with consumers,[54] helped close sales,[55] and received post-tour summaries, documenting the sales that were made and identifying issues sales people had in closing deals.[56] It is beyond any doubt Baker "directly participated."

c. Baker Knew or Had Reason To Know About SBE's Deception.

Finally, given that Baker has authority to control and directly participated in SBE's deception—although the FTC need only establish one, *see*, *e.g.*, *Ross*, 743 F.3d at 892—Baker is liable for monetary relief if he knew or should have known about the deception. The evidence establishing Baker's knowledge is too extensive to summarize here, but a few points are particularly important:

- Through marketing materials he received or reviewed, Baker knew SBE made the six core claims: (1) the operation had no debt;[57] (2) every dollar collected would go back into the development;[58] (3) that Sanctuary Belize would have numerous

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diminished role).

[52] PXA ¶ 17:11, Baker Dep. (Feb. 19, 2019) at 134:18-135:22.

[53] PX814 ¶ 24.

[54] PXA ¶ 11:5, Hrg. Tr., 101:8-13; PX814 ¶ 24.

[55] DX-AP-89 (Baker closed sale for Brian and Kari Southard); PXA ¶ 11:5, Hrg. Tr., 101:23-103:2; PX 814 ¶ 24 (Costanzo testifying: "If potential purchasers were on the fence, Peter Baker would be called-in to talk with them, to inspire confidence that the development would be delivered and completed in a timely manner."); DX-AP-89 (sales tour spreadsheet identifying "Pete" as one of the closers on a sale).

[56] PX 814 ¶ 24; PXA ¶ 11:5, Hrg. Tr., 101:14-20; *id.* at 101:23-103:2; DX-AP-88; DX-AP-89 (post tour email and status report).

[57] PXA ¶ 17:11, Baker Dep., 300:12-301:25 (confirming he knew consumers were told that the development had no debt and that this made the development less risky).

[58] As noted above, Baker received SBE marketing. As consumers testified, SBE marketing claimed every dollar would be spent on the development. *See, e.g.*, PX198 ¶ 6:1 (at PDF 13) (consumer declaration about receiving a document titled "Top 5 Tips for Mitigating Risk While Investing Abroad" that includes the representation: "Choosing a developer with no debt takes away the biggest risk of failure, because every dollar earned can go right back into the development itself."); PXA ¶ 17:11, Baker Dep., 300:12-301:25 (testifying to knowledge of a similar document).

luxury amenities;[59] (4) that Sanctuary Belize would be complete within two to five years;[60] (5) Sanctuary Belize lots would rapidly appreciate;[61] and (6) there was a robust resale market.[62]

- Baker admitted that the "no debt" model will not provide sufficient funds to complete the development with the promised amenities within a reasonable time.[63]

- Baker admitted that the "every dollar" claim is false,[64] and that he had reason to believe it was false prior to the FTC's lawsuit.[65]

- Baker admitted that SBE had no current plan to build most of the promised amenities.[66]

- Regarding rapid appreciation and easy resale, Baker knew lot purchasers had difficulty selling lots and that few people resold properties for a profit.[67]

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[59] PXA ¶ 11:5, 113:13-114:4 (Baker testifying to contents of "Vision Book," which was marketing that he had received, in which SBE claimed the Marina Village would have restaurants and bars and a hotel, among other items); DX-AP-343 at 3 (email seeking Baker's approval of claims that Sanctuary Belize would include "a 250-slip yacht harbor with restaurants and seaside townhomes and condominiums, along with plans for a world class hospital, modern roads, community meeting houses, pools, a spa, resort hotels, and even a casino"); DX-AP-344 at 9 (presentation Baker gave claiming there would numerous amenities, including luxury amenities in the Marina Village, and further stating there would be a "State-of-the-art hospital providing US standard-of-care treatment").

[60] DX-AP-344 at 21 (presentation Baker gave stating "current development timeline of 3-5 years").

