UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

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

FTC'S RESPONSE IN SUPPORT OF THE PROPOSED REDRESS PLAN

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Introduction

The FTC's proposed Redress Plan ("the Plan") tackles a consumer redress problem of almost historical complexity—real estate in another country deceptively marketed in the United States over thirteen years—and it reflects the agency's extensive expertise as well as the support of the Receiver and the Government of Belize. *See* ECF No. 1117-2 (Jan. 21, 2021) (correspondence from Prime Minister John Briceño); PXB ¶ 3 (Receiver correspondence). Despite substantial noise from a few people who collected fill-in-the-blank objections from other lot purchasers, objectors only represent about 10% of the approximately 1,700 lot contracts at issue. PXB ¶ 4; PXA ¶ 7. There are five types of objections, some of which are understandable but none of which has any merit.

First, some objectors complain that the Plan lacks guarantees—in effect, the absence of assurances about everything from prospective developers to homeowner's association fees impairs their ability to decide whether to remain owners. Unfortunately, however, these objectors want something neither the FTC nor anyone else can provide with respect to risky real estate investments overseas. In fact, the Sanctuary Belize Enterprise ("SBE") perpetrated such a destructive fraud because Andris Pukke provided consumers with exactly the sort of false guarantees necessary to induce them to gamble huge sums. We cannot repeat this by re-promising things that no one can honestly promise in these circumstances. To be direct: consumers unable to assume the risks New Sanctuary presents should elect to take compensation under the Plan without maintaining their lots. Anyone who claims there is a way to guarantee results is misleading them.

Second, exactly as the absence of assurances about the future is an inescapable consequence of the fraud rather than a valid objection to the Plan, the inability to effectuate SBE's myriad other illusory promises is unfortunate but unavoidable. As the Court may recall from this matter's vast record, SBE's promises extended beyond the specific litigated misrepresentations and include, among other things: (i) that SBE would respect buyback contracts, settlements, judgments, or other obligations to particular parties; (ii) that certain

owners would have special common area access, easements, or privileges; (iii) that the development would function partly as a nonprofit; and (iv) that owners, or at least some owners, would have rights under homeowner's association documents that purport to govern everything from setback requirements to trashcans and the labelling of toilets.[1] However, tailoring relief based on 1,700 individual circumstances is impossible—the Receivership cannot prioritize particular consumers no matter how compelling the basis for their asserted priority might be. Furthermore, to maximize value for everyone, the Receivership must maximize the development's value to a prospective developer—which necessarily means offering prospective developers a reasonably clean slate.

Third, certain objectors make various process objections. Specifically, they falsely claim to act on behalf of the advisory Consumer Committee and complain that the FTC did not provide the Committee with the Plan before disseminating it to the "masses," ECF No. 1137-2 (Feb. 18, 2021) at 2, although the advisory Committee has no authority to negotiate on behalf of hundreds of other people. In fact, although the FTC has taken measures to keep consumers informed, and the Plan provides very significant additional communication obligations, *see* ECF No. 1117 (Jan. 21, 2021) at 2-3, it is neither obligatory nor advisable for the FTC to negotiate with individual consumers or anyone who incorrectly purports to represent groups of consumers.

Fourth, one consumer demanding to negotiate, Craig Hibbert, spearheads a set of associated objections incorrectly alleging that the Plan favors the approximately 66% of lot purchasers who did not fully pay the contract prices that Defendants originally set.[2] Among other things, Hibbert alleges that the Plan is a "diabolical" and "totalitarian" proposal that "nobody but the federal government would have the temerity" to suggest. PXB ¶ 6; PXC ¶ 11.

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[1] *See* PXB ¶ 5 at § 2.3.

[2] Notwithstanding the Court's extended deadline for comments and objections, *see* ECF No. 1137 (Feb. 18, 2021), Hibbert submitted additional untimely comments and objections on March 9. He did not simultaneously serve the FTC notwithstanding the Court's direction that he do so. The FTC received the material through the ECF system on March 11. *See* ECF No. 1178.

His language aside, and as the FTC has already explained, ECF No. 1117 at 10-13, Hibbert's collected objections are mistaken for multiple reasons, including that they dramatically overvalue what the Plan provides partly-paid owners.

Nevertheless, Hibbert and certain others propose two alternative plans that reflect their objections ("Hibbert-A" and "Hibbert-B"). Both exclude consumers who choose not to remain in New Sanctuary from potential second and third rounds of cash distribution. Thus, hundreds of consumers will get less simply because they cannot or should not double-down on their investments by maintaining lots in New Sanctuary. In fact, many Kanantik lot purchasers will get nothing at all under either Hibbert plan because Kanantik has no cash to fund a first distribution. This alone is a sufficient basis to reject Hibbert's Plans.

To the extent the Court considers the Hibbert plans further, the Hibbert-A plan is not a genuine plan at all; it simply distributes the Receivership's cash[3] and leaves everyone to fend for themselves with respect to every other issue. As discussed below, the Hibbert-B plan requires consumers to decide whether to remain in the development without knowing what the effective price of their lot will be. *See* PXA ¶ 16. Although this feature is probably a mistake, the plan's other major attribute is unmistakably intentional: it shifts more than **$10,000,000** in assets from the roughly 66% of partly-paid owners to the roughly 36% of fully-paid owners *without regard to how much any consumer has lost*.[4] Thus, under Hibbert-B, a consumer who paid $50,000 for a $50,000 lot will recover a larger percentage of her loss, whereas a consumer who paid

[3] Solely to preserve the issue, the FTC notes that Hibbert's plans improperly propose to distribute assets the FTC obtained through Court-approved settlements that give the agency exclusive discretion over settlement funds—more than $27 million and most of the Receivership's cash. *See* ECF No. 607 (Sept. 25, 2019) at § III(B); ECF No. 326 (Mar. 25, 2019) at § C. Thus, to implement either Hibbert plan (or anything similar) would require litigation over the potential modification of those stipulated orders—which the FTC would oppose.

[4] The 66% figure is based on information Hibbert reports from the Receiver. *See* ECF No. 1175-2 at 10. The FTC has slightly different data, but the differences are likely immaterial.

$400,000 for a $500,000 lot will recover a smaller percentage of his loss—even though he has, in fact, lost more. Put simply, the Court should reject both Hibbert plans.

Finally, various other objectors raise miscellaneous concerns related to eligibility, potential development expenses, and other issues. None has merit. Notably, although the Plan does not contemplate extensive ongoing judicial oversight, it provides mechanisms for consumers unsatisfied with the Receiver's decisions to return to the Court. ECF No. 1117-1 at 42, § VI(B). Likewise, the FTC, Receiver, or other interested parties can return to the Court to amend the Plan even years later should something unfold differently than intended. In short, given the extremely complicated situation, the Plan represents a fair and reasonable approach to minimize losses and move forward.

Background

A. The Depth of the Deception and Harm Defendants Caused

As the Court is aware, this is a severely limited fund situation. Every lot purchaser had his or her rights violated and none will receive what they deserve. It is difficult to overstate the damage Defendants did. Lot purchasers rightly feel tremendous frustration and anger. In some cases, they are fortunate that the harm SBE caused is not life-altering. In other cases, however, the loss is devastating, representing an entire life's savings. In fact, some consumers facing such a loss are understandably unable to easily accept that their lots are worth as little as they are, or they are only starting to appreciate the situation.[5]

The FTC responds to the objections mindful that—although a workable redress plan addressing a limited fund scenario requires dismissing many reasonable requests for additional compensation or rights—that does not mean those requests are not good faith appeals based on what Defendants told consumers or what consumers otherwise reasonably believe. With some

[5] Notably, as discussed below, the Hibbert-B plan makes more sense if one assumes the lots are worth only slightly less than their initial purchase prices set by Defendants.

exceptions, including those objectors who have sought to mislead other consumers or the Court, the FTC does not intend to challenge objectors' good faith.

B. The Advisory Consumer Committee

1. Committee History and Structure

As part of the Interim Receivership Management Plan ("Interim Plan"), the Court formed a consumer committee to advise the Receiver regarding the day-to-day management issues involved with maintaining a Manhattan-sized development parcel in Belize. *See* ECF No. 559 (Aug. 23, 2019) at 3-4. The FTC proposed the Committee as part of a broader effort to address "concerns that the Receiver improve communications with affected parties." ECF No. 443-1 (May 10, 2019) at 21. However, the advisory Committee has no rights, powers or duties other than to meet periodically with the Receiver and receive associated travel reimbursement. *See id.* The Receiver chooses the Committee's membership and can change its members at any time without Court approval. *See id.* at 2. Membership includes different types of members (including current Sanctuary Belize residents and consumers who lost their lots through wrongful foreclosure) so that the Receiver would hear different perspectives, but it does not authorize Committee members to act as attorneys or agents for other consumers.[6] *See id.*

Significantly, the Interim Plan concluded several months of litigation related to the Receivership's management, including a motion to intervene by Hibbert and several other consumers (most of whom are now objectors, PXB ¶ 4). *See* ECF No. 286 (Mar. 8, 2019) at 3. The Court denied that motion, ECF No. 311 (Mar. 13, 2019), but the proposed intervenors nevertheless submitted an alternative interim management plan, ECF No. 347 (Mar. 22, 2019). In fact, on July 9, 2019, the Court heard extensive argument from "Craig Hibbert as spokesperson on behalf of the plan submitted by various lot owners," ECF No. 559 at 1, but ultimately adopted the FTC's proposal with a minor modification, *see id.*

[6] The Court subsequently expanded the advisory Committee to include two Kanantik representatives. ECF No. 1107 (Jan. 13, 2021).

2. Misrepresentations Concerning the Committee

On February 18, 2021, Hibbert and another consumer, Michelle Weslander Quaid, submitted a letter to the Court signed and presented in a manner suggesting, incorrectly, that Hibbert and Weslander Quaid were authorized to act on the Committee's behalf—they are not. *See* ECF No. 1137-1; PXB ¶ 3 (correspondence from Receiver to consumers regarding the misimpression the letter created). Hibbert, Weslander Quaid, and others then submitted additional documents entitled "Belize Consumer Committee and Owners Redress Plan," ECF No. 1175-1 (Mar. 1, 2021), and "Consumer Committee and Owner Response to FTC Redress Plan," ECF No. 1175-2 (Mar. 1, 2021). As the Receiver correctly explained, these submissions "mislead a reader into believing that they are the work of or sanctioned by the Consumer Committee." PXB ¶ 3. The Receiver also noted that these objectors had solicited support for their position through correspondence to consumers falsely characterizing their objections as an "official" response to the FTC. *See id.* As the Receiver explained, the materials advisory Committee members submitted "do not represent the official or unofficial position of the Consumer Committee." *Id.* (Receiver's emphasis). In fact, the Court never tasked the Committee with developing such positions, *see* ECF No. 559, and the Committee never did so, *see* PXB ¶ 3.

