

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

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In re SANCTUARY BELIZE  
LITIGATION

No. 18-cv-3309-PJM

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**PRO-SE MOTION FROM MICHAEL SANTOS  
MOTION FOR SUMMARY JUDGMENT, OR PARTIAL SUMMARY JUDGMENT  
IN ACCORDANCE WITH FEDERAL RULE OF CIVIL PROCEDURE 56  
& RELATED REQUESTS TO THE COURT**

**COMES NOW** pro-se defendant Michael Santos (Movant), who moves for summary judgment on all of the claims against him by Plaintiff, the Federal Trade Commission (“FTC” or “Commission”). Movant asks for Summary Judgment, pursuant to Fed. R. Civ. P. 56. In the alternative, Movant asks for partial summary judgment.

Movant has discussed the grounds for this motion and the relief requested with counsel for the FTC on November 5, 2019, November 6, 2019, November 7, 2019, and through email on November 8, 2019. Movant expect the FTC’s counsel to oppose the relief requested herein.

In addition to Summary Judgment, Movant requests the following:

1. Movant requests oral argument on his motion for Summary Judgment.
2. That the Court rule on Movant’s pending motion to grant Movant access to \$30,000 to buy copies of all deposition transcripts, or in the alternative to have the FTC make all deposition transcripts available for review in the FTC’s Los Angeles office pursuant to Local Rule 104(5).
3. If the Court grants Movant’s pending motion to access \$30,000 to buy copies of deposition transcripts, or in the alternative, to have the FTC make all deposition

transcripts available for review in the FTC's Los Angeles Office pursuant to Local Rule 104(5), Movant implores the Court's permission to supplement the Motion for Summary Judgment. Movant asks to supplement the Motion so that he can attach copies of deposition transcripts, confirming that not a single deponent supported FTC's theory that Movant had authority to control any activities for any SBE entity.

4. That the Court consider sanctions against the FTC for belatedly adding Michael Santos as a defendant to the Amended Complaint. When the FTC added Michael Santos to the Amended Complaint, the FTC did not have evidence to support its claim that Michel Santos was ever an officer or owner of Global Property Alliance, or any other SBE entity, at any time. Nor did the FTC have evidence to support its claim that Michael Santos had authority over any SBE entity. Nor did the FTC have evidence that Michael Santos had managerial functions or authority over any SBE entity or any SBE employee. The deposition testimony is conclusive. And the FTC has not produced any testimony, let alone any other evidence, that it had at the time it filed the Amended Complaint, to support the conclusion that Santos should be held jointly liable for \$144 million by reason of the facts contained in this paragraph. This action has cost Santos more than \$300,000 to defend, even though Santos was never an authority or control figure of an SBE entity, and even though Santos did not have any possible way of knowing that others were engaged in deception, as alleged by the FTC. To the contrary, Santos invested \$1,400,000 of his personal funds; he also invited family and friends to join him in building a new alternative investment company based on his belief in the success of Sanctuary Belize. This was a good faith effort to build a new business, thereby showing that he did not know of any alleged

deceptions at Sanctuary Belize. The FTC knew that Santos was differently situated from other defendants, and that he lacked knowledge of any wrongdoing.

Based on these moving papers and the accompanying Memoranda, Movant asks this Honorable Court to rule in Movant's favor on each of the FTC's claims alleged in the Amended Complaint:

1. One Count of violating the Federal Trade Commission Act ("FTC Act"), by reason of allegedly deceptive marketing practices. (Movant asks for summary judgment on this count of violating the FTC Act.)
2. And the Amended Complaint charges Movant with two Counts of violating the telemarketing Sales Rule ("TSR"), based on misrepresentations and misleading investment opportunities. (Movant asks for summary judgment on these two counts of violating the TSR.)

**Relief Sought:**

Because the Plaintiff's evidence, viewed in the light most favorable to the FTC, is insufficient to establish all of the elements in the claims, the Movant is entitled to summary judgment. In support of this motion for Summary Judgment, and in compliance with Local Rule 105, Movant attaches a Memorandum with appropriate table of contents and Appendix of Exhibits.

Date: November 15, 2019

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## I. BACKGROUND

### A) Prison Experience:

In 2011, Movant Michael Santos was approaching his release date from a 45-year federal prison term.<sup>1</sup> Movant had been incarcerated for longer than 25 years and authorities transferred him to the federal prison camp in Atwater, California. During the 25 years that he served in prison, Movant built a record showing his commitment to reconcile with society for the bad decisions of his youth. He was incarcerated when he was 23 years old. To prepare for a law-abiding life as a contributing citizen, Movant earned two university degrees, published more than a dozen books that university professors relied upon to educate students, and he built a strong support network with both business and academic mentors. In 2003, he married Carole Santos inside of a prison visiting room. With Carole acting as a liaison to the world, Movant continued living productively and industriously while in prison, paying taxes on income earned through his publishing projects.

### B) Meeting Andris Pukke:

On the first day that Movant arrived in Atwater, Defendant Andris Pukke (“Pukke”) approached him. Pukke told Movant that he had read some of Movant’s writing and it helped him prepare prior to his confinement. When Pukke told Movant about his business experience, Pukke made a favorable impression upon Movant; Movant met many people that led successful businesses prior to their imprisonment and he had reason to believe they intended to return to society as law-abiding citizens.

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<sup>1</sup> Movant made the bad decision of trafficking in cocaine when he was 20. Authorities arrested him and charged him with various federal crimes related to his wrongdoing. There were no allegations of weapons or violence in his case. Since his conviction, Movant built a well-documented record of working to reconcile with society for bad decisions he made during the recklessness of youth. (See Exhibit 43, Hastings Law Review Article on Earning Freedom)

Pukke told Movant that he wanted to put his problems with the law behind him and resume his career of building businesses. Movant recommended that Pukke write a book as a strategy to begin rebuilding his life. By providing readers with his story, Movant suggested, Pukke could begin laying the groundwork for a new career. Further, the effort would help him work productively through the time he served in Atwater.