[61] SBE made this claim, among other places, in emails to consumers. *See, e.g.*, PX 191 ¶ 4:1 (at PDF 9-10). Baker testified that he received email marketing materials sent to consumers.

[62] The same documents showing rapid appreciation necessarily imply a resale market.

[63] PXA ¶ 11:5, Hrg. Tr. 113:18-115:25 (Baker testifying that the many promised amenities do not exist right now, and that there is *no current plan* to build many of them, including the hotel, grocery store, condos, and lodges); DX-AP-344 (presentation Baker provided stating that financing would be necessary to timely finish Sanctuary Belize).

[64] DE216 at 2 (admitting the "every dollar" claim is false because of money Pukke took).

[65] PXA ¶ 11:5, Hrg. Tr., 83:1-84:20 (recounting 2016 allegations he was aware of that Pukke was siphoning money); *id.* at 86:5-21 (Pukke claiming he would address the allegations through an audit, but then never completed the audit); PXA ¶ 17:11, Baker Dep., 149:21 to 151:17 (still not having seen an audit, addressed concerns his wife had that money was being diverted by talking with SBE's accountant in 2018).

[66] PXA ¶ 11:5, Hrg. Tr. 113:18-115:25 (Baker testifying that the many promised amenities do not exist right now, and that there is *no current plan* to build many of them, including the hotel, grocery store, condos, and lodges).

[67] PXA ¶ 17:11, Baker Dep., 344:22-24 ("Oh, it was—there wasn't a lot of people who originally first bought who then flipped for a profit like her.").

- Baker knew that Pukke had been pursued by the FTC previously for deceptive marketing[68] and that Pukke is a felon.[69]

- Baker knew SBE lied to consumers because he knew it misrepresented Pukke's role. Specifically, Baker admitted Pukke used the Marc Romeo alias and that documents referring to "Marc Romeo" as a sales manager or SBE officer were false because Pukke, not Romeo, performed those functions.[70]

- Baker knew about complaints from dissatisfied consumers,[71] including that SBE salespeople made claims SBE could not fulfill,[72] that consumers posted negative information online about Sanctuary Belize,[73] and that an owners' group sued over broken promises.[74]

Overall, the evidence about his authority, participation, and knowledge is damning and vastly beyond what is necessary to support Baker's personal liability. The Court should view his plan in that context.

E. The Evidence Against Andris Pukke

1. Pukke Has a Track Record of Dishonesty and Disregard for the Court's Orders

Andris Pukke proposed a plan, DE354 (Mar. 25, 2019), which makes both his role in this matter and the substantive evidence against him important. The evidence against Pukke is too

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[68] Baker was contempt defendant in *AmeriDebt* and the Court held him in contempt Pukke's final order in that matter. *See* DE5-1 (Oct. 31, 2018) at 5-12.

[69] *See, e.g.*, PXA ¶ 11:5, Hrg. Tr., 50:15-16 ("Later on, in 2011 or '12, when Mr. Pukke was found [liable] for his problems, he went to prison[.]").

[70] PXA ¶ 12:6, Hrg. Tr. (Mar. 15, 2019) at 67:19-68:10 (Baker admitting he was aware that Pukke used aliases); *id.* at 109:7-13 (the real "Mark Romeo was not working with the development. At that time he had switched over from an initial investor to a lot owner only. So he was not involved in the project at all"); PXA ¶ 17:11, Baker Dep., 211:1-24 (whenever "Romeo" appeared as actually involved in the development, this was a reference to Pukke under an assumed name).

[71] PX814 ¶ 20.

[72] PXA ¶ 11:5, Hrg. Tr. 97:18-98:1; PXA ¶ 17:11, Baker Dep., 161:18 to 162:5 (acknowledging an SBE salesperson who "stretched the truth" and made "grandiose claims").

[73] PXA ¶ 12:6, Hrg. Tr. (Mar. 15, 2019 AM) at 90:8-92:9 (describing relationship with Lark Gould, a woman hired to eliminate negative online articles from search results); DX-AP-343 (email correspondence regarding efforts).