C. Development of the Plan and Communications With Consumers

Throughout this matter, the agency's efforts have included substantial contributions from officials and experts with experience in consumer economics, communications, redress, and other areas of core Commission expertise. PXD ¶ 1. To develop the Plan, the FTC relied substantially on that consumer protection expertise coupled with ongoing dialogue with the Receiver and Government of Belize. PXD ¶ 1. The FTC also met with the advisory Committee to discuss general plan parameters and issues, PXD ¶ 2, and—although the Commission cannot speak with every consumer individually—the FTC nevertheless communicated with dozens of consumers individually (including Hibbert), PXD ¶3.

After proposing the Plan, the FTC published FAQs about the Plan on its website, *see* ECF No. 1119-1 (Jan. 21, 2021), and, at the Committee's request, prepared a consumer-friendly explanation of how the Plan calculates lot prices, *see* ECF No. 1132-1 (Feb. 11, 2021). The Receiver has also regularly disseminated information to consumers, including information about the Plan. PXD ¶ 4. Importantly, however, this represents the beginning of the effort to communicate Plan information to consumers, not the end. Should the Court adopt the Plan, the Receiver will promptly communicate information by email, ECF No. 1117-1 at 20, § II(A), hold at least two information sessions, *id.* at 20, § II(B), aggressively solicit participation, *id.* at 21-22, §§II(C)-(G)(1), present options to consumers in an easy-to-understand manner (subject to FTC approval), *id.* at 25-27, 30-31, § III(B)-(C), III(H)-(I), and require consumers to execute detailed disclosures (also subject to FTC approval) that help ensure they understand these options, *see id.*, *see also id.* at 5-7 (defining disclosures). In short, various objectors' suggestion that the FTC acted recklessly or impeded communication about potential redress is incorrect.

Likewise, the objectors' implication that most consumers oppose the plan is simply wrong. As discussed above, only about 10% of consumers have objected. PXB ¶ 4. Declarations supporting the Plan are attached, *see* PXB ¶ 8, and the FTC could produce more easily if necessary (of course, consumers not opposed to the Plan are unlikely to submit statements of support or non-opposition without encouragement, and the FTC has not campaigned for support).[7] *See also* Bouvier, ECF No. 1163 (Feb. 26, 2021) (unsolicited comment "that the Proposed Redress Plan uses the only equitable approach possible").

In fact, there is cause to suspect that the number of genuine objections is actually less than the approximately 10% the Court received. Some consumers have reported to the FTC that

[7] The FTC includes these several declarations to complete the record. However, the FTC has not promoted its Plan relative to Hibbert's alternatives because there is no need to obtain a number of supporting declarations greater than the number of objectors—the number of objections is largely immaterial to whether the Court should approve the Plan. Rather, the substance of the objections—not the number—is what is important, and here, the relatively few objections are substantively unpersuasive.

they feel "intimidated" by objectors. PXD ¶ 5. Furthermore, Hibbert and others encouraged consumers to sign declarations supporting one of Hibbert's plans by directing them to a website named the "New Sanctuary Owners Site." PXB ¶ 9. The website includes only Hibbert's plans and submissions; in fact, the only information about the "FTC Redress Plan" is Hibbert's commentary describing it as a "diabolical" proposal that "nobody but the federal government would have the temerity" to suggest. PXC ¶ 13.[8]

On the website, consumers answer questions that auto-populate a fill-in-the-blank declaration form that refers to the Hibbert proposals as "the Belize Consumer Committee & Owners Plan"—although, as noted above, the advisory Committee did not develop or endorse the plan. Each declaration also states that the declarant has "read and understood" both the FTC Plan and Hibbert's proposals, which seems unlikely to be accurate for all declarants given the complexity of the issues involved. In fact, some declarants also submitted comments independently that reflect significant misunderstandings about the various proposals. *Compare* ECF No. 1178-1 at 113 (consumer declaring, under penalty of perjury, that he "understand[s]" the FTC Plan), *with* ECF No. 1164 (same consumer expressing mistaken concerns that, "unless I have missed something?" the FTC Plan does not consider amounts consumers have paid).

Considerably after the Court's extended deadline for such submissions expired, *see* ECF No. 1137, Hibbert proposal proponents filed roughly 100 such declarations (along with the declarants' IP addresses, emails, and in some cases, photos, *see*, e.g. ECF No. 1178-1 at 6 (Mar. 11, 2021)). More presumably will follow (again, notwithstanding the deadline). However, given the pressure and (at best) incomplete information, the number of genuine, informed objections rather than fill-in-the blank declarations is likely much lower than 10%.

[8] The email address associated with the comment is the one Hibbert uses to communicate with the FTC. PXB ¶ 10.

D. The Hibbert Plans[9]

1. Hibbert-A Plan (Giving Up)

The Hibbert-A plan proposes to distribute assets "currently held by the Receiver as described in the FTC's redress plan," which likely means at least a 15% refund for Sanctuary Belize lot purchasers, and potentially nothing (0%) for Kanantik lot purchasers (Kanantik currently has essentially no liquid assets).[10] *See* ECF No. 1119-1 at 6 (discussing potential distributions). Anyone who purchased a lot but chooses not to remain an owner would not receive subsequent distributions.

The Hibbert-A plan's other major feature is that it has no other features. Among other things: (1) whether Kanantik lot purchasers would have the option to move to New Sanctuary is unclear; (2) there is no provision to reduce the purchase price of anyone's lot to reflect the fact that Defendants' fraudulently induced the lot sales at issue; and (3) there is no provision for resolving competing claims on lots. By leaving existing fraudulently-induced contracts intact, and by proceeding without resolving competing claims, Hibbert-A will lead to a litigation morass as consumers scramble to sue each other (and the Receiver) to resolve their rights and recover what they can. No legitimate developer would want to enter this situation and the Government of Belize presumably would resist such a debacle.

2. Hibbert-B Plan (Shifting Millions)

a. The Hibbert-B Plan Generally

The Hibbert-B plan has several of the same features as the Hibbert-A plan—including a structure that excludes anyone from second and third cash distributions if they cannot afford (or

[9] The FTC summarizes both Hibbert plans based on the information he provided through ECF No. 1175-1 (Mar. 1, 2021).

[10] Kanantik does have real property. When the Receiver liquidates Kanantik's non-cash assets under the Plan, Kanantik lot purchasers will receive their *pro rata* shares of the proceeds, likely during the second round of distribution. However, neither Hibbert plan provides Kanantik lot purchasers who choose not to keep their lots with any recovery because, as discussed below, Hibbert excludes non-owners from second and third round distributions.

do not want) to maintain lots in New Sanctuary or Kanatnik (this includes everyone who does not currently have clear rights to a lot and does not want to invest additional amounts). Additionally, Hibbert-B provides consumers the following options:

- Consumers can release their lots back to the Receiver's inventory with no further obligation. They would get one round of redress only, so Sanctuary Belize lot purchasers would likely leave with a redress share and Kanantik lot purchasers would get nothing.

- Any consumer that paid less than 100% of their original contract and wants to remain an owner without paying the deceptive price Defendants established must "buy their own discount." Put differently, according to a complex formula, such consumers would "buy" discounts from their original lot prices by agreeing to increasingly lengthy transfer restrictions or decreasingly small portions of their redress (or combinations of both).[11] *See* PXA ¶ 12.

[11] The formula appears below, *see* PXA ¶ 12; consumers cannot decline transfer restrictions.

Years of transfer restriction	Cost to consumer of 5% price discount	Cost to consumer of 10% price discount	Cost to consumer of 15% price discount	Cost to consumer of 20% price discount	Cost to consumer of 25% price discount
1	100% of cash redress				
2	80% of cash redress	100% of cash redress			
3	60% of cash redress	80% of cash redress	100% of cash redress		
4	40% of cash redress	60% of cash redress	80% of cash redress	100% of cash redress	
5	20% of cash redress	40% of cash redress	60% of cash redress	80% of cash redress	100% of cash redress

- Consumers who want to remain owners and have paid 100% of their original contract (or are willing to do so) would receive significant extra money. Depending on how long a transfer restriction they are willing to accept, they will receive "bonus" payments. For example, a fully-paid consumer who paid $350,000 for a lot and agrees to a five-year transfer restriction will not receive a *pro rata* distribution based on the $350,000 that they actually paid, but on an artificially enhanced amount of $393,750. PXA ¶ 25.

As discussed further below, the combined effect of these features is to drive partly-paid consumers from the development and shift millions to fully-paid consumers regardless of the amounts anyone has actually lost.

b. The Multimillion Dollar Shift in Hibbert-B

Under reasonable (if not conservative) assumptions—and assumptions are necessary in part because, as explained below, the *pro rata* redress amount is unknowable under Hibbert-B—Hibbert-B shifts more than **$10 million** to fully-paid owners.[12] PXA ¶ 19. This figure aggregates changes across the entire population of partly-paid owners (roughly 66% of the total). PXA ¶ 7. Consider this illustration, using real data from a lot purchaser in Kentucky who paid $238,157.17 toward a $288,150.00 lot—or 83% of the price Defendants set:

Exemplar Kentucky Consumer—Estimated Redress Amounts[13]			
Consumer Elects To Maintain Ownership		Consumer Elects To Leave	
FTC Plan	Hibbert-B	FTC Plan	Hibbert-B
$53,731.47	$13,435.56	$53,731.47	$35,723.58

PXA ¶ 26. Thus, under Hibbert-B, the redress this consumer loses shifts to fully-paid lot purchasers—without regard to how much they paid. So a purchaser who paid the same amount

[12] With respect to that issue, we assume this consumer's *pro rata* redress amount is the same under both the FTC Plan and Hibbert-B. PXA ¶ 26.