Movant assisted Pukke in writing his story. By assisting him, Movant learned from what Pukke told him about his business experience. Further, Pukke learned more about Movant's experiences, and the writing skills he developed. In that context, they formed a friendship. Movant believed Pukke when he told him that after he served his sentence, he would be finished with the criminal judicial system and move on to live a positive, law-abiding life.

Movant relied upon his experience of interacting with more than 10,000 people in federal prison to make an assessment of Pukke. Based on Pukke's work ethic, mannerisms, and lessons he learned from his prior experience with both the FTC and the criminal justice system, Movant had reason to believe Pukke's stated commitment to reconcile with society and move forward as a law-abiding citizen. His manuscript was supposed to be a first step toward rebuilding. By telling his version of events of how and why he went to prison, Pukke would show a commitment to living transparently and also document his efforts to make things right.

After Pukke assessed the contributions Movant made in his efforts to write a manuscript, Pukke invited Movant to work in one of his companies. Movant declined the offer, stating that he had a plan of building a career around lessons he learned while traversing 9,500 days as a federal prisoner. Movant wanted to work toward prison reform efforts and to build an independent career. Pukke made a standing offer, telling Movant that if he ever needed a job, his company

would have a place for him. Pukke transferred from the prison in Atwater to a halfway house in Southern California in early 2012.

Upon Movant's release from prison, in August of 2013, Movant began his career as an adjunct professor of criminal justice at San Francisco State University. Simultaneously, Movant began working toward improving outcomes in the criminal justice system. Without compensation, Movant traveled from coast-to-coast to speak in schools to at-risk youth, law-enforcement forums, universities to discuss strategies we, as a society, could use to improve outcomes of the criminal justice system. Those efforts required capital to cover both living and travel expenses. Movant also needed capital to fund the production of digital products related to his criminal reform work.

### **C) Employment with Global Property Alliance (2014-2016):**

In early 2014, Movant contacted Pukke with a request for sponsorship. Pukke responded by offering Movant employment. In order to accept the job, Movant had to move from San Francisco to Southern California, in the Orange County area. By taking a job with Global Property Alliance (GPA), Pukke said that Movant could earn a steady salary, while simultaneously using corporate resources to continue developing his prison reform work. The job would be a hybrid of sponsorship for his prison reform initiatives, and also an opportunity for Movant to transition skills he developed to the corporate sector. Movant's initial task would be to develop an HR strategy to improve hiring and to improve corporate communications by editing for grammar and syntax.

As a result of Movant's work in criminal justice reform, Movant's federal probation officer authorized him to interact with other people with felony convictions. Yet since Pukke was still on Supervised Release, Pukke told Movant that he could not be in charge of GPA. Pukke

told Movant that he only worked in marketing, and he would remain in that role until after his problems with the criminal justice system concluded. Given Movant's knowledge of Supervised Release, Pukke's explanation seemed 100 percent plausible.

Pukke introduced Movant to Defendant Rod Kazazi ("Kazazi"), the Chief Financial Officer of GPA. After listening to Movant's story, and to Pukke's instruction, Kazazi confirmed that GPA would offer Movant a position. Kazazi confirmed that GPA would support the efforts Movant was making to build a career around prison reform efforts, authorizing him liberty of time to travel and develop curriculums or write books. Kazazi indicated that he wanted Movant to create a system to improve hiring and to assist with corporate communications. Kazazi and Pukke instructed Movant to begin working with non-defendant Jim Catsos ("Catsos"), who was said to be the head of sales.

Movant's first official day of work at GPA was on June 2, 2014. On his first day of work, Movant met Catsos. Catsos provided Movant with a set of sales scripts. Catsos represented that he authored the scripts, and that he based his work on "scientific principles" of sales. When Movant pointed out that the scripts were riddled with errors in syntax and grammar, Catsos took offense. Within hours of their first meeting, it became clear that Movant would not work well with Catsos. (Exhibit 14, and Statement of Undisputed Facts, 5). In addition, Catsos instructed Movant to hide the fact that Movant had been in prison for decades. When Movant refused to lie or misrepresent his prison experience, Catsos and Movant ceased working together. Within days of starting at GPA, Movant's working relationship with Catsos deteriorated.

Within a day of being hired, since Catsos was not receptive to having Movant contribute to his sales team, Movant focused on improving the hiring processes, as Kazazi and Pukke assigned. Movant developed a system to measure a productive candidate's work ethic, critical-



thinking skills, and ability to think independently. (Exhibit 5, Exhibit 1) Movant recruited candidates from local colleges and universities. He ran ads, reviewed applications, assessed responses that candidates provided, conducted initial interviews, and wrote reports on each candidate's propensity to contribute as an independent thinker. He turned those reports over to Catsos, who would conduct interviews and make a hiring decision. This HR work consumed a couple of months. (Exhibits 1 through 7).

Catsos hired and summarily fired candidates that movant recommended. The working relationship between Movant and Catsos grew increasingly hostile. As a result, sometime during the first 60 days of his employment, Movant told Pukke that he thought it would be best for him to resign from GPA. Pukke disagreed, telling Movant that he did not have to work with Catsos. Instead, Pukke relocated Movant to another area of the building. His new area was in a vacant area that was separate from the sales center that Catsos controlled. (Exhibits: 22, 14, 19; Statement of Undisputed Facts: 8 and 19).

Pukke encouraged Movant to keep the job. Movant could count on the salary and the resources GPA provided as sponsorship Pukke promised while they were in prison together. From that point forward, Movant would be responsible, chiefly, for working on his own entrepreneurial initiatives and prison reform efforts; GPA would serve as both an incubator and sponsor for the efforts. Movant would assist with any requests for editing for syntax and grammar, and work on communications as requested. But by approximately his fourth month on the job at GPA, Movant worked independently from any of the SBE<sup>2</sup> entities. With authorization from Pukke and Kazazi, Movant worked to develop Prison Professors and his career with

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<sup>2</sup> The FTC defined SBE as Global Property Alliance Inc., Sittee River Wildlife Reserve, Buy Belize LLC, Buy International Inc., Foundation Development Management Inc., Eco-Futures Development, and Eco-Futures Belize Limited.