[74] *See, e.g.*, Hrg. Tr. (Mar. 13, 2019) at 90:19-23 ("I was the lucky recipient of getting to deal with the IOSB lawsuit."). The litigation involved a claim that consumers' representations about Pukke's involvement were defamatory, although Baker prosecuted the action with full knowledge that the representations were true. PX467 at 3, 25-27.

substantial to recount fully here, but his history scamming consumers is extensive, *see* DE5-1 (Oct. 31, 2018) at 1-5, and as is his gross disregard for the Court's orders, *see id.* at 5-12, 52-57. Most pertinent here, Pukke resisted the Court's effort to separate him from Sanctuary Belize. In fact, using straw purchasers and nominees, he unlawfully retained control despite contempt, civil incarceration, and criminal incarceration. *See id.* at 5-12; *see also* DE267 (Oct. 31, 2018).

2. Overwhelming Evidence Shows Pukke's Liability.

a. Pukke Had Authority To Control SBE's Deceptive Practices.

Although this matter is still in a preliminary phase, the likelihood that the FTC will prevail against Pukke is extremely high. With respect to his authority over SBE, Pukke controlled all aspects of SBE's operations.[75] Among other things, Pukke owns at least 29% of the development,[76] decides what to spend on construction, [77] makes employment decisions,[78] and makes design choices.[79] Pukke also directs other principals.[80] Finally, when asked about these matters and other evidence establishing his authority to control, Pukke refused to respond.[81]

b. Pukke Directly Participated in SBE's Deception.

There is also vast evidence that Pukke directly participated in SBE's deception. By way of example only, Pukke approved SBE's telemarketing claims and its written marketing material.[82] Pukke also personally instructed SBE staff to not disclose his involvement, or to minimize it.[83] When asked about his direct participation, Pukke refused to answer.[84]

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[75] PX204 ¶ 7:7 (at PDF 145-152); PX 205 ¶¶ 4-6; PX208 ¶ 5; PX 814 ¶ 43; PXA ¶ 17:11 Baker Dep. 91:23-92:17; 98:3-9.

[76] PX 816 Ex. A at 3-5 (at PDF 6-8).

[77] PXA ¶ 17:11, Baker Dep., 91:23-94:24.

[78] PX 205 ¶¶ 2-3.

[79] PX 208 ¶¶ 5-8, 13; PX429-30; PX435; PX 438-41; PX451-54.

[80] PX 203 ¶ 8; PX 205 ¶ 9; PX 297 ¶ 157; PX 442-443; PX 297 ¶ 326; PX 635.

[81] PXA ¶ 18:12, Hrg. Tr. (Mar. 22, 2019 PM) at 79:12-113:19.

[82] PX207 ¶ 5 and Att. 3 at 1; PX 814 ¶¶ 20, 21; PXA ¶ 17:11, Baker Dep., 95:18-96:12; *id.* 98:3-9; PX196 ¶¶ 21-23; PX 196:22 (at PDF 180).

[83] PX203 ¶ 8; PX485.

c. Pukke Knew or Had Reason To Know About SBE's Deception.

Pukke also asserted his Fifth Amendment right rather than address questions about his knowledge. For instance, Pukke refused to answer questions about one of his own exhibits, DX-AP-324,[85] which is a telemarketing script containing the no debt, timeline, amenity, and appreciation claims, *see id.* Having operated SBE for fifteen years, Pukke knew the development had debt, that it was risky, that consumers sued, defaulted or sought buybacks rather than reap any purported appreciation, and that most amenities were entirely unfinished, let alone unfinished within the promised timeline. And, of course, Pukke knew sales revenue did not go entirely to the development because he directed millions to other investments or siphoned it off himself. PX816 at 5-7. Overall, and as the FTC's proposed Findings of Fact detail, the evidence concerning Pukke's authority, participation, and knowledge far exceeds what is necessary to support Pukke's liability. The Court should view Pukke's plan in that context.