[13] For this illustration, we assume this consumer's *pro rata* redress amount is 15% under both the FTC Plan and Hibbert-B (for the first round of distribution), the consumer elects to take a 20% price discount under Hibbert-B, and distribution rounds two and three for Sanctuary Belize lot purchasers are $10 million collectively. PXA ¶ 26.

as this consumer ($238,157.17) toward a lot Defendants priced at $238,157.17 will receive tens of thousands more in redress as a result of the Hibbert-B shift.

The purported justification for this $10,000,000[14] aggregate shift represents a central difference between Hibbert-B and the FTC Plan. Specifically, Hibbert-B incorrectly assumes that partly-paid consumers are getting a valuable "discount" under the FTC Plan, which—if true—Hibbert suggests justifies shifting resources to fully-paid consumers who cannot access the allegedly valuable "discount" because they are fully paid. Continuing with the Kentucky Consumer example from above to illustrate the Hibbert-B hypothesis: Because the Kentucky Consumer had already paid 83% of the price Defendants set, and the reduced price available to her under the FTC Plan will be lower than that, the Kentucky Consumer can keep the lot without paying anything further—*i.e.*, she can pay for her lot in full at a 17% discount (as a result of SBE's fraud, she has already paid 83% of the original price). PXA ¶ 26. If, completely contrary to reality, one assumes that the lot is worth 95% of the original price, this consumer would supposedly gain $35,585.33 by keeping the lot—because she will have paid $238,157.17 (83% of the original price) for something purportedly worth $273,742.50 (95% of the original price). PXA ¶ 26. More realistically, however, if the lot at issue is worth 20% of the original price, then the right to buy it at 83% of the original price rather than 100% is not worth anything at all.

Significantly, the problem Hibbert-B creates is particularly severe with respect to the many consumers who will need to pour good money after bad—often tens of thousands of dollars more—to access the "discount." For example, a partly-paid consumer who has paid $40,000 toward a lot SBE originally priced at $200,000 will need to spend an additional $110,000 to obtain the lot at a "discounted" Effective Price of $150,000. If that lot is worth only $50,000—which may still be too high—then the consumer has lost $100,000. PXA ¶ 23.

[14] The shift of $10 million could be even greater—theoretically reaching more than $14 million under less plausible assumptions. PXA ¶ 18. In some scenarios, the cash redress for some fully-paid owners could nearly double under the Hibbert-B plan relative to the FTC Plan. PXA ¶ 21.

Meanwhile, a fully-paid consumer who purchased an identical lot for $150,000—the precise amount his partly-paid neighbor paid—will have only lost $74,687.50 (amount paid minus redress and assumed $50,000 lot value). PXA ¶ 24. Stated differently, the fully-paid consumer will have lost $25,112.50 less despite having paid exactly the same amount. PXA ¶ 24. Thus, in this particular example, the fully-paid consumer necessarily fares better because they acquire an identical lot at a lower net cost.[15] PXA ¶ 24. When this phenomenon is viewed across the entire population of lots, it becomes clear that Hibbert-B gambles millions of dollars based on wishful thinking about the lots' value.

Importantly, the Court's findings already make clear that the lots are likely worth very little (something many purchasers who have invested their life savings understandably find difficult to accept). This Court already found that multiple misrepresentations infected the lot sale transactions at issue, *see In re Sanctuary Belize Litig.*, 482 F. Supp.3d 373 (D. Md. 2020), and that those misrepresentations were material to consumers, *see id.* at 408-34. *See also Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992) (noting that a "material" representation is one "'likely to affect their choice of, or conduct regarding a product'") (quoting *Matter of Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 165 (1984)); *see also* PXA ¶ 22 (material representations necessarily affect how consumers value a product or service). Pukke and his associates could charge as much as they did because they promoted the development as a low-risk, financially sound project with luxury amenities that SBE would complete quickly. *See Sanctuary Belize*, 482 F. Supp.3d at 401-25. In fact, as the Court found, "the resale of lots in fact proved

[15] Again, Hibbert complains the FTC's Plan is unfair because fully-paid consumers cannot access allegedly valuable "discounts." Another way to think about the above example (two consumers each paying $150,000 for the same lot) is that the partly-paid consumer gets a reduced price through the Plan, whereas the fully-paid consumer got her purported "discount" already—she got it from Pukke, who reduced the price from some higher number to $150,000 to induce that consumer to sign. Hibbert invites the Court to disregard this, arguing that the fully-paid consumers might be "better negotiators," ECF No. 1176-2 at 7, and "[t]his is how business works," *id.* at 5. However, the fact that any consumer negotiated or bargained himself to a $150,000 price (as opposed to some higher number) does not mean that he actually lost more than that.

exceedingly difficult for lot purchasers," *Sanctuary Belize*, 482 F. Supp.3d at 423 (summarizing evidence), which is incompatible with the notion that the lots actually have considerable value. In short, because SBE substantially misled consumers, they grossly overpaid for the lots. They are likely worth very little currently—if a market exists for them at all.[16]

The FTC's Plan addresses this uncertainty by allowing consumers to value the lots themselves, making a choice based on their financial circumstances and their own assessment of the lots' potential value—and allowing for how little the lots may be worth. In contrast, Hibbert-B assumes the lots are worth around the price Pukke originally established, with a plan designed to "compensate" fully-paid consumers because they cannot access discounts that reduce Pukke's enormous overcharge. However, the opportunity to lose potentially tens of thousands of additional dollars is not a "benefit" to partly-paid consumers that justifies shifting any resources to fully-paid consumers, let alone more than $10 million.

c. The Absence of an Effective Price

For the partly-paid Sanctuary Belize consumers considering whether to continue in New Sanctuary, a key consideration will be the "effective price" of their lot, or the consumer's remaining obligation minus their *pro rata* cash recovery ("Effective Price").[17] Importantly, the FTC Plan requires the Receiver to disclose to consumers substantial information including, among numerous things: (1) the new discounted lot price; (2) the amount the consumer already paid; and (3) a specific, minimum redress dollar amount. *See* 1117-1 at 25, 30, §§ III(B) and III(H). This information will make the Effective Price clear. For instance, reasonably assuming

[16] To provide a general reference, a quick, informal survey of various lots in Belize marketed online shows numerous empty lots of generally comparable size listed from between $10,000 and $50,000 (depending on location, size, and other characteristics), PXB ¶ 11, and, of course, sellers may actually take less.

[17] This is also true for Kanantik lot purchasers, but because the first distribution to Kanantik lot purchasers is likely to be zero, Kanantik lot purchasers do not need to know their *pro rata* share to understand their Effective Price.

15% first-round redress, a Sanctuary Belize consumer with a $200,000 original price (seller deceptive price) and 25% discount would receive an election form stating (in substance):

New Price:	$150,000
Amount Already Paid:	$125,000
Minimum Cash Recovery:	$18,750

In this scenario, the Effective Price is $131,250, meaning the consumer can keep her lot for $6,250 rather than $25,000. Although numbers will vary, and consumers need not (and likely should not) immediately pay their cash recovery toward their lot, the amount of their *pro rata* recovery is one of several critical factors that will drive consumer decision-making.

However, determining consumers' *pro rata* recoveries—thereby enabling consumers to consider their lot's Effective Price—is impossible under Hibbert-B until *after* consumers have already decided whether they want to remain owners. PXA ¶ 16. The reason is simple in concept (albeit complex in application): under Hibbert-B, every consumer's redress share is affected by every other consumer's decision. PXA ¶ 16. Put another away, every consumer chooses their own share from a slate of options: partly-paid consumers will choose between 0% and 100% of their actual *pro rata* share, and fully-paid consumers will choose between 100% and amounts above 100% of their actual *pro rata* share. Because the fund is finite, what each consumer does affects every other consumer. PXA ¶ 16. For instance, if a single consumer forgoes her share (*i.e.*, chooses 0%), then the value of every other consumer's share becomes slightly greater. PXA ¶ 16. Likewise, if a single consumer chooses to receive 110% of his *pro rata* share, then the value of every other consumer's share becomes slightly less. Although no individual decision itself "moves the needle" much, the aggregate effect of 1,700 decisions makes it impossible to predict *ex ante* what the redress will be. Thus, there is no way under

Hibbert-B to inform consumers with any precision regarding what their redress share will be and, therefore, what the Effective Price of their lot is.[18] PXA ¶ 16.

d. Increased Costs To Remain Owners

Although it is impossible to know what redress shares will be under Hibbert-B, they will be less for partly-paid owners because Hibbert-B shifts extraordinary amounts to fully-paid owners. Put differently, although those owners will not know what their Effective Prices will be, they will be considerably higher under Hibbert-B relative to the FTC's Plan. PXA ¶ 20 ($23 million increase in amounts partly-paid owners will owe toward their lots if they accept new contracts, in addition to reduced redress for these owners). Increasing the Effective Price of remaining in the development will likely lead to a decrease in the number of lot purchasers who remain owners.[19] PXA ¶ 22. This result, in turn, will reduce the receivables available to a prospective developer, lessen the prospects for commercial growth, and otherwise work against everyone's interests including fully-paid owners and the Government of Belize.

e. Additional Issues With Hibbert-B

Hibbert supports his position with numerous statistics, calculations, or other claims that often include arithmetic errors or other mistakes (that usually favor his position). For instance, in one particularly baffling claim, Hibbert asserts that fully-paid owners paid SBE "77,346,642.82," which supposedly "represents 77.3% of the money the FTC alleges was the subject of the defendants' fraud." ECF No. 1175-2 at 13. Yet, as Hibbert surely knows, the

[18] Possibly, Hibbert could give consumers a range, but this will not help much because the range would need to be too large to be meaningful. The highest possibility and the lowest possibility are tens of thousands of dollars apart. PXA ¶ 21.

[19] This assumes the higher prices would be disclosed somehow. Given the complicated calculations involved, it is likely that even very sophisticated purchasers will be unable to estimate their Effective Price. In that scenario, the demand for lots might not diminish, but disappointment or defaults will increase once consumers learn—after already deciding to remain owners—how little redress they will receive that they can put toward their lot.