Alternative Investment Seminars, which was built around Movant's personal story. (Exhibits: 13-21; Statement of Undisputed Facts: 13, 19).

At no time did Movant have a Managerial Function<sup>3</sup> with any of the SBE Entities. At no time did Movant have authority to instruct a single employee of any SBE Entity on how to perform his or her job functions. At no time did a single employee of any SBE Entity report to Movant. And since Movant had never visited Belize<sup>4</sup>, at no time did Movant have an opportunity to assess the veracity of any of the alleged representations being made as described in the FTC's Amended Complaint. (Exhibits 13-22). Given Movant's instant conflicts with Jim Catsos, Movant did not interact with sales or marketing staff so as to be able to assess the truth or falsity of any particular sales or marketing statements.

By June of 2016, after two years of sponsorship from GPA, Movant's ventures in prison reform, personal investments, and entrepreneurial ventures were more stable. Accordingly, by mutual agreement, Movant left the employment of GPA. (Exhibits 24, 25, 26, 37; Statement of Undisputed Facts, 20).

#### **D) Employment with Buy International (2018):**

In January of 2018, Pukke and Kazazi invited Movant to take a job with a new company they had started. They informed Movant that their new company was called Buy International. They said their new company would promote American expat communities and develop new projects in Mexico, the Bahamas, Costa Rica, and the Dominican Republic. Pukke and Kazazi said that they intended to use the same model that they described as having been successful in

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<sup>3</sup> The FTC defined Managerial Functions: "means the ability to hire or fire employees; control over cash withdrawals or deposits, payroll, or compensation structure; authority or control over more than one employee; and decision-making power over the short-term or long-term goals of the SBE Entities." FTC First Set of Interrogatories of General Applicability.

<sup>4</sup> Movant did not visit Belize until February 2018 for approximately 5 days.

Belize. Pukke and Kazazi offered Movant the job of business development and promoting expat living. They told Movant that he would work independently. Since Catsos had been fired, Movant would not have to interact with him at all. Movant would work independently.

After agreeing to a compensation plan, Movant agreed to work on the initiative. Within 30 days of his employment at Buy International, Movant traveled to Belize for the first time ever to visit the Sanctuary project. The project made a favorable impression upon Movant. Because Movant knew next to nothing about Sanctuary Belize, he spoke with more than 100 people that had either invested or become employees of the SBE. (Exhibit 19).

Phil Watford (“Watford”), a sales director in Belize, convinced Movant that investing with the SBE would be an excellent opportunity. Watford represented that he had retired as a homicide detective from Las Vegas. While still a law enforcement officer, he purchased a lot in Sanctuary. Then as the development grew, Watford told Movant that he invested further, building a house on his property. After retiring from law enforcement, Watford moved with his family to Sanctuary and he became a Tour Director with the SBE, interacting with consumers and making the core representations that the FTC now says are fraudulent. (Exhibit 15).

Yet Movant would have no way of knowing the representations of Watford and others were deceptive, as alleged by the FTC in its Amended Complaint. If a former law enforcement officer purchased land, built a house, and then took employment with the SBE, Movant had reason to believe the SBE was a legitimate company. (Statement of Undisputed Material Facts, 48).

Following his only visit to Belize, Movant made a commitment to invest more than \$1 million of his and his wife’s money in a new development. In exchange for more than \$1 million that Movant pledged as a limited investor in a development in Costa Rica, Pukke and Kazazi

agreed to provide Movant with an option-agreement that would allow him to acquire 27 lots in the Laguna Palms sections of Sanctuary Belize (Exhibit 42). Movant would form a separate company called Alternative Investment Properties (AIP). He would use AIP to build his own investment company around his personal story. The lots would be marketed separately and apart from the SBE sales process.

Movant's investment of more than \$1 million is some evidence that he did not know of the falsity of any alleged misrepresentations as stated in the FTC's Amended Complaint. Rather, Movant believed Watford and 100 other people with whom he spoke. It is beyond dispute that Movant never lied about his, or Pukke's, prison time. And there is no evidence that Movant ever knowingly made any of the FTC's other alleged misrepresentations about Sanctuary Belize as part of any SBE Entity's sales or marketing plan. Not a single deponent testified otherwise.

In July 2018, Movant made a \$1.4 million deposit with Newport Land Group (Exhibit 38). The purpose of that deposit was to acquire shares in Rancho Del Mar, a new development that Newport Land Group intended to build in Costa Rica. Movant also worked with family and friends to raise additional capital for the Costa Rica project. Cumulatively, with family and friends, Movant and others contributed \$3.35 million in good faith. Together, those investors would become limited partners in the Rancho Del Mar, Costa Rica project. (Exhibits 38, 39, 40; Statement of Undisputed Material Facts, 49).

(The FTC has not produced any evidence that Movant knew, or should have known, of any improper financial relationship between Movant's \$1.4 million investment in a new development in Costa Rica, and the alleged Sanctuary Belize scheme. In order to prevail, the FTC must show that Movant had knowledge, or should have known, that his \$1.4 million investment was being used to advance the Sanctuary Belize scheme in order to take the

investment and add it to the Receiver's money pool. Yet evidence does not exist to support such an allegation.)

**E) The Amended Complaint:**

On October 31, 2018, Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed its Complaint for Permanent Injunction and other Equitable Relief ("Complaint"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108.

Movant retained counsel for advice on how he should recoup the \$1.4 million he invested with Newport Land Group. If the FTC was suing Pukke, Kazazi, Costanzo, and Greenfield, Movant wanted Newport Land Group to return money that all limited investors contributed to the Costa Rica project. Counsel instructed Movant that since neither he nor Newport Land Group were named in the FTC's initial Complaint, the best way to recover the investment with Newport Land Group would be to sue Newport Land Group for breach of contract.

On advice of counsel, in November 2019, Movant filed suit against Newport Land Group in the Superior Court of California, Orange County for breach of contract. (Exhibit 41, Statement of Undisputed Material Facts, 50).