II. The FTC Plan

A. The FTC Plan Ensures the Receivership's Financial Stability.

The most pressing concern the Receivership faces is the prospect that the Receiver cannot recover assets quickly enough to fund necessary Receivership expenses ranging from security to infrastructure maintenance. As the Court is aware, the FTC recovered more than $4 million from one Relief Defendant, DE326 (Mar. 20, 2019), and the Commission has already made more than $100,000 available to the Receiver to ensure that the Receivership remains sufficiently liquid, DE355. Although the FTC has discretion to direct the Relief Defendant recovery funds to benefit the public in different ways, if the Court implements the FTC Plan, the Commission will make the funds available should the Receiver need them. FTC Plan § IV. Thus, if the Court implements the FTC Plan, the Receivership ability to meet necessary expenses is assured.

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[84] PXA ¶ 18:12, Hrg. Tr. (Mar. 22, 2019 PM) at 79:12-113:19.

[85] DX-AP-324; PXA ¶ 18:12, Hrg Tr. 90:15-94:3 (Mar. 22, 2019 PM) (refusing to answer questions about a telemarketing script (DX-AP-324)).

B. The FTC Plan Maintains the Status Quo, and Appropriately Defers to the Court-Appointed Receiver.

Importantly, the FTC Plan focuses on maintaining the status quo by ensuring proper security and allocating resources to keep the development's basic infrastructure functioning. *See* FTC Plan § II. The FTC proposes that the Court-appointed Receiver make day-to-day operational decisions rather than Baker, other Pukke associates, or individual subsets of lot purchasers. Likewise, the FTC Plan does not require the Court to micromanage the development or otherwise make decisions with substantial long-term impact prematurely.

C. The FTC's Plan Considers the Interests of All Lot Purchasers Rather Than Only One Subset.

As discussed above, the overwhelming majority of lot purchasers are Category One or Category Three purchasers who may never move to Sanctuary Belize or, at least, will not move soon. Preventing waste and otherwise maintaining the development's value serves their long-term interests to a much greater extent than development activities that deplete the receivership estate while benefiting only Category Two lot purchasers (current residents), or a subset of them.

However, the FTC takes seriously the justifiable concerns that Category Two purchasers have. In fact, the FTC met with two proposed intervenors (both Category Two purchasers) and their counsel—and the FTC will arrange subsequent meetings to ensure their interests are not neglected. In fact, the FTC's Plan includes multiple specific elements intended to serve Category Two interests and that flow from the FTC's meeting with proposed intervenors. For instance, Category Two purchasers—current residents—expressed understandable concerns about security. Although the FTC Plan generally affords the Receiver considerable discretion, Section II(B) directs the Receiver to improve security in five specific ways that reflect concerns proposed intervenors articulated to the FTC. Additionally, Sections II(C) and (D) direct the Receiver to address unlawful activity within the development and problems with current development employees—both concerns Category Two purchasers expressed to the FTC.

Furthermore, Section II(A) directs the Receiver to address other issues that current residents have raised with the FTC, the Receiver, or the Court. *See, e.g.*, DE286 (Mar. 8, 2019)

at 7 (proposed intervenors' motion discussing concerns about the development's environment); FTC Plan § II(A)(iii) (directing the Receiver to take reasonable measures to prevent environmental degradation); DE286 at 9 (identifying shortages of feed and veterinary care for horses); FTC Plan § III(A)(iv) (addressing this issue). Notably, although the measures Section II outlines benefit Category Two purchasers more than other groups, ensuring security and preventing unlawful activity helps maintain the development's long run value, which helps all lot purchasers. Accordingly, the FTC Plan balances the majority interest in minimizing interim receivership expenses while preserving assets with the minority interest in ensuring the development is secure and livable while this litigation continues.

Notably, the FTC Plan also substantially improves consumer communication. In particular, many differently situated purchasers share concerns that the Receiver improve communications with all affected parties. To address this, the FTC Plan includes a Consumer Committee that will meet with the Receiver regularly and—equally important—it includes members from all three lot purchaser groups. FTC Plan §§ I(D), III(A)-(B). The FTC Plan also requires that the Receiver communicate with all lot purchasers frequently. *Id.* at § III(C).