Court awarded $120.2 million, *see Sanctuary Belize*, 482 F. Supp.3d at 475, and the FTC sought even more (138.7 million), *see id.* at 474,[20] meaning Hibbert is substantially mistaken.[21]

In another likely error, Hibbert presents a chart that states partially-paid and fully-paid owners have the same average lot price. *See* ECF No. 1175-2 at 11. In reality, the partially-paid consumers have a higher average lot price. PXA ¶ 30. (As discussed below, there are other issues with this chart as well.) To provide a final example, Hibbert asserts that "the FTC has not clarified whether [the percentage recovery] would be the same or different for Kanantik and Sanctuary [Belize] owner claimants." ECF No. 1175-1 at 5 n.1. However, the FTC specified that they would be different in the Plan itself. *See* ECF No. 1117-1 at 8, Defs. 17, 19 (defining collections eligible for distribution differently). The FTC also specified that they would be different in its consumer-accessible FAQ, *see* ECF No. 1119-1 at 6, which the FTC filed with the Court and published on its website. The Receiver also disseminated the FAQ to all lot purchasers, *see* ECF No. 1119 (Jan. 21, 2021), including, presumably, Hibbert.[22]

[20] Additionally, because SBE kept poor records, FTC expert Erik Lioy could only testify about SBE's sales from 2011 onward. *See* 482 F. Supp.3d at 475.

[21] Importantly, under the FTC's Plan, the group of fully-paid owners will recover exactly the proportion of the overall recovery they collectively paid. PXA ¶ 21. Thus, if they collectively paid 77.3%—which, again, is incorrect—they would, as a group, get 77.3% of the recovery.

[22] In another argument based on a likely mistaken factual predicate, Hibbert criticizes the FTC Plan because it "does not take into consideration any depreciation of the lot value[.]" ECF No. 1175-2 at 11. Of course, at least under U.S. tax law, land does not depreciate. *See* 26 U.S.C. § 167(a); *Everson v. United States*, 108 F.3d 234, 236 (9th Cir. 1997) ("The allowance for depreciation . . . is governed by 26 U.S.C. § 167(a) (1954), which has traditionally been interpreted to preclude depreciation of land and of improvements that are part and parcel of the land.") (citations omitted). It seems extremely improbable that land depreciates under applicable Belizean tax law (or any tax law), but even if it does, the depreciation would affect partly-paid owners more because, on average, they have higher lot prices. PXA ¶ 27.

E. Factual and Legal Misconceptions About the Plan

1. Contrary to What Some Objections Suggest, No One Is Required To Participate.

Several misconceptions about the proposed Redress Plan appear explicitly or implicitly in many objections. Importantly, no one is *required* to participate. Although the FTC urges all consumers to participate, including those who oppose the Plan, consumers can become Non-Participating Owners simply by declining to submit a claim. ECF No. 1117-1 at 13, 37. In effect, the Redress Plan proposes a bargain: if consumers choose to participate, they cede whatever rights they have in exchange for the rights the Plan specifies—including rights to compensation and lots—but *only* those rights. Consumers may also decline the bargain, thereby ratifying their existing contract and enabling them to attempt to enforce whatever rights they contend they have thereunder. In most cases, the prospect that a Non-Participating Owner will recover anything at all, let alone more than their litigation costs, is extremely remote (and would have been extremely remote prior to this case as well).[23]

2. Contrary To What Some Objections Suggest, The Plan Does Not Appraise Lots or Imply Their Value.

As noted above, a key feature of the Hibbert-B plan is that it dangerously assumes—without any basis—that the lots are very valuable and, accordingly, that Hibbert and others have lost only relatively small amounts if anything. This supposition is nonsense given that the Court found fraud permeated the lot sale process. *See Sanctuary Belize*, 482 F. Supp.3d at 401-25. In contrast, the FTC's Plan intentionally assumes that the lots' value is unknown, thereby allowing for the possibility that their value is extremely limited. Importantly, the reduced purchase prices available to lot purchasers under the Plan does not mean the lots are actually worth the new lower price. Rather, as the FTC previously explained, "the discount reflects the FTC's desire to

[23] Notably, non-participating owners may not *both* decline to participate and reserve their right to subsequently seek to void the contracts as fraudulently induced, *see* ECF No. 1117-1 at 37, a prospect that would leave the Receivership—and possibly a subsequent developer—in the impossible position of defending against claims that the FTC has already established.

afford the largest possible discount without impairing New Sanctuary's receivables to the point where the development is no longer attractive to a qualified developer[.]" ECF No. 1117 at 5 n.6; *see also* ECF 1119-1 at 10 (explaining, in consumer FAQ, that the FTC did not value the lots).

One objector complains that the FTC should have appraised the lots,[24] but the FTC had good reason to choose the approach it did. First, making some sort of general guess concerning lot values is impossible given their substantially different sizes, locations, infrastructure, and other attributes. Furthermore, performing 1,700 unique appraisals would be burdensome. *See In re Sanctuary Belize Litig.*, No.18-cv-3309, 2019 WL 5267774, *3 n. 5 (D. Md. Oct. 17, 2019) (noting "the potential complexity of proving the present value of over one thousand parcels"). Second, in the context of this complex Receivership, even costly individual appraisals are likely insufficiently reliable to make consequential redress decisions. The value of the lots will turn substantially on a potential developer's future performance and is difficult to estimate for other reasons, including the substantial oversupply of lots that hundreds of consumers may seek to sell at once. Third, and most important, the Plan permits consumers to decide what the lots are worth—they can appraise the lots themselves, or simply make judgments based on their impression of the lots' likely value under the circumstances. As the FTC explained, the Plan "doesn't assign the lots any specific value to determine compensation. Consumers will decide what they think the lots are worth." ECF 1119-1 at 10. This is a superior approach to one that assumes—contrary to the Court's finding that fraud permeated the sales process—that the lots are highly valuable.

3. Contrary To What Some Objections Suggest, The Court Has Equitable Authority To Implement the Proposed Plan.

Contrary to what some consumers apparently believe, the Court's substantial equitable authority under the FTC Act includes the ability to restructure American and Belizean corporate

[24] Woody/Foote (ECF No. 1126) (Feb. 26, 2021); *see also* Baboolal (ECF No. 1159) (Feb. 26, 2021) (arguing that different lots have different values depending on their attributes).

entities against which the Court has properly entered judgment and transferred to the Receiver's control. Once within the Court's equitable jurisdiction—as the Sanctuary Belize Enterprise ("SBE") entities plainly are—the Court's considerable equitable power enables it to reorganize the common enterprise entities in a manner consistent with equitable principles. To provide a few of many possible examples illustrating equitable power, bankruptcy and district courts sitting in equity have "restructure[d] the operation of local and state governmental entities," *Hills v. Gautreaux*, 425 U.S. 284, 293-94 (1976), reorganized an HMO network consisting of more than forty legal entities and one million members, *see In re Family Health Services, Inc.*, 101 B.R. 618, 626 (Bankr. C.D. Cal. 1989), and required school systems to implement compensatory or remedial education programs, *Milliken v. Bradley*, 433 U.S. 267, 279-91 (1977). Equitable power includes the ability to dissolve corporations, *see*, *e.g.*, *In re English Seafood (USA) Inc.*, 743 F.Supp. 281, 288 (D. Del.1990), or order their assets sold, *see*, *e.g.*, *Moran v. Edson*, 493 F.2d 400, 407-08 (3d Cir. 1974). Equitable remedies also routinely include reforming contracts, *see*, *e.g.*, *Vogel v. Indep. Fed. Sav. Bank*, 692 F. Supp. 587, 596 (D. Md. 1988), and restructuring debtor-creditor relationships, *see*, *e.g.*, *Granfinanciera S.A. v. Nordberg*, 492 U.S. 33, 57-59 (1989). Indeed, "[w]hen federal law is at issue and the public interest is involved, a federal court's equitable powers assume an even broader and more flexible character than when only a private controversy is at stake." *Kansas v. Nebraska*, 574 U.S. 445, 456 (2015) (quotation omitted); *see also Virginian R. Co. v. Railway Employees*, 300 U.S. 515, 552 (1937) ("Courts of equity may, and frequently do, go much farther" to give "relief in furtherance of the public interest than they are accustomed to go when only private interests are involved"). In short, there is no serious question that the Court has the equitable authority to implement the Redress Plan.

4. Contrary To What Some Objections Suggest, the Plan Credits Amounts Already Paid Toward Lots at New Sanctuary.

Some consumers have objected or expressed concerns that the Plan allegedly does not credit lot purchasers for amounts they already paid. This is incorrect. Stated very simply, the Plan calculates a consumer's Amount Paid (generally, what the consumer actually paid including

principal, interest, taxes and fees),[25] and compares that figure to the Purchase Price (the adjusted new price reflecting applicable reductions). If the Amount Paid is lower than the Purchase Price, the consumer may pay off the balance (Purchase Price minus Amount Paid) immediately or over time. If the Amount Paid is equal to or greater than the new Purchase Price, the consumer pays nothing further. *See generally* ECF No. 1117-1 at 27-29, 30-32. In fact, because the Plan credits Amounts Paid toward the new (discounted) Purchase Price, approximately 164 consumers that currently have balances will have the option to keep their lots without any further payment (and they will also receive *pro rata* redress), and another approximately 102 consumers will have the option to keep their lots without any further payment greater than the *pro rata* redress they will receive.[26] *See* PXA ¶ 28.

Legal Standard

When an action is "brought to enforce the requirements of a remedial statute," the court "has broad discretion to fashion appropriate relief." *Anderson v. Stephens,* 875 F.2d 76, 79 (4th Cir.1989) (internal quotations omitted); *see also FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir.1994) (explaining that the FTC Act "gives the federal courts broad authority to fashion appropriate remedies for violations of the Act") (citations omitted) (internal quotation marks omitted); *FTC v. Health Formulas, LLC*, No. 14-cv-01649, 2015 WL 2130504, *5 (D. Nev. May 6, 2015) ("The court's power to supervise the receivership and determine appropriate remedies is extremely broad.") (quotation omitted).

[25] As with the FTC's opening submission, *see* ECF No. 1117 at 2 n.2, this response uses Plan terms informally without intending to incorporate the Plan's definitions precisely. Furthermore, the Plan is complex and generally applicable statements concerning its content sometimes require qualifications or additional detail to be complete. Accordingly, as with the prior filing, this submission is necessarily a summary intended to communicate key points in a manageable and readable manner. It is not meant to conflict with the Plan; however, to the extent anything arguably does, the Plan itself governs.

[26] A few consumers have expressed concerns that their lot prices will increase under the Plan, which is mistaken. In general, these lot purchasers are incorrectly comparing their new price with their original list price without including the interest they would have paid.