On December 28, 2019, the Commission filed a motion to amend the Complaint, adding Michael Santos and Newport Land Group, LLC ("NLG") as defendants in the case.

On January 15, 2019, the Court named Movant as a defendant.<sup>5</sup> On February 8, 2019, Movant filed a pro se motion in the Superior Court of California, Orange County, for Voluntary

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<sup>5</sup> Citing the Court's first sentence under the heading "I. Factual and Procedural History" in the Memorandum Opinion denying Movant's motion to dismiss, which states "The FTC first named Santos as a defendant in its Amended Complaint filed on January 15, 2019, (Amended Complaint at Paragraph 29, ECF No. 114."

Dismissal Without Prejudice in Movant’s lawsuit against Newport Land Group, Case No. 30-2018-00908630-CI-BC-CJC in order to comply with the Stipulated Preliminary Injunction Order.

**F) The Charge:**

In the Amended Complaint, the FTC charges Movant with one Count of violating the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), by reason of allegedly deceptive marketing practices, as well as two Counts of violating the telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310.3(b), based on misrepresentations and misleading investment opportunities. The factual basis for these claims—that Movant was an officer, director, part owner, manager, or otherwise controlled an SBE Entity; that movant made one of the alleged misrepresentations to SBE consumers while working for SBE; that Movant knew or should have known of at least one of the alleged misrepresentations when he allegedly made such a statement to an SBE customer; that movant aided and abetted the Sanctuary Belize sales process and should therefore be tagged with at least one of the misrepresentations—are not supported by any evidence. Rather, Movant invested \$1,400,000 of his money in a non-SBE real estate deal in another country because Movant believed what satisfied Sanctuary Belize lot-owners like Watford told Movant. If anything, the evidence shows that Movant (and his family) are victims of deception, not promoters of falsity.

**II. CLAIMS AND DEFENSES UPON WHICH JUDGMENT IS SOUGHT**

**1) The Burden of Proof and Elements to be Liable for violating the FTC Act and TSR:**

To be liable for violating the FTC Act, the Plaintiff must establish, by a preponderance of the evidence, a case that he “(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. The second prong of the analysis may be established by showing that the individual had actual knowledge of the deceptive conduct, was recklessly indifferent to its deceptiveness, or had an awareness of a high probability of deceptiveness and intentionally avoided learning the truth.” *F.T.C. v. Ross*, 743 F.3d 886, 892 (4<sup>th</sup> Circ. 2014).

The standard for individual liability under the TSR is the same as the standard for individual liability under the FTC Act. *See, e.g. F.T.C. v. WV Universal Mgmt., LLC* 877 F.3d 1234, 1240 (11<sup>th</sup> Cir. 2017) (holding that “by violating the TSR, [the defendant] violated the FTC Act and is subject to its penalties).

The Commission does not have any evidence to support the first part of the above stated test as applied to Movant. And no reasonable jury would find for the plaintiff on the second part.

## **2) Elements That Cannot be Proven by the Plaintiff:**

Element 1: Movant contends that the FTC cannot demonstrate a triable issue of fact as to whether Movant participated directly in the deceptive practices *or* had authority to control those practices, **and**

Element 2: Movant contends that the FTC cannot demonstrate a triable issue of fact as to whether Movant had or should have had knowledge of the deceptive practices.

Movant attended or listened telephonically as FTC attorneys deposed the following people: 1) Gordon Barienbrock, 2) Ryan Boyajian, 3) Luke Chadwick, 4) James Catsos, 5) Maya Baker, 6) Violette Mathis, 7) Anthony Mock, 8) Peter Baker, 9) Andrew Dixon, 10) Zarnie Anderson, and 11) Eric Hogan. The FTC Attorney also deposed Movant.

Deponents Gordon Barienbrock, Violette Mathis, Andrew Dixon, and Anthony Mock testified that they did not know Movant and that they did not know Movant was affiliated with

the SBE Entities prior to the filing of the Amended Complaint. The other deponents provided testimony that supports Movant's position. The deponents that knew of Movant testified that Movant did not participate directly in the alleged deceptive practices and that Movant never had the authority to control any SBE employees, entities, or practices.

### **3) Salient Testimony by Deponents:<sup>6</sup>**

#### **1} Luke Chadwick: Testified to his role as head of sales at SBE for a portion of time during the Relevant Period<sup>7</sup> (See Exhibit 13).**

Question #34 for Chadwick: Are you aware of whether I had authority over any salesperson at any time? Chadwick's response: You did not.

Question #40 for Chadwick: From your view, would Catsos allow me to have any authority over any part of the sales process? Chadwick's response: No.

Question #41 for Chadwick: Would I have had authority in telling a salesperson what they should or should not say? Chadwick's response: No you would not.

Question #63 for Chadwick: To your knowledge, did I ever interact with any consumer in Belize? Chadwick's response: No.

Question #84 for Chadwick: To your knowledge did I have any authority to instruct anyone with regard to the messaging of videos that the sales and marketing team would use? Chadwick's response: Not to my knowledge.

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<sup>6</sup> Because Movant does not have access to the deposition transcripts, Movant has relied upon his notes of the testimony. Movant has a pending motion asking for access to all deposition transcripts (and errata sheets) so he can add them to this motion. If the Court grants Movant access to the transcripts, he asks for permission to include the actual transcripts. However, Movant believe his transcriptions to be accurate in substance. Without the transcripts, Movant is prejudiced in his effort to show the Court the facts, as shown in the depositions. At a minimum, the FTC should provide the Court with the portions of the depositions that show Movant's questioning of witnesses, as well as Movant's deposition transcript. While incomplete, this evidence certainly supports the key facts in this motion. However, only access to the full record will permit Movant a fair chance to make his case.

<sup>7</sup> According to the FTC, Relevant Period means April 20, 2005 to November 6, 2018



Question #88 for Chadwick: Are you aware of my becoming a sales leader, or leader of any kind, during any time when you were employed at GPA? Chadwick's response: Not to my knowledge.