D. The FTC's Plan Helps Preserve Frozen AIBL Funds Until an Eventual Resolution.

Finally, the FTC Plan moves currently frozen AIBL assets into the Receivership Estate for management (they would not be used to fund Receivership expenses). *See* FTC Plan § V. Giving the Receiver temporary control over these assets would enable the Receiver to preserve them until the Court resolves the issues surrounding these funds.[86]

III. The Alternative Plans

A. Peter Baker's Plan

The Baker Plan includes too many problematic elements to easily summarize. By way of example only:

[86] Millions of the frozen AIBL assets are in securities that may lose value.

- It would summarily dismiss SBE entities Pukke controls (SRWR and EFBL), AIBL, and Baker himself from this action. DE346 ¶ 13.

- The Baker Plan would restore Baker's control over the project, allowing him to draw a $100,000 a year salary for his purported work "manag[ing] the operations of the development in Belize and the United States." *Id.*

- The Baker Plan relies on support from key insiders close to SBE and Pukke. For instance, Diane Allen served as "Client-Development Liason for Sanctuary Belize," PX664 at 1, and in that capacity, defended SBE against lot purchasers well-founded allegations, *see, e.g.*, *id.* (challenging concerns about "the trustworthiness" of SBE entity Global Property Alliance). Allen reported directly to Pukke, who edited the marketing content she provided to lot purchasers. *See, e.g.*, PXA ¶ 4:2 at 5 (Pukke telling Allen that her draft Sanctuary Belize newsletter "needs a few tweaks"). She plainly knew about Pukke's actual role while SBE denied or minimized it publicly. Diane Allen supports the Baker Plan. DE346-2 at 1, 3.

- Despite SBE's "no debt" marketing, investor Gordon Bierenbrock loaned SBE $4.5 million, *see* DE346 ¶ 6, and attended Pukke's meeting with marina manager IGY, *see* PXA ¶¶ 1-2. Bierenbrock also supports the Baker Plan. *See* DE346 ¶ 6; DE346-3 at 3-4.

- The Baker Plan would require lot purchasers to continue making payments on fraudulently induced contracts for lots they may no longer want. *See* DE346 ¶ 3.

- The Baker Plan would resume lot sales, *see* DE346 at 2-3, which is extremely premature given the unavoidable uncertainty surrounding the development. Assuming the FTC prevails, selling more lots is almost certainly appropriate, but doing so immediately, without a long-term plan—and before one can be developed—makes little sense.

Finally, the Baker Plan proposes to spend $18 million on various development activities, *see* DE346 ¶ 2. It is unclear where Baker gets this estimate, which is $14 to 19 million lower than even Pukke's estimate[87] (and those estimates still omitted the most significant amenities promised to consumers). The Baker Plan would spend $18 million to complete the development's infrastructure and an airstrip—but nothing else. Its view of the developer's

[87] As part of Pukke's case, Pamela Pukke's husband, Anthony Mock, claimed the development could be completed for $32-40 million. *See* PXA ¶ 13:7 Hrg. Tr. (Mar. 15, 2019 PM) at 93:25-94:11 (claiming it could be finished in two phases, the first for $20-25 million, and the second for $12-15 million).

obligations excludes shops and restaurants, a hotel, any medical facility, improvements to the marina to make it "world class," or any other amenities SBE promised.

Finally, the Baker Plan's supposed concessions are meaningless. Baker claims he would "coordinate" with the FTC to develop a telemarketing sales script, which Baker (or at least his counsel) knows is not something the FTC will do. Baker insists on maintaining SBE's relationship with "**Atlantic Bank, which is necessary to conduct business in Belize**," DE346 ¶ 11 (emphasis added), but he supposedly agrees to cease his "business and personal relationship[]" with other defendants, presumably including Pukke, *id.* However, ordering Baker not to have a "business or personal relationship" with Pukke is meaningless given that both Pukke and Baker have a track record of ignoring this Court's orders. In any event, Pukke could coordinate with Baker through Barienbrock, Allen, or other third parties.