Importantly, "[w]hen approving a distribution plan, a district court sits in equity and has the authority to approve any plan provided it is fair and reasonable." *CFTC v. Barki*, LLC, 09-cv-06, 2009 WL 3839389, *1 (W.D.N.C. Nov. 12, 2009) (internal quotations omitted); *see also SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 332 (7th Cir. 2010) (court need only find that "the proposed plan of distribution is fair and reasonable"). Indeed, in *Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73 (2d Cir. 2006), the Second Circuit held that, because the SEC "is charged by statute with enforcing the securities laws," the court "would defer to [the agency's] 'experience and expertise' in determining how to distribute the funds." *Id.* at 82 (quotation omitted).[27] The same standard applies here. Because the FTC is the agency charged with enforcing the FTC Act, it has discretion to determine how to distribute FTC Act recoveries. *Cf. WorldCom, Inc.*, 467 F.3d at 84. Thus, "once the district court satisfies itself that the distribution of proceeds . . . is fair and reasonable, its review is at an end." *Id.* (quotation omitted); *see also SEC v. Wang*, 944 F.2d 80, 85-88 (2d Cir. 1991) (affirming district court approval of SEC plan that entirely excluded certain types of traders).

Argument

I. The Redress Plan Cannot Guarantee Favorable Outcomes.

A. The Redress Plan Cannot Guarantee Development Outcomes.

Given the remarkable community SBE promised, including "that the completed development would boast extraordinary amenities comparable to those of a small American city," *Sanctuary Belize*, 482 F. Supp.3d at 411, consumers understandably want assurances about who the developer will be, and what the development will become, before they decide whether to

[27] Notably, the Plan is also analogous to a settlement in some respects, and complex agency settlements typically receive deference where—as here—a government actor with relevant expertise designed the settlement. *See, e.g., United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990) (explaining that deference is appropriate "where, as here, a government actor committed to the protection of the public interest has pulled the laboring oar in constructing the proposed Settlement"); *cf. FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 408 (1st Cir.1987) (discussing need for judicial deference "to the agency's determination that the settlement is appropriate").

remain owners. However, the Plan only requires that the Receiver attempt to locate a qualified developer that agrees to perform minimum tasks (primarily infrastructure, maintenance, and security), although the developer may choose to do more. *See* ECF No. 1117-1 at 16, 39, 46, Def. 57, Def. 39, § VII(F)-(H). Regrettably, although the FTC is optimistic that the Receiver will locate a suitable candidate, there is no way to guarantee that will happen, or that the selected developer will meet its obligations, or what else it might choose to do. Furthermore, attempting to impose additional requirements makes the development correspondingly less attractive to prospective developers that would need to complete those tasks. Finally, it is also unworkable to permit consumers to wait months or years to "wait and see" how things unfold before they decide whether to continue as owners because moving forward requires knowing which consumers will retain rights to which lots, and what New Sanctuary's receivables will be.

In summary, maintaining ownership in New Sanctuary involves significant uncertainty about the future and consumers who cannot accept that uncertainty, or who choose not to, should not remain owners. The Plan's inability to guarantee outcomes that the FTC simply cannot guarantee is unfortunate, but not a valid objection.

B. The Redress Plan Cannot Guarantee HOA Fees.

Some objectors complain that the Plan does not cap homeowner's association ("HOA") fees. However, there is a short-term constraint on HOA fees; namely, should the Receiver impose an interim HOA fee consumers contend is unreasonable, lot purchasers could raise that issue with the Court. *See* ECF No. 1117-1 at 45, § VIII(D); *id.* at 41-43, § VI. In the long run, an owner-elected New Sanctuary HOA will set fees and make assessments, *see id.* at 45, § VIII(B)(2), potentially in conjunction with a new developer, *see id.* at § 46, § VIII(G)-(H).

However, to the extent that SBE guaranteed that there would never be fee increases or assessments, that was not a promise legitimate developers can make. Indeed, if expenses exceed assets and revenue for some reason, it is unclear how a legitimate HOA can make necessary repairs without raising additional revenue. To the extent that individual consumers cannot

assume the risk that HOA fees increase or assessments could be necessary at some point for some reason, they likely should not maintain New Sanctuary ownership.[28]

II. The Redress Plan Cannot Enforce Defendants' Earlier Promises.

A. The Redress Plan Cannot Recognize Buyback Agreements, Belizean Judgments, or Settlements That Prioritize Certain Consumers.

The FTC Plan proposes a *pro rata* distribution pursuant to which each lot purchaser's recovery is proportional to his share of the overall loss in either Sanctuary Belize or Kanantik. *See* ECF No. 1117-1 at 25, 30 § III(B), III(H); *see also* ECF No. 1117 at 5 n.5 (explaining how *pro rata* distribution functions). With respect to federal equity receiverships, overwhelming authority establishes that distributing compensation to victims of the same scam on a *pro rata* basis is the proper method. *See, e.g.*, *Liberte Capital Group, LLC v. Capwill*, 148 Fed. Appx. 426, 434-37 (6th Cir. Aug. 29, 2005) (affirming district court's decision to adopt *pro rata* method of disbursement of investor funds from receivership); *SEC v. Quan*, 870 F.3d 754, 762 (8th Cir. 2017) ("Courts have "routinely endorsed" the *pro rata* distribution of assets to investors as the most fair and equitable approach in fraud cases.") (citations omitted); *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 89 (2d Cir. 2002) (explaining that "the use of a *pro rata* distribution has been deemed especially appropriate for fraud victims of a 'Ponzi' scheme" and collecting cases); *SEC v. Sunwest Mgmt., Inc.*, No. 09-cv-6056, 2009 WL 3245879, *8 (D. Or. Oct. 2, 2009), 2009 WL 3245879, *8 (D. Or. Oct. 2, 2009) ("[F]ederal equity receivership case law supports an equitable, pro rata distribution as provided for in the Distribution Plan.") (citation omitted); *cf. Cunningham v. Brown*, 265 U.S. 1, 13 (1924) (explaining, in litigation that followed

[28] Through his untimely comment on March 11, Hibbert complains that the FTC's Plan cannot guarantee lot purchasers will receive titles to their lots. *See* ECF No. 1137. The FTC and Receiver have communicated with the Government of Belize to help expedite and clarify the lot title process. However, because the Government of Belize issues titles, not the FTC or Receiver, the Plan cannot guarantee titles to consumers.

the collapse of Charles Ponzi's scheme, that "equality is equity" among "equally innocent victims").

Notably, several consumers have asserted various purportedly "priority" claims, and many more are similarly situated. For instance, objectors include consumers whose lots SBE contracted to buy back through buyback agreements (there are dozens of such agreements, PXB ¶ 12),[29] consumers who sued SBE (multiple consumers sued SBE, PXB ¶ 13),[30] four consumers who claim rights under a settlement with SBE, [31] and one with an unsecured Belizean judgment.[32] Requests for priority status are inappropriate, however, because they deviate from the *pro rata* rule: they would recover far more than their proportionate share of the loss even though they experienced the same wrongful conduct as did everyone else. They should not recover proportionately more than other victims of the same scam simply because, through some combination of energy or luck, their self-help attempts were more successful—when other consumers may have tried even harder without success, faced other obstacles, or were simply less fortunate.

Precisely to avoid this unfairness, there is no requirement that federal equity receiverships follow claim priorities that exist elsewhere in law. *See, e.g.*, *SEC v. Credit Bancorp, Ltd.*, No. 99-cv-11395, 2000 WL 1752979, *28 (S.D.N.Y. Nov. 29, 2000) ("In equity, remedies to which claimants might be entitled to under other law may be suspended if such a measure is consistent with treating all claimants fairly."); *Quilling v. Trade Partners, Inc.*, No. 103-CV-236, 2007 WL 107669, *3 (W.D. Mich. Jan. 9, 2007) (recognizing that in overseeing

[29] Crossen, ECF No. 1146 (Feb. 19, 2021).

[30] McKinney/Landherr, ECF No. 1144 (Feb. 19, 2021).

[31] Welch, ECF No. 1168 (Feb. 26, 2021); Lockwood, ECF No. 1147 (Feb. 22, 2021); Minor, ECF No. 1143 (Feb. 19, 2021); Schneck, ECF No. 1130-1 (Feb. 5, 2021). These consumers characterize themselves as "judgment" creditors, although they attach a settlement agreement akin to a buyback agreement rather than a judgment. *See* Minor, ECF No. 1143 at 1023.

[32] Liss (ECF No. 1167) (Feb. 26, 2021).

a receivership, courts' "broad powers and wide discretion extend to allocating the priority of distributions from the receivership estate") (citation and internal quotation marks omitted); *In re Indian Motorcycle Litig.*, 307 B.R. 7, 16 (D. Mass. 2004) ("[I]n a receivership proceeding . . . this court sits in equity, and the allocation of priority lies within the trial court's sound discretion."); *see also SEC v. J.P. Morgan Sec. LLC*, 266 F. Supp. 3d 225, 230 (D.D.C. 2017) ("Courts do not need to endorse investor attempts to assert a superior claim . . . so that they can recoup their entire investment.") (citation omitted). This includes the various unsecured judgment creditor and contractual claims at issue here.[33] *See, e.g.*, *Sunwest Mgmt.*, 2009 WL 3245879 at *8 (finding "no support of the objecting parties' assertion . . . that equity requires that unsecured claims be favored over the claims of victimized investors in this case"). There is no dispute that these objectors suffered the same wrong as everyone else. Consequently, there is no basis to exempt them from *pro rata* treatment.

B. The Redress Plan Cannot Enforce Numerous Covenants, Promised Easements, Utility Commitments, or Other Assurances Defendants Made.

Beyond the specific misrepresentations the Court found, SBE made countless additional promises to lot purchasers including, among other things, special access to waterfront or other common areas, the construction of particular canals, roads, and electrical hookups, guaranteed rental income, promised easements,[34] rights with respect to commercial activity, and a host of

[33] The fact that judgment creditors likely would have bankruptcy priority is not relevant. *See, e.g., WorldCom*, 467 F.3d at 85 ("We see no indication . . . that the SEC must follow the Bankruptcy Code's claim priorities when developing a distribution plan."); *Quilling v. Trade Partners, Inc.*, No. 03-cv-236, 2007 WL 107669, *1 (W.D. Mich. Jan. 9, 2007) ("This proceeding is a federal equity receivership and the Bankruptcy Code does not apply."); *Liberte Capital Group*, 248 Fed. Appx. 650, 672 (6th Cir. 2007) ("[B]ankruptcy cases are factually and legally distinguishable from cases concerning equity receiverships[.]"); *Marion v. TDI, Inc.*, 2006 WL 3742747, *2 (E.D. Pa. 2006) ("[A] bankruptcy proceeding differs significantly from an equity receivership imposed at the request of a government agency such as the SEC.").