Question #95 for Chadwick: To your knowledge, was I ever an administrator of any website that sold or marketed properties at the defendant companies? Chadwick's response: Not to my knowledge.

Question #97 for Chadwick: If Jim Catsos or anyone on his team made a misrepresentation, would I have had any authority to correct him? Chadwick's response: Not to my knowledge.

Question #98 for Chadwick: Did I have any authority over any person who worked at SBE that interacted with consumers in any way? Chadwick's response: Not to my knowledge.

Question #111 for Chadwick: Can you tell me whether I had any influence over corporate policy? Chadwick's response: Not to my knowledge.

Question #113 for Chadwick: To your knowledge, would I have had any way of knowing whether the entity had debt, or did not have debt? Chadwick's response: Not to my knowledge.

Question #119 for Chadwick: To your knowledge, what did I do? Chadwick's response: To my knowledge you worked on your own prison reform program. That was what I understood you to do.

## **2} Peter Baker: Testified to being an owner of the SBE development in Belize. (Exhibit 18)**

Question #14 for Peter Baker: Did you ever know me to have a Managerial Function with any of the SBE Entities? Peter Baker's response: Absolutely not.

Question #15 for Peter Baker: If I had visited Belize and given instructions to anyone working in Belize would I have had authority over any person there? Peter Baker's response: No, they wouldn't even know who you are.

Question #16 for Peter Baker: Did you ever know me to participate in any meetings reserved for people that had Managerial Functions? Peter Baker's response: No. You never participated in any meetings like that.

Question #19 for Peter Baker: Based on what you've said today about other people that had Managerial Functions of the SBE Entities during the Relevant Period, on what basis would you say that the FTC made me a defendant, but not those people that you know had Managerial Functions? Peter Baker's response: The only reason you're a defendant, I think, is because you have money.

Question #23 for Peter Baker: Would you say that the FTC got it wrong when it alleged that I was a senior member of the sales team? Peter Baker's response: There is no way you were a senior member of anything.

Question #35 for Peter Baker: How many of these depositions have you participated in since the FTC launched its Complaint? Peter Baker's response: More than a dozen.

Question #36 for Peter Baker: How many of the people that were deposed identified me as being a person with Managerial Functions for any SBE Entity? Peter Baker's response: No one.

Question #49 for Peter Baker: To your knowledge, did any employee of any SBE Entity, ever report to me? Peter Baker's response: Nobody reported to you.

Question #51 for Peter Baker: To your knowledge, did I have authority to hire or fire any employee for any SBE Entity? Peter Baker's response: No you did not.

### **3} James Catsos: Testified to being head of sales and the author of scripts. (Exhibit 14)**

Question #2 for James Catsos: Can you recall whether there was any time during your employment at GPA that I had any authority to direct you in any way, or issue an order in any way? James Catsos' response: I don't recall you having that authority.

Question #3 for James Catsos: Would you know if I had any knowledge whatsoever about the development in Belize when I began with the company? James Catsos' response: I don't think that you did.

Question #6 for James Catsos: At any time during your employment at GPA, did I replace you as a leader on the sales team, with authority over anyone? James Catsos' response: I don't believe so.

Question #14 for James Catsos: Based on your experience of working at GPA, would you have characterized me as being an officer or owner or leader in the company? James Catsos' response: No.

Question #19 for James Catsos: Do you know what my role was supposed to be at GPA? James Catsos' response: In the beginning, you designed the interview process to do interviews. At a later time, as we looked at some of the evidence, you put together the training manual. And then, honestly, I don't know what you did.

Question #31 for James Catsos: Exhibit 28 Profiles a training schedule that I drafted. Is that right? James Catsos' response: I don't think it says you drafted but I thought I remember you drafting it.

Question #33 for James Catsos: Did you object, or reject the idea when I suggested that I could train, did you reject that proposal because I would be taking over the role of a sales leader when I was not? And then you did the training? James Catsos' response: I might have.

Question #34 for James Catsos: Do you recall that instead of allowing me to participate in the training, you said it would be best for people with experience, like Brandi or Rebecca to lead the training—not me? James Catsos' response: I mean it's possible. I just see your name on this stuff. I honestly don't remember.

Question #36 for James Catsos: Do you recall whether a time came when I transitioned away from having any working relationship with you or others on the sales team? James Catsos' response: Yes.

Question #37 for James Catsos: Approximately how long would you say that we worked together before I switched to another role, in a different location from the telephone sales area? James Catsos' response: I'm not sure, but I don't believe it was too long.

Question #42 for James Catsos: Do you recall testifying about the questionnaire that I developed to help you find, or filter out candidates that you could consider hiring? James Catsos' response: I don't remember seeing it, I do remember when you did it.

Question #43 for James Catsos: Do you know if the questions that I designed were to help you find potential candidates that would be honest and work with you? Was that my purpose? James Catsos' response: Yes. The goal was to find really good candidates.

Question #50 for James Catsos: Did I ever have authority to fire candidates that were on your sales team? James Catsos' response: No.

Question #68 for James Catsos: Did I ever have authority to override you, or anyone else, in what you believed should be included in any scripts that a salesperson used? James Catsos' response: No.

**4} Eric Hogan: Testified to being Director of Sales (Exhibit 21):**

Question #12 for Eric Hogan: In your role as a sales leader, would you have known if anyone in the company perceived me as being someone with Managerial Functions? Eric Hogan's response: No one would see you as being someone with managerial functions.

Question #26 for Eric Hogan: Since you were the Sales Director in Belize, would it make sense that you would know if I were selling properties on behalf of the SBE? Eric Hogan's response: Yes, if you were selling for the SBE I would have known. It would be my job to know.

Question #29 for Eric Hogan: And is it your testimony that you did not know that I was selling, or helping with sales of the SBE? Eric Hogan's response: You were not selling or doing anything for the SBE.

Question #33 for Eric Hogan: Did you ever perceive me as being part of that leadership team? Eric Hogan's response: No, I did not.