In short, the Baker Plan restarts the development in approximately in the same manner, and under roughly the same leadership structure, as existed before this action. The Baker Plan is tantamount to an immediate, final ruling in various defendants' favor. DE346 ¶ 13 (proposing to dismiss AIBL, Baker, and SBE entities SRWR and EFBL).

B. Andris Pukke's Plan

Pukke's plan is little more than a thinly-disguised proposal that the Court permit his associates to resume essentially every aspect of the undertaking that led to the current situation. Among its most problematic features:

- Pukke's plan requires lot purchasers to continue making payments on lot sale contracts SBE fraudulently induced. *See* DE441 at 4.
- Pukke proposes to "implement[] the master plan," *id.*, but Pukke does not cite the purported "master plan" and it unclear what plan he means.
- Pukke proposes to involve Anthony Mock and Erwin Contreras, *see id.*, both of whom have close ties to Pukke. Pukke and Erwin Contreras have

been working together since at least 2012.[88] Anthony Mock is Pukke's ex-wife's husband.[89]

- Pukke's plan would resume lot sales, *see* DE441 at 4, which is inappropriate at this preliminary stage.
- Pukke's plan makes no provision for victims who do not want a Sanctuary Belize lot. Specifically, it does nothing for Category One lot purchasers other than giving them a new lot—and requiring that they restart payments. *See id.*

Finally, Pukke's plan requires the Receiver to engage a new developer, but without any guidance as to what the new developer would do or any assurance that the new developer will not simply be yet another entity that Pukke controls.

C. The Nine Homeowners Plan

Certain nonparty current residents have proposed a detailed plan that, if implemented, would allocate as much as $50 million to various development activities. DE347-2 at 15. Preliminarily, although its proponents call their proposal "the owners' plan," but it is not from all owners and, in fact, it is unclear who supports this plan beyond the nine proposed intervenor couples (all of whom have completed a home or reside in Sanctuary Belize). Although the plan's proponents claim considerable support, at least some lot purchasers state that the plan's proponents identified them as supporting the plan when, in reality, they do not. *See* PXB-D.

With regard to the plan's details, the millions it proposes to spend go far beyond maintaining the status quo. The Nine Homeowners Plan is extremely prescriptive and includes extensive detail concerning everything from providing internet service to tending to the organic garden. DE347-2 at 2. The Nine Homeowners Plan funds itself through continued payments on fraudulently induced contracts, yet most of the benefits go to the small fraction of Category Two lot purchasers who live in Sanctuary Belize or plan to soon. Although the plan's proponents understandably oppose using future lot sale revenue to compensate purchasers who do not live in Sanctuary Belize and may never live there, forcing these purchasers to fund development

[88] PXA ¶ 3:1.

[89] PX297 ¶ 157; PX 442-44.

expenses is no better—which is, practically speaking, what the Nine Homeowners Plan proposes (every receivership dollar spent on development is a dollar not spent on direct cash compensation to lot purchasers). The Nine Homeowners Plan is meant in good faith, but final determinations about how to allocate limited funds between different purchaser groups with divergent interests should wait until after the Court and all affected parties understand what resources there are.

LEGAL STANDARD

As the Court explained, "a preliminary injunction serves the purpose of preserving, as much as possible, the relative positions of the parties until a full exposition on the merits of the case can be had at trial." DE431 (Apr. 25, 2019); *see also Benisek v. Lamone*, 138 S. Ct. 1942, 1945 (2018) ("[T]he 'purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held[.]'") (quoting *University of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)). Significantly, under the FTC Act, the Court has wide latitude to fashion temporary relief that furthers the statutory interest in consumer protection, *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1112-3 (9th Cir. 1982), and the Court's power includes a receiver, see, e.g., *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432 (11th Cir. 1984). A receiver is appropriate when necessary to maintain the status quo by ensuring that assets are not "lost, injured, diminished in value or squandered[.]" *Leone Indus. v. Associated Packaging Inc.*, 795 F. Supp. 117, 120 (D.N.J. 1992).