[34] Some easements present unique cases depending on whether the easement is something SBE promised or something that actually appears on the relevant lot's title. If the Receiver recognizes an easement as part of the "identified lot" subject to the Plan, then the Plan protects the easement the lot includes. *See* Crossen, ECF No. 1146 (Feb. 19, 2021). This is different, however, from many instances in which SBE informed a lot purchaser that their lot would have

other commitments both raised by objectors or separately to the FTC. However, even assuming written or oral contracts exist reflecting these or other similar promises, in an equity receivership, "[t]he court is not required to distribute the assets in accordance with the contractual rights of the parties." *Quan*, 870 F.3d at 762. As one court explained, "a distribution plan is not required to apportion assets in conformity with misrepresentations and arbitrary allocations that were made by the defrauder, otherwise, the whim of the defrauder would . . . control[ ] the process that is supposed to unwind the fraud.'" *CFTC v. Walsh*, 712 F.3d 735, 749 (2d Cir. 2013) (quoting *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229, 238 n.7 (2d Cir. 2011)); *cf. United States v. Durham*, 86 F.3d 70, 72 (5th Cir. 1996) (affirming district court decision finding that a distribution plan would be inequitable if it elevated the position of some victims over others "on the basis of the actions of the defrauders").

Furthermore, "line drawing" between compensable and non-compensable losses "is necessary because the Receiver is working with a set of claims that exceed the finite amount of money he has[.]" *SEC v. Merrill Scott & Assocs., Ltd.*, No. 02-cv-39, 2008 WL 2787401, *5 (D. Utah July 15, 2008). Requiring the Receiver to ascertain every promise SBE made to every lot purchaser and then value that promise would be impossible, and there is no reason why losses associated with these collateral breached promises should take precedence over direct lot payments consumers made. Additionally, saddling a prospective developer with likely hundreds of miscellaneous commitments and obligations will make a commitment to develop New Sanctuary less attractive—something that works to everyone's disadvantage. For these reasons, excluding SBE's myriad collateral promises is "fair and reasonable." *See, e.g., Wealth Mgmt.*, 628 F.3d at 332; *Barki*, 2009 WL 3839389 at *1.

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an easement or that they would have other analogous rights, but those rights did not become part of the "identified lot" for some reason (typically, SBE's dishonesty).

C. The Redress Plan Cannot Enforce Defendants' Promise to Develop Sanctuary Belize Through a Nonprofit Land Trust.

Pukke originally organized SBE to operate partly through a purported Belizean nonprofit, Sittee River Wildlife Reserve ("SRWR"), which held Sanctuary Belize land prior to the Receivership. SBE promoted SRWR's alleged nonprofit status as part of its pitch to prospective buyers, and some consumers find the idea of a nonprofit entity holding land attractive. Of course, SBE did not operate SRWR as a nonprofit.[35] Rather, as the Court found, "SRWR was and is part of the common enterprise that is SBE. As such, it is jointly and severally liable for violations of the FTC Act and the TSR the Court has found were committed by SBE." *Sanctuary Belize*, 482 F. Supp.3d at 461-62. Additionally, there is likely no viable way to operate SRWR as a legitimate nonprofit land trust post-Receivership because attracting a developer to New Sanctuary will require that the new developer have the possibility of a significant profit.

Objectors variously contend that SRWR legally must remain a nonprofit or otherwise cannot transfer its assets either within the receivership or from the receivership to a buyer[36]—assertions which, if true, would devastate the Receivership's potential value and consumers' potential recovery. However, as discussed above, the Court has authority to restructure receivership entities or transfer their assets notwithstanding SRWR's nominal corporate form. *See also Broadbent v. Advantage Software, Inc.*, 415 F. App'x 73, 78 (10th Cir. 2011) ("[I]n fashioning relief in an equity receivership, a district court has discretion to summarily reject formalistic arguments that would otherwise be available in a traditional lawsuit.") (citation

[35] Pukke previously used non-profit entities to further the goals of for-profit enterprises in *AmeriDebt*. *See generally FTC v. Ameridebt, Inc.*, 373 F. Supp. 2d 558, 560 (D. Md. 2005) ("The FTC alleges that Defendants, operating in common as a non-profit credit counseling service, defrauded consumers with debt problems by offering to fashion debt repayment plans for them, then deducting for their own benefit payments the consumers made under the plans without disclosing those deductions to the consumers"); *see also* PX 1346 at 69-80 (first draft of ghost-written Pukke autobiography explaining the interplay of non-profit AmeriDebt and its for-profit servicer, DebtWorks).

[36] DeVitto, ECF No. 1161 (Feb. 26, 2021); Hodge/Effinberger, ECF No. 1172 (Feb. 9, 2021); Herskowitz, ECF No. 1151 (Feb. 10, 2021).

omitted); *see also English Seafood*, 743 F.Supp. at 288 (D. Del. 1990) (equity court can dissolve corporations); *Moran*, 493 F.2d at 407-08 (equity court can order assets sold). Because it is neither necessary nor advisable to attempt to advance the development through a nonprofit land trust, the objections related to SRWR are meritless.

D. The Redress Plan Cannot Enforce Defendants' Promise To Adopt Certain Homeowner's Association Governing Rules.

Various objectors note that the Plan does not incorporate any particular homeowner's association rules, including a 2016 set of such guidelines that at least some consumers apparently understood would govern the development. In particular, certain individual lot purchasers had input into various Restrictive Covenants, Conditions and Easements ("RCC&E") of Sanctuary Belize. Three nominal stakeholders executed this document: Eco-Futures Belize Limited, SRWR, and Sanctuary Belize Property Owners Association—all common enterprise entities the Court found jointly and severally liable, *see Sanctuary Belize*, at 482 F. Supp.3d at 461-65, and placed within the Receivership, ECF No. 1112 (Jan. 13, 2021). The RCC&Es contain miscellaneous requirements covering minimum square footage, PXB ¶ 5 at 10, height restrictions, landscaping, *id.* at 11, prohibitions on the removal of "trees over 6 caliper inches," *id.* at 12, rules governing "catch basins and drainage areas," *id.* at 18, signage, *id.* at 18, and exterior lighting, *id.* at 19. It contains numerous other provisions likely anathema to a prospective developer, including restrictions on commercial activity, limiting residential construction to builders approved by an "Architectural Review Board" ("ARB"), PXB ¶ 5 at 5, and requiring the ARB to approve essentially anything of consequence. (Of course, Pukke made ARB decisions. *See* PXB ¶ 14.) As a "contract" entirely between Receivership entities, there is no requirement that the Receivership implement this particular set of rules.

Additionally, carrying forward the RCC&Es (or anything similar) is unnecessary and unadvisable for other reasons. First, the Court and equitable principles govern the Receiver's management of the development in the Receivership, not the RCC&Es. Second, appending the RCC&Es or an equivalent as part of a proposed redress plan is likely to lead to disputes over

their content that are properly the subject of homeowner's association meetings rather than federal court proceedings. Third, and most important, it makes no sense to reduce the development's sale value by requiring prospective buyers to analyze and agree to myriad neighborhood governance rules that may limit New Sanctuary's value. Lot purchasers unwilling to risk that a new, legitimate developer will not act sufficiently consistent with their expectations likely should not maintain their ownership.

Ultimately, the FTC recognizes that certain consumers worked with Pukke and his associates to develop the RCC&Es, and they have many reasonable elements. Nothing prevents the Receiver from implementing them within its discretion, or from anyone proposing them to a prospective developer. It may even be likely that New Sanctuary will have something very similar to the RCC&Es. However, they are not properly part of the redress Plan.

III. The Various Process Objections Are Baseless.

The various process concerns asserted by various objectors are misplaced. First, as discussed above, the Court created the Consumer Committee to advise the Receiver regarding interim receivership management, not to negotiate a redress proposal with the FTC. Second—and setting aside that the FTC was not obligated to negotiate with the advisory Committee at all—the FTC cannot negotiate with either Committee members or other consumers who purport to represent their peers because the would-be negotiators are not attorneys or otherwise authorized agents who can bind other lot purchasers. Third, suggesting that the FTC should have negotiated with 1,700 individual consumers (or even groups of them) is obviously unworkable even in this case (and many cases involve redress programs that affect hundreds of thousands or millions of people). Finally, the only question before the Court is whether the Plan is substantively "fair and reasonable." *See, e.g.*, *Wealth Mgmt.*, 628 F.3d at 332; *Barki*, 2009 WL 3839389 at *1. Although the FTC did, in fact, confer with many consumers, the Government of Belize, the Receiver, and other interested parties, how the FTC developed the Plan is immaterial to whether the Plan is "fair and reasonable"—and it is.

IV. The FTC Plan Is Fair and Reasonable, Whereas the Hibbert Plans Are Harmful and Likely Unlawful.

A. The FTC Plan Treats All Lot Purchasers Fairly and Reasonably, Including Fully-Paid Lot Purchasers.

The FTC Plan proposes a straightforward *pro rata* distribution, which courts routinely find appropriate. *See, e.g.*, *Liberte Capital*, 148 Fed. Appx. at 434-37; *Quan*, 870 F.3d at 762; *Credit Bancorp*, 290 F.3d at 89; *Sunwest Mgmt.* 2009 WL 3245879 at *8. *Pro rata* distribution means measuring the amounts consumers paid. *See, e.g.*, *In re Bernard Madoff Inv. Sec. LLC*, 654 F.3d 229, 235 (2d Cir. 2011) (holding that claims should be determined based on amounts invested minus amounts withdrawn). This is what the FTC's Plan does. *See* ECF No. 1117-1 at 11, 18, Defs. 18, 69. It properly awards the same *pro rata* share to consumers who paid the same amount for lots in the same development (Sanctuary Belize or Kanantik), regardless of the amount SBE charged for the lot.