Question #35 for Eric Hogan: If I had authority to control an aspect if the SBE, would you have known? Eric Hogan's response: Yes, I would have known.

Question #41 for Eric Hogan: Was there ever a time when I had authority to tell you how to do your job? Eric Hogan's response: No.

Question #43 for Eric Hogan: During the six years that you worked at SBE, would it be fair to say that you participated in more than 50 meetings that involved sales or training? Eric Hogan's response: Yes, way more than that.

Question #45 for Eric Hogan: Did you ever see me participate in a sales meeting? Eric Hogan's response: No.

Question #47 for Eric Hogan: Did you ever see me participate in a training session with you or other employees of the SBE? Eric Hogan's response: No.

Question #50 for Eric Hogan: Did you ever discuss a sales script with me? Eric Hogan's response: No.

Question #52 for Eric Hogan: Do you know if I ever had authority to instruct people on the sales team how to communicate with customers? Eric Hogan's response: No.

Question #59 for Eric Hogan: Do you know if I ever had authority to influence compensation structures? Eric Hogan's response: No, you did not.

Question #71 for Eric Hogan: Did anyone ever train you to use videos that I created? No.

Question #72 for Eric Hogan: To your knowledge, did Brandi ever authorize anyone on the sales team to use videos I created? Eric Hogan's response: No.

Question #82 for Eric Hogan: Are you testifying that during the six years that you worked in sales, you never knew me to have any authority over any person that worked in sales? Eric Hogan's response: You did not have authority.

**5} Zarnie Anderson: Testified to being Director of Sales (Exhibit 20):**

Question #13 for Zarnie Anderson: The Palm Springs and Orlando live events, were those held in 2014? Zarnie Anderson's response: Yes.

Question #15 for Zarnie Anderson: Do you recall if my portion of the presentation was to talk about my personal role as a private investor, and the ways I built an investment career after struggle? Zarnie Anderson's response: Yes, that was what you spoke about.

Question #16 for Zarnie Anderson: When you began working in sales, did you have any interaction with me? Zarnie Anderson's response: No.

Question #34 for Zarnie Anderson: Do you recall testifying today that Andi, Rod, Brandi, and Frank were part of a leadership team? Zarnie Anderson's response: Yes.

Question #35 for Zarnie Anderson: Did you ever perceive me as being part of that leadership team? Zarnie Anderson's response: No.

Question #46 for Zarnie Anderson: Did you ever see me participate in a sales meeting? Zarnie Anderson's response: No.

Question #52 for Zarnie Anderson: Did you ever hear me instruct anyone on how to deliver a sales script? Zarnie Anderson's response: No.

Question #61 for Zarnie Anderson: Do you know if I ever had authority to influence compensation structures? Zarnie Anderson's response: No.

Question #63 for Zarnie Anderson: Did I ever discuss your job performance? Zarnie Anderson's response: No.

Question #77 for Zarnie Anderson: Did you ever receive instruction from me regarding videos that I created? Zarnie Anderson's response: No.

**6} Maya Baker: Testified to being Hospitality Manager in Belize (Exhibit 15):**

Question #6 for Maya Baker: With regard to the sales call for prospective lot-purchasers visiting Belize, would you tell me who would be on the call at the California sales office? Maya Baker's response: Brandi primarily. They would then have some of the different salespeople sitting around.

Question #9 for Maya Baker: Does that mean that you participated in more than 50 of those phone calls? Maya Baker's response: Yes I would say approximately so.

Question #10 for Maya Baker: Can you testify to how many of those pre-tour phone calls I participated on? Maya Baker's response: I don't recall you participating in any of them—no offense.

Question #16 for Maya Baker: Did you ever have a phone call with me regarding any matter whatsoever? Maya Baker's response: I don't think I ever spoke to you.

Question #19 for Maya Baker: Did I have the authority to influence the sales process in Belize in any way? Maya Baker's response: No I don't know what your mandate was. I don't have any knowledge of you.

Question #31 for Maya Baker: Would it be truthful to say that I was a senior leader of the sales team? Maya Baker's response: No.

Question #34 for Maya Baker: Let's put it this way. Did I have authority to influence how you would do your job in any way? Maya Baker's response: No. No.

**7} Ryan Boyajian: Testified to being Hospitality Manager in Belize (Exhibit 12):**

Question #4 for Ryan Boyajian: Did you say that you knew Andi since 2005? Ryan Boyajian's response: Yes, somewhere around 2005.

Question #17 for Ryan Boyajian: When you worked with Andris, did you think of him as being a successful businessman? Ryan Boyajian's response: Yes I did.

Question #18 for Ryan Boyajian: On what basis would you have thought him a successful businessman? Ryan Boyajian's response: Based on what I saw in his office, and the scope and magnitude of his project in Belize. Based on the house he lived in and what I saw.

Question #31 for Ryan Boyajian: Did you ever hear or see me marketing lots for Belize? Ryan Boyajian's response: I did not.

Question #32 for Ryan Boyajian: Did you ever hear or see me instructing others on how to market lots in Belize? Ryan Boyajian's response: I did not.

Question #33 for Ryan Boyajian: Did you ever hear me instruct anyone on what they should say to consumers? Ryan Boyajian's response: I did not.



Question #39 for Ryan Boyajian: Did you ever see me engage in any telemarketing calls?

Ryan Boyajian's response: I did not.

Question #40 for Ryan Boyajian: Did you ever see me instructing anyone that made telemarketing calls? Ryan Boyajian's response: I did not.

Question #61 for Ryan Boyajian: In the time that you worked there, did you ever see me leading any meetings? Ryan Boyajian's response: I did not.

Question #91 for Ryan Boyajian: During the time that you worked with Andris, did you ever see me having any authority over any entity that operated at the Michelson address previously discussed? Ryan Boyajian's response: No I did not.

**8} Gordon Barienbrock: Testified to investing more than \$6 million with SBE over 10 years**

**(Exhibit 11):**

Question #4 for Gordon Barienbrock: As one of the largest investors in Belize, would you have made efforts to know all owners, operators, or controllers of Belize? Gordon Barienbrock's response: Yes.