ARGUMENT

I. The FTC's Plan Preserves Assets and Protects the Status Quo at No Cost to Consumers.

The FTC Plan serves the purposes of the interim Receivership—maintaining the status quo—without forcing the Court or lot purchasers to make final decisions prematurely. As discussed above, under the FTC Plan, if the Receiver exhausts assets otherwise available to fund Receivership expenses, it may use the FTC's $4 million *AmeriDebt* contempt recovery to ensure the development's security and maintenance. This proposal has critical advantages. First, unlike the others, it does not require consumers to make payments pursuant to contracts SBE

fraudulently obtained. Second, also unlike every other proposal, the FTC Plan does not force consumers to make consequential decisions (for instance, to opt-in or opt-out of the development) based on incomplete information. Third, in contrast to the various alternatives, the FTC Plan does not force a premature tradeoff between competing interests. Receivership assets spent on specific development tasks reduce the funds available for consumer redress (and, of course, allocating funds to consumer redress now would reduce funds available for development tasks). Fourth—and again unlike the alternatives—the FTC Plan does not resume sales, start construction, or require other significant decisions based on incomplete information.

Importantly, although the FTC Plan appropriately defers long-term issues, it also includes specific provisions ensuring the development's interim security and upkeep. *See* FTC Plan § II(A)-(C). It properly tasks the Court-appointed Receiver with managing day-to-day operations (rather than the Court itself, defendants, their associates, or a subgroup of lot purchasers). It also directs the Receiver to enhance communications with all lot purchasers and receive input from different lot purchaser categories. Finally, the FTC's Plan helps to preserve frozen AIBL funds by giving the Receiver control until an eventual resolution.

II. The Competing Plans Are Unlawful, Inequitable, and Practically Unworkable.

A. The Court Should Reject the Peter Baker Plan.

Peter Baker's plan is unworkable for numerous reasons, including that the Court cannot trust Baker to undo the problems he helped cause. It also suffers from the same principal defect as the other proposals, namely, it is not about preserving the status quo. It would involve Baker (and likely Pukke) resuming sales, starting construction, collecting on fraudulently induced contracts, and making other decisions that vastly exceed what is necessary to prevent waste at this preliminary stage. Furthermore, it directs resources to activities that benefit current and near-future residents (Category Two lot purchasers) at the expense of other groups. It also improperly marginalizes the Court-appointed Receiver's role—the Receiver should make most day-to-day, interim management decisions—not any interested party.

Notably, the Baker Plan gets one thing entirely right: whatever his motives—and notwithstanding his effort to minimize his involvement—Baker does have extensive knowledge about the development **precisely because he has been heavily involved for fifteen years**. Anointing Baker the *de facto* interim manager is problematic for all sorts of reasons, but not because he is unfamiliar with the development; as the FTC's evidence at the hearing established, Baker was one of the most heavily involved of Pukke's associates. Re-installing Baker (and possibly Pukke) as the development's manager is improper if not unlawful at this stage, and the fact that the Baker Plan promotes Baker as the logical person for that role only reinforces the evidence the FTC presented regarding Baker's personal liability.

B. The Court Should Reject the Andris Pukke Plan.

Pukke's Plan is essentially Baker's Plan by another name. It contemplates resumed sales, enforcing contracts SBE fraudulently induced, and funneling development business to his associates (including Pamela Pukke's husband, Anthony Mock). As with Baker's plan, it directs resources toward activities that primarily benefit Category Two lot purchasers. It would also inevitably lead to further Court involvement because it redirects day-to-day management from the Receiver to other (largely unidentified) parties.