As discussed above, it is simply not the case that a consumer who paid $200,000 for a $200,000 lot is injured more seriously than a consumer that paid the $200,000 for a $225,000 lot. They both have the option to walk away under the Plan, and they will both walk away with a $200,000 loss (minus their equal *pro rata* recovery). Importantly, fully-paid owners stand to benefit indirectly from the "discounts" offered to partly-paid consumers because they make it more likely that—notwithstanding the risks—partly-paid consumers will remain owners. This is critical to the development's population, its corresponding potential economic activity, and the possible cash flow available to a prospective developer. Population growth, or at least stability, likely also serves the interests of the Government of Belize, which certainly prefers to avoid the mass exodus of partly-paid lot purchasers that the absence of discounts would surely cause.

Hibbert's only real argument against the FTC's *pro rata* position is that the "discounts" actually deliver something so valuable to partly-paid purchasers that fully-paid consumers need millions in extra compensation. As discussed above, that is plainly incorrect, and it is far more likely that consumers accessing those "discounts" will not recoup their additional investment. At minimum, they are assuming significant additional risk. Although Hibbert disagrees, his

objection simply reflects a more optimistic valuation of the discounts despite the Court's finding that material misrepresentations induced lot purchasers. *See Sanctuary Belize*, 482 F. Supp.3d at 401-25. However, the fact that he loudly asserts that unsubstantiated view does not mean the FTC's better-grounded but more pessimistic valuation is unfair or unreasonable.[37] Because the FTC's Plan is fair and reasonable, and Hibbert has not established otherwise, the Court should overrule his objections and disregard the new plans that embody his perspective. *See, e.g.*, *WorldCom, Inc.*, 467 F.3d at 84 (whether the plan is "fair and reasonable" is the only question).

B. Both Hibbert Plans Are Harmful and Likely Unlawful.

1. Both Hibbert Plans Violate *Pro Rata* Distribution Principles.

Both Hibbert plans violate *pro rata* principles and, therefore, are at least presumptively illegal. As discussed above, both Hibbert-A and Hibbert-B render anyone who leaves the development ineligible for second and third-round distributions (which, for Kanantik lot purchasers, is likely the only distribution they will receive). This means that even if the first distribution is *pro rata*, the overall distribution will not be because owners who remain will receive additional compensation. Given the law strongly favoring *pro rata* distribution, that fact standing alone likely renders both Hibbert plans illegal. *See, e.g.*, *Liberte Capital*, 148 Fed. Appx. at 434-37; *Quan*, 870 F.3d at 762; *Credit Bancorp*, 290 F.3d at 89; *Sunwest Mgmt.* 2009 WL 3245879 at *8.

Additionally, Hibbert-B allows consumers to "buy" discounts with portions of their redress (meaning smaller shares), or gain additional redress (larger shares) by accepting transfer restrictions. This is not *pro rata* either. Curiously, perhaps understanding that *pro rata* is the method the law strongly favors, Hibbert makes various assertions that suggest he accepts *pro*

[37] Importantly, the FTC's Plan does not assume that lot values are extremely low, but rather that they *might be* extremely low. Thus, the Plan enables consumers to affect their potential outcomes by making their own judgments about the development's future and acting accordingly. In contrast, Hibbert-B asks the Court to endorse an almost-recklessly optimistic view of what lots are worth.

rata principles. *See*, *e.g.*, ECF No. 1175-2 at 2 (stating that "[t]he only number that matters" is "the actual amount of money a consumer paid into the project"); *id.* at 7 (plan should "focus on compensating actual moneys invested"). However, because his plans adjust consumers' *pro rata* shares in various ways, they do not reflect these principles, and the Court should reject both Hibbert plans accordingly.

2. The Hibbert-A Plan Is an Abdication of Responsibility.

Through Hibbert-A, Hibbert proposes that the Receiver simply distribute cash and then walk away. Consumers would "fend for themselves" as they sue each other, and the Receiver, to determine who owns which lots and what everyone's rights are. Anyone unwilling or unable to participate in the litigation imbroglio Hibbert-A would create is likely to end up with nothing beyond one distribution (or, in the case of Kanantik lot purchasers, nothing at all). No developer would consider becoming involved with the mess that Hibbert-A would create. At one point, Hibbert lauds this "laissez-faire" approach because "other plans will emerge." *See* ECF No. 1137-2 (Feb. 18, 2021) at 4. But planning that "other plans will emerge" is no plan at all. Hibbert-A would be a gross abdication of the Court's equitable authority.

3. The Hibbert-B Plan Wrongly Shifts Millions, Makes Determining Effective Prices Impossible, and Will Drive Consumers Away.

As discussed above, Hibbert-B shifts more than $10 million from partly-paid to fully-paid owners. PXA ¶ 19. However, it is unsustainable to have two consumers who lost the same amount in the same scam recover different shares. The only purported basis to shift millions to fully-paid consumers is that the Plan gives partly-paid consumers the option to remain owners for less than the deceptive price SBE established—even though the new, lower price is very likely still more than the lots are worth. Viewed another way, Hibbert-B reshuffles the FTC Plan's *pro rata* distribution to handsomely compensate fully-paid lot owners for their inability to assume additional risks of partly-paid owners who have lost exactly the same amount. Again, equity will not countenance this incoherent result.

There are other severe problems as well. Under Hibbert-B, every consumer's redress recovery depends on every other consumer's decision. This makes it impossible to inform consumers the minimum they will receive before they must decide whether to remain owners. Consequently, consumers will not know the Effective Price (new price minus compensation) of the lot in which they have an interest before they must elect whether to keep the lot. Furthermore, even if no one can determine the Effective Price for these owners *ex ante*, the ultimate Effective Price will increase considerably because Hibbert-B shifts extraordinary amounts away from partly-paid owners. Assuming Hibbert-B discloses the potential costs of remaining in the development to partly-paid consumers, many fewer consumers will choose to remain than under the FTC Plan (in which Effective Prices are lower). This will diminish economic activity, work contrary to the interests of the Government of Belize, and make New Sanctuary harder to market to prospective developers. There is simply no equitable basis to adopt Hibbert-B, which is certainly harmful and probably illegal.

V. The Remaining Miscellaneous Objections Lack Merit.

A. The Plan Properly Includes All Consumers Who Purchased on or Before November 7, 2018.

As it often does when there is significant risk that defendants will destroy evidence and dissipate assets, the FTC sought and obtained an *ex parte* Temporary Restraining Order ("TRO") against SBE. *See* ECF No. 1 (Oct. 31, 2018) (then-sealed Complaint);[38] ECF No. 5-2 (*ex parte* TRO); ECF No. 4-1 (Nov. 5, 2018) (ordering temporarily sealing proceedings pending service). Consequently, this action remained sealed until the FTC and Receiver entered SBE's business premises on November 7, 2018, and the FTC began serving Defendants. *See* ECF No. 23 (Nov. 15, 2018) at 4.

[38] The filing of an unserved, sealed complaint had no impact on Defendants' operations and created no obligations on the then-unappointed Receiver or the Defendants.

In a heart-wrenching objection,[39] one couple explains that they purchased their lot on November 4, 2018 while SBE's operations continued, but only the day before the Court entered the (then-sealed) *ex parte* TRO, and only three days before the FTC and Receiver disclosed the sealed proceedings and halted SBE's operations. The FTC properly proceeded *ex parte* to protect the public interest. It could not have disclosed the Complaint on or before November 4 without imperiling a complex law enforcement effort and potentially violating the Court's order sealing the proceeding pending service. There is often a last consumer to buy before an injunction halts operations, and that consumer's loss—however unfortunate—is no different from consumers who purchased earlier.

B. The Eligibility Requirements Are Reasonable.

Several objectors who worked for SBE and claim to own lots object because the Plan subordinates their claims if they worked for SBE and knowingly misled consumers:[40]

- Christopher Cammarano. Pukke associate Christopher Cammarano had an office inside Pukke's Michelson Drive headquarters, ECF No. 23-3 (Nov. 15, 2018). As Cammarano admits, his work included "gathering information for the development newsletters" and helping "keep my fellow lot owners updated." ECF No. 1158 (Feb. 26, 2021) at 3; PXB ¶ 15 (internal SBE correspondence about newsletters from Cammarano copying "Andy Storm" (a Pukke alias)). Cammarano appeared on Pukke's preliminary injunction hearing witness list, ECF No. 263-8 (Mar. 4, 2019), and his trial witness list, ECF 804-7 (Jan. 10, 2020), and he submitted a declaration on Pukke's behalf post-trial, ECF No. 960-3 (May 26, 2020).[41] Cammarano also directed consumers to contact "Marc Romeo" (another Pukke alias) about important issues. PXB ¶ 16.

- Clifford Smith. Smith "was engaged in selling lots for [SBE]," and purchased a lot in his own name, *see* ECF No. 1148-1 at 1. Although not an attorney, Smith improperly submits an objection on behalf of an entity he claims to have organized, A Better Place Properties, L.L.C., *see* ECF

[39] Goff, ECF No. 1165 (Feb. 26, 2021).

[40] The evidence identified below with respect to these objectors is not exhaustive.

[41] Cammarano also claims to co-own his lot with someone else who has not objected. *See* ECF No. 1158 (Feb. 26, 2021).

No. 1148 (Feb. 19, 2021) at 1. Smith suggests that this entity should qualify as a "consumer" because it paid for the lot he purchased. *See id.*

- Delaney Carlson and Theresa Edelen. These objectors admit that they "were for a time employed by [SBE]." ECF No. 1162-2 at 2. They provide little additional detail regarding their precise role.

Importantly, none of these objections challenges the principle that Defendants' agents who knowingly harmed consumers should not recover, at least until after innocent lot owners. In particular, the Plan excludes Defendants' employees or agents if they made representations the Court found were false, and if they knew or should have known they were false. *See* 1117-1 at 3. These facts could render the employees or agents liable for assisting and facilitating the scam. *See* 16 C.F.R. § 310.3(b). If the Receiver determines that these claimants do not qualify because they assisted and facilitated the scam, they can appeal to the Court under the Plan, *see* 1117-1 at 41-43, § VI, and the Court will provide them whatever hearings or other process is appropriate. *See, e.g.*, *SEC v. Byers*, 637 F. Supp. 2d 166, 184 (S.D.N.Y. 2009) ("It is well-settled that a District Court has the authority, in implementing a distribution plan in a receivership case, to use summary proceedings to evaluate claims and claim priority, provided the parties have an opportunity to be heard to argue their claims.") (citations omitted), *aff'd sub nom. S.E.C. v. Malek*, 397 F. App'x 711 (2d Cir. 2010). However, particularly given the extremely limited overall redress, it is plainly reasonable that SBE's agents or employees who knowingly misled other lot purchasers not recover *pari passu* with those they injured.