Question #5 for Gordon Barienbrock: Prior to November 2018, when the FTC initiated its action against the SBE, did you ever have any kind of interaction with me, including in person, by phone, text, or email? Gordon Barienbrock's response: No.

Question #18 for Gordon Barienbrock: Did you believe the SBE was a legitimate investment opportunity for you and others? Gordon Barienbrock's response: Yes.

Question #20 for Gordon Barienbrock: If I would have told you that the principals told me they were building a world-class marina, should I have had reason to doubt them? Gordon Barienbrock's response: No.

Question #21 for Gordon Barienbrock: If I would have asked you to confirm or deny the principals' claims that they were going to build a world-class marina, what would you have told me? Gordon Barienbrock's response: I would have confirmed that they were right.

Question #22 for Gordon Barienbrock: Did you testify that you're an expert in marinas? Gordon Barienbrock's response: Yes.

**9} Violette Mathis: Testified to investing more than \$20 million with SBE over many years**

**(Exhibit 16):**

Question #4 for Violette Mathis: Do you know that the FTC named Michael Santos a defendant in this case? Violette Mathis's response: No

Question #5 for Violette Mathis: Did you ever have any interaction with Michael Santos? Violette Mathis's response: No

Question #6 for Violette Mathis: Did you ever know Michael Santos to have any role as a leader in any of the companies named in the FTC complaint? Violette Mathis's response: No

**10} Anthony Mock: Testified to being a primary builder in SBE (Exhibit 17):**

Question #1 for Anthony Mock: Did you ever know Michael Santos to be a corporate officer for any of the companies named in the FTC complaint? Anthony Mock's response: I don't know Michael Santos.

### **III. SUMMARY OF TESTIMONY**

Since not a single deponent testified otherwise, there cannot be a genuine dispute of the following Material Facts:

1. Not a single deponent testified that Movant participated directly in the alleged deceptive practices of the SBE.
2. Not a single deponent testified that Movant was an officer, director or owner (in whole or in part) of any SBE Entity.

3. Not a single deponent testified that Movant had authority to control the alleged deceptive practices of the SBE.
4. Not a single deponent testified that Movant had or should have had knowledge of the alleged deceptive practices of the SBE.
5. Not a single deponent testified that Movant had actual knowledge of the alleged deceptive conduct.
6. Not a single deponent testified that Movant was recklessly indifferent to the alleged deceptiveness.
7. Not a single deponent testified that Movant had a high probability of knowing about the alleged deceptiveness and intentionally avoided learning the truth.
8. Not a single deponent testified that the SBE relied upon any videos Movant created to market Sanctuary Belize lots to consumers.
9. Not a single deponent testified that Movant “formulated, controlled, [and] had the authority to control” other employees engaged in marketing the SBE.
10. Not a single deponent testified that Movant made a single one of the FTC’s alleged misrepresentations in the Amended Complaint to any SBE consumer.
11. Not a single deponent testified that Movant had reason to know that others were making any of the alleged misrepresentations in the Amended Complaint.
12. Not a single deponent testified that Movant aided or abetted others in making any of the alleged misrepresentations in the Amended Complaint.
13. No evidence exists that Movant ever earned a commission from the sale of any lot in the SBE.
14. No evidence exists that Movant made a single video for the SBE that knowingly contained any of the alleged misrepresentations in the Amended Complaint.
15. No evidence exists that the SBE sales team used a single video that Movant made for his own company’s marketing purposes.
16. No evidence exists that the SBE sales team used a single video that Movant made to sell a single lot for the SBE.

## IV. ARGUMENT

Rule 56 of the Federal Rules of Civil Procedure authorizes this Court to grant judgment as a matter of law where there is no genuine issue as to any material fact. An issue is "genuine" only if "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Accordingly, the moving party must establish that no such issue remains for trial, even if the evidence is viewed in the light most favorable to the non-moving party. See *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970).

The Amended Complaint alleges several misrepresentations that the SBE made to consumers. And in the Amended Complaint, the FTC misled the Court to believe that Movant “promoted these claims directly to consumers, for example, ‘through various marketing videos.’” Despite there not being any evidence to support the allegation against Movant, the FTC also misled the Court into believing that Movant “formulated, controlled, [and] had the authority to control other employees engaged in marketing Sanctuary Belize.”

Movant is differently situated, 180-degrees differently, from Kristi Ross, the defendant in *F.T.C. v. Ross*, 743 F.3d 925 (4<sup>th</sup> Circ. 2014). After a bench trial, the district court found in favor of the Commission. Specifically, it found that Ross’

Broad responsibilities at IMI coupled with the fact that she personally financed corporate expenses, oversaw a large amount of employees and had a hand in the creation and dissemination of the deceptive ads prove[d] by a preponderance of the evidence that she had authority to control and directly participated in the deceptive acts within the meaning of Section 5 of the [Federal Trade Commission] Act. *Ross*, 897 F. Supp. 2d at 384.

In contrast to *Ross*, the FTC has not produced a single witness to support its allegation that Movant had any Managerial Functions. Nor did a single witness come forth to testify that

Movant made videos to promote claims made to consumers for the SBE. In fact, every deponent agreed with Movant’s testimony to the contrary. (Exhibits 11 through 21)

The videos that Movant created were for his own ventures—not the SBE. Movant branded the subject videos as Alternative Investment Properties or Alternative Investment Seminars, or Prison to Paradise. None of those videos were related to the SBE. None of those videos used branding by the SBE. None of the videos were paid for by any SBE Entity. None of these videos were made in conjunction with any SBE Entity. Movant paid for the production of those videos out of his own funds, and Movant paid to host those videos on his own channel, without any input from the SBE. Movant alone, not anyone associated with an SBE Entity, decided on the content of the videos.

Most importantly, not a single SBE Entity salesperson used any videos that Movant created to communicate with any of SBE’s potential buyers, and Movant did not knowingly make a single misrepresentation—as alleged in the Amended Complaint.