C. The Court Should Reject the Nine Homeowners Plan.

The Nine Homeowners Plan is a good faith proposal containing elements likely to form part of a long-term solution. As an interim proposal, however, it has considerable procedural and substantive defects. Not only are Nine Homeowners nonparties to the case, as discussed above, it is unclear who they represent. At least in some instances, they have claimed support of consumers who do not, in fact, support them. *See* PXB-D. It is likewise unclear what the plan's proponents told lot purchasers to garner their apparent support, but any suggestion that the Receivership will become insolvent without the Nine Homeowners Plan is mistaken.[90]

[90] The plan's proponents may have made such claims to lot purchasers. *See*, *e.g.*, DE347-2 at 2 (statement in the Nine Homeowners Plan that "the Receivership Estate is close to being illiquid"); DE286 (Mar. 8, 2019) at 16 (attributing problems to "the lack of funds in the

Additionally, it is unlikely that individual lot purchasers have reviewed and endorsed the details of a $50 million development plan that is simultaneously extremely specific, DE347 at 18 (proposing to create a committee to manage competing claims to the same lot), and extremely vague, *id.* at 14 ("projects may be added and some may be modified or eliminated").

Even if the Court considers the Nine Homeowners Plan, it suffers from significant problems. Most important, it favors Category Two lot purchasers—current residents and likely near-term homebuilders—who represent a small minority of lot purchasers. Any Receivership assets that fund development expenses will reduce the sum available to pay consumer redress. The plan acknowledges that lot purchasers should receive compensation from "funds recovered from defendants," *id.* at 20, but defendants' principal assets—in fact, the principal Receivership assets—are unsold lots, the partially-completed marina, development rights, and so forth. These are the same assets that the Nine Homeowners Plan would deploy for the benefit of Category Two purchasers. Furthermore, not only does the Nine Homeowners Plan allocate Receivership assets in a lopsided manner, it raises tens of millions to finish portions of the development in part by requiring lot purchasers who may not build a residence in Sanctuary Belize anytime soon (or ever) to resume payments under fraudulently induced contracts unless they opt-out "within 60 days" and receive instead unknown and possibly zero compensation, *see id.* at 18.[91]

To provide another example of the problems inherent in allowing one subset of lot purchasers to decide the collective future of all lot purchasers, the Nine Homeowners Plan proposes, in some instances, to resolve competing claims to lots by awarding the disputed lot to "**the claimant with the most recent real estate contract**." *Id.* (emphasis added). Put more directly, the claimant most likely to be in Category Two would get the disputed lot. Significantly, the Nine Homeowners Plan also leaves open the possibility of resuming "beach

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[Receivership] estate"). However, if the Court implements the FTC Plan, there is no longer any material risk of insufficient funds.

[91] Of course, they might also receive meaningful compensation. The fact that the available redress is unknown underscores the problem with making these decisions prematurely.

resort operations" by "subsidizing expenses in the interim." *Id.* at 12. It is difficult to understand how this would not primarily benefit the small number of existing residents. Finally, a "POA Board" would make critical decisions, although all Category One purchasers and many Category Three purchasers would be ineligible to serve on the Board or vote for its members.[92]

In addition to problems associated with favoring one subset of purchasers over another, the $50 million development plan goes far beyond merely maintaining the status quo and preventing waste. *See id.* at 15. It also revokes considerable authority from the Receiver and requires lot purchasers to make premature decisions. Although some of the concepts the plan proposes are potential elements of a final resolution, and the FTC will maintain dialogue with the plan's proponents, the Nine Homeowners proposal is neither viable nor equitable as an interim Receivership management plan.

CONCLUSION

For all the aforementioned reasons, the Court should enter the FTC's Proposed Interim Receivership Management Plan.

[92] Specifically, eligibility to serve on, or vote for, the POA Board would be limited to "[o]wners of titled property" or purchasers with a "[c]urrent valid contract for purchase of real estate in the Sanctuary Belize." DE347-2 at 9. Among other omissions, this limited franchise excludes purchasers who paid tens (or hundreds) of thousands but lost their lot, purchasers who lack title (there are many such purchasers), and lot purchasers with contracts for Laguna Palms, but whom SBE unilaterally assigned to Sanctuary Belize.

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