Further, any deponent that knew Movant testified that he never formulated, controlled, or had the authority to control any SBE Entity or SBE employee. Many key SBE sales and marketing people that the FTC called for deposition had no idea that Movant had any role with the SBE. Maya Baker thought he worked on prison reform. Eric Hogan thought he worked on prison reform. It’s inconceivable that Movant should be liable for \$144 million for participating in an alleged fraud scheme when people that testified to being architects of the sales process (who are not defendants) did not know of any role that Movant had with the SBE. They testified that Movant did not have any authority to act on behalf of the SBE.

The second prong of the liability test depends on whether Movant “had actual knowledge of the deceptive conduct, was recklessly indifferent to its deceptiveness, or had an awareness of a

high probability of deceptiveness and intentionally avoided learning the truth.” *Ross*, 743 F.3d at 892.

Clearly, we’re now at a different stage of the proceedings from when the Court denied Movant’s Motion to Dismiss. We are in the final days of Discovery and the FTC has (i) conducted a two-week PI hearing, (ii) deposed more than a dozen more people, and (iii) subpoenaed many documents from many sources. If the Commission has any evidence that shows Movant’s culpability, the FTC should gotten it from the witnesses by now.

Some of the people deposed were intricately involved in the SBE. They earned commissions from lot sales. They made direct representations to SBE consumers. They worked closely with the SBE for many years. And unlike the Movant, a person that came into employment after longer than 26 years in prison, many of the people had extensive experience. If hundreds of people that worked for the SBE were not expected to have knowledge of deception, how could it be reasonable to expect the Movant to have known?

For example, one person employed by the SBE as a senior sales leader retired as a homicide detective (Phil Watford), and another senior sales leader in Belize was a certified public accountant (Cliff Smith) (Exhibit 15, 16, 18; Statement of Undisputed Material Facts, 48). Those two sales leaders participated on sales calls and sales training. They represented to Movant that the development was a worthwhile investment. They interacted with hundreds of consumers and they played an influential role in persuading Movant that the SBE was a legitimate enterprise.

Deponent Maya Baker responded to Movant’s questions as follows:

Question #50 for Maya Baker: Do you recall mentioning Phil Watford in your testimony?

Deponent Maya Baker testified: Yes

Question #51 for Maya Baker: Did Phil Watford ever tell you that he retired as a Las Vegas homicide detective? Deponent Maya Baker testified: I don't think he told me, but everyone knew it.

Question #61 for Maya Baker: Did Phil Watford, the retired homicide detective, relocate with his wife and son to become a permanent resident at the Belize development? Deponent Maya Baker testified: Yes.

Question #62 for Maya Baker: Did Phil Watford become a part of the sales team in Belize? Deponent Maya Baker testified: Yes.

Question #64 for Maya Baker: Did Phil Watford reveal his law enforcement background to prospective consumers? Deponent Maya Baker testified: Yes. I think so.

Question #65 for Maya Baker: If Phil Watford told me that the developer was building a world-class marina, would you say he was deceiving me? Deponent Maya Baker testified: No.

Question #67 for Maya Baker: If a retired law-enforcement officer like Phil Watford represented that the development was legitimate, on what grounds would a first-time visitor to Belize have to think he was being deceptive? Deponent Maya Baker testified: I don't know.

Deponent Baker gave similar responses to questions about Cliff Smith, the former Certified Public Accountant, that relocated to Sanctuary Belize. Besides investing in Belize, he pursued a sales career, making representations to consumers every weekend. In no way would Movant have more knowledge than either of Maya Baker, the retired detective Phil Watford, the Certified Public Accountant Cliff Smith. Indeed, Movant based his decision to invest \$1.4 million, in part, because a retired law-enforcement officer, and a Certified Public Accountant, represented that SBE was a good investment. (Exhibits 15, 38, 42).

Further, in 2015, the U.S. Probation Office filed a petition asking the Court to find that Pukke had violated the terms of his supervised release. Probation alleged that by failing to disclose his involvement with SBE entities and using an alias, Andris Pukke violated the terms of his supervised release.

This Honorable Court ruled that:

“with respect to the specific alleged violation in the Petition, there [was] insufficient evidence to support the finding of a violation.” Accordingly, the Court terminated supervised release as to Pukke on December 9, 2015. The Court’s decision at the end of the proceeding may well have been ill-founded.<sup>8</sup>

Like the Honorable Court’s decision may well have been ill-founded, Movant’s time, energy, and \$1.4 million investment was ill-founded. That said, Movant did not have as much information or knowledge about Andris Pukke as this Honorable Court had. Nor could Movant have had as much information as more than 100 other employees that worked for the SBE. Those employees interacted directly with consumers, and they had a long depth and breadth of experience of working with people that had actual Managerial Functions at the SBE. Ironically, the FTC chose not to make defendants of senior leaders that testified to architecting the sales scripts used to communicate the development’s messaging to more than 1,000 consumers.

The FTC has not presented any evidence to suggest that Movant was knowledgeable about deception. Not a single person offered testimony to suggest that Movant’s limited job responsibilities should have made him aware of any alleged misrepresentations. As all of the deponents testified, Movant did not have any way of knowing that he was investing in a deceptive enterprise.

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<sup>8</sup> See Memorandum Opinion in Support of Preliminary Injunction, signed by the Honorable Peter J. Messitte, on August 2, 2019, pages 39-40, Footnote 23.



A total lack of testimony exists to suggest Movant “knew or should have known” about misrepresentations. On the contrary. There is tangible evidence that Movant’s \$1,400,000 investment was made in good faith, and that he was on the way to building an alternative-investment strategy around his personal story of overcoming adversity. No reasonable person would invest \$1.4 million if that person knew or should have known that he was buying into a fraudulent enterprise, as alleged by the Commission in its Amended Complaint.

## V. CONCLUSION

For the reasons stated above, and in accordance with the Federal Rules of Civil Procedure 56(c), Movant prays for a ruling of Summary Judgment or Partial Summary Judgment in his favor, and for the other relief requested on pages 1 and 2 of this motion.

Respectfully,

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