C. Calculating Loss of Use of Money (Interest) Is Inappropriate and Unnecessary.

Several consumers[42] complain that the Plan does not incorporate interest or compensation for consumers' loss of use of the money Defendants wrongfully took. *Cf. Gov't of Virgin Islands v. Davis*, 43 F.3d 41, 47 (3d Cir. 1994) (explaining that prejudgment interest can be a component of restitution because "[l]ost interest translates into lost opportunities, as it reflects the victim's inability to use his or her money for a productive purpose"). However—although the FTC

[42] *See, e.g.*, Hibbert (ECF No. 1175-2) (Mar. 1, 2021) at 10-160; Crossen (ECF No. 1146) (Feb. 19, 2021).

sometimes seeks prejudgment interest—it chose not to here, and the Court correspondingly did not award it, which should end the matter.

Notably, the FTC did not pursue relief based on prejudgment loss of use for multiple reasons. In general, and subject to various exceptions depending on the type of case and its facts, prejudgment interest runs from when a demand is made, which is often when the complaint is filed. *See, e.g.*, *New Amsterdam Cas. Co. v. Waller*, 323 F.2d 20, 28 (4th Cir. 1963) (awarding "prejudgment interest beginning with the date upon which the complaint was filed"); *see also FTC v. Nat'l Bus. Consultants, Inc.*, No. 89-cv-1740, 1993 WL 293289, *1 (E.D. La. July 23, 1993) (awarding the FTC "prejudgment interest from [the] date of judicial demand"). Because the FTC could not easily recover loss of use from before its filing in the context of this case, and because it understood consumer losses likely would exceed its recovery anyway, it did not spend additional resources trying to obtain prejudgment interest.

Of course, there are scenarios where the FTC could have recovered prejudgment interest (or the equivalent) from some earlier point. Unfortunately, as the Court is aware, this fraud spanned thirteen years. *Sanctuary Belize*, 482 F. Supp. 3d at 402. Many—if not most—consumers paid monthly, over years (and different sets of years). PXA ¶ 29. They paid different amounts. PXA ¶ 29. Sometimes the same consumer paid different amounts at different times. PXA ¶ 29. Some got partial refunds or buybacks. PXA ¶ 29. Many missed payments. PXA ¶ 29. Interest rates vary over time. Assuming that theoretically available interest runs from the date each consumer signed a lot purchase contract, given the herculean task involved with trying to calculate that figure 1,700 times, the FTC's decision not to pursue this relief is manifest. More important here—and ignoring the fact that the FTC did not recover for this loss in the first place—saddling the Receiver with performing these calculations would be burdensome.

Finally, Hibbert is mistaken that the absence of a loss-of-use benefit from the Plan discriminates against fully-paid owners as a class. Remarkably, at one point, Hibbert's analysis assumes partly-paid owners do not experience time-value losses. *See* 1175-2 at 11 (including chart that substantially exaggerates alleged discrepancy between fully-paid and partly paid

owners by awarding time-value to a fully-paid owner but not a partly-paid owner); PXA ¶ 30 (discussing this discrepancy). In reality, all consumers experience time-value losses—not only fully-paid consumers. For instance, someone who paid $200,000 toward a $400,000 lot in even monthly increments over a ten-year period from 2008 to 2018 will have a greater loss of use than someone who paid $200,000 for a $200,000 lot in 2017. In fact, more than 700 non-continuing lot purchasers are not "fully paid" because they were foreclosed upon or simply stopped paying due to the lack of promised progress or some other reason, PXA ¶ 31, and many stopped paying before various fully-paid owners finished their payments (making these partly-paid consumers theoretically entitled to relatively greater shares of the nonexistent loss-of-use recovery). Put simply, depending on when consumers paid what money—and regardless of if or when they paid 100%—some consumers will fare somewhat better or worse. However, that relatively minor disequilibrium is insignificant compared with the expense and delay associated with attempting to achieve a perfect distribution.

D. Objections To the Plan Are Not the Proper Vehicle To Challenge Receivership Decisions or Expenses.

Various objectors assert grievances about how the Receiver is managing the receivership estate. For instance, one objector asserts that the Receiver should remove a purportedly dissatisfactory employee.[43] Receivership management decisions are the province of the Receiver and, to the extent anyone seeks to complain about those decisions, redress plan objections are not the proper vehicle for those concerns. Likewise, some consumers complain that the Receivership is too expensive, or that the Court should cap the Receiver's fees in the future. But they offer no basis for these assertions, and none exists. In any event, the proper means to review the Receiver's fees is through a separate filing with the Court that responds to the Receiver's periodic requests for payment.

[43] Nisenoff, ECF No. 1141-1 (Feb. 24, 2021).

E. The FTC Properly Treats Interest Paid to SBE As Part of the Amount Consumers Lost.

Consistent with economic reality, the Plan properly treats both principal and interest payments lot purchasers made as part of the amounts they lost, *see* 1117-1 at 1, Def. 1—it makes no difference whether SBE called the lot payments they received "principal," "interest," or something else. Likewise, the Plan correspondingly calculates new prices based on the total amount consumers originally owed, regardless of whether SBE characterized it as "principal," "interest," or something else. *Id.* at 18, Def. 1. A few consumers propose that interest should not be considered, usually because they misunderstand the FTC's rationale or because they assert they intended to avoid interest by repaying their loans early.[44] Although it is unlikely to make sense for many (if any) consumers because the Plan finances balances owed at 0% over ten years, the Plan nevertheless contains a provision permitting owners to repay their original principal balance (without interest) immediately if they prefer. *See id.* at 27, § III(C)(3); *id.* at 32, § III(I)(3).

F. The Proposal To Address Competing Claims Is Fair.

To address the likely dozens of instances in which multiple consumers have claims to the same lot, the Plan requires the Receiver to award the lot to the consumer who will suffer the greatest loss if he or she does not receive the lot considering the totality of the circumstances. ECF No. 1117-1 at 23-24, § II(K). Other claimants will receive rights to a reasonably comparable lot from New Sanctuary, *see id.*, and the consumers involved can ask this Court to review the Receiver's decisions, *see id.* at 41-43, § VI. Additionally, to encourage consumers to compromise disputes over lots themselves, the Plan permits lot purchasers to transfer or trade rights with other lot purchasers. *See id.* at 35, § III(P).

One objector (Crossen) complains that the Plan does not propose to resolve competing claims on a lot in his favor. As he explains it, SBE began repurchasing one of his lots through a

[44] Cammarano, ECF No. 1158 (Feb. 26, 2021); Kelbanoff, ECF No. 1145 (Feb. 26, 2021); Auld, ECF No. 1157 (Feb. 26, 2021).

buyback agreement repaying the consumer over time. SBE made payments erratically and, although it still owed Crossen roughly $100,000, it sold the lot to a second consumer (Gagne), who built a house on the lot. As such, both Crossen and Gagne have claims; in fact, as Crossen candidly admits, SBE's contract with Gagne falsely represented to Gagne that SBE had clear title it could sell. *See* ECF No. 1146 (Feb. 19, 2021) at 2.

Under the Plan, Gange is likely to receive the lot because awarding the lot—and Gagne's house—to Crossen would impose a far greater loss on Gagne. Crossen would then receive a comparable lot. ECF No. 1117-1 at 23-24, § II(K). Notably, no court is likely to kick Gagne off the lot and award both the lot *and the house* to Crossen. What Crossen really wants is the Receiver to repay the full net amount he paid (approximately $100,000), *see* ECF No. 1146 at 3, which makes Crossen no different than every other consumer that would like the full net amount they paid refunded. Finally, although the outcome is unsatisfactory from Crossen's perspective, he does not seriously contest the principle that the lot should go to the consumer who suffers the greatest loss without it.

G. The Government of Belize Supervises the AIBL Liquidation Process.

Under the auspices of Belizean regulators, the Liquidator of Atlantic International Bank Limited ("AIBL") has substantially completed an orderly liquidation process in accordance with Belizean law. PXB ¶ 17. One claimant, an AIBL accountholder, lodges numerous complaints about the liquidation as well as how the Court evaluated the relationship between the bank and SBE.[45] However, his complaint that the Government of Belize permitted the Liquidator to repay him in Belizean currency is almost certainly baseless and, regardless, it is properly directed to Belizean officials rather than this Court. This objector's other issues related to the bank are not made with sufficient particularity to enable the FTC to address them.

[45] Holloway, ECF No. 1153 (Feb. 24, 2021). Hibbert also briefly mentions the bank, primarily to blame the FTC for its failure. *See* ECF No. 1175-2 at 4. It is unclear how that relates to Hibbert's argument.

H. The Ten-Year, Interest-Free Payoff Requirement Is Reasonable.

One objector notes that SBE financed his purchase through a thirty-year loan.[46] According to this consumer, payments over an accelerated ten-year payment will result in monthly payments greater than he can afford. However, SBE could assume such loan terms only because it was an illegitimate enterprise. No legitimate developer is likely to pay much, if anything, to purchase the rights to service a thirty-year loan, and the Receiver cannot remain in place to service the loan for thirty years. Because the Receiver needs to find a developer to acquire the potential portfolio of New Sanctuary contracts to transfer the development out of the Receivership, loan terms must be sufficiently short to limit the risk to a prospective buyer. The Plan's ten-year, interest-free term appropriately balances the need to keep monthly payments low with the equally-important need to make the loans attractive to purchase.

I. The Proposed Bridge Will Help Integrate New Sanctuary Into the Surrounding Area and Solidify Support for the Project in Belize.

The Sittee River borders New Sanctuary and separates it from Hopkins, a nearby Garifuna community with restaurants, tourist activity, and other commercial establishments. PXB ¶ 18. Cooperation with the Government of Belize and the local community is *critical* to New Sanctuary's potential success (and, thus, the long-term value of lots to consumers who remain in New Sanctuary). To help facilitate this cooperation, as well as to increase economic activity in potential future commercial areas within New Sanctuary, the Plan requires a qualified New Sanctuary developer to complete a bridge connecting New Sanctuary to Hopkins.[47]

Several consumers express concerns about the possible cost,[48] but they likely envision something far more elaborate than what such construction would entail. As development expert

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[46] Nisenoff, ECF 1141-1 (Feb. 24, 2021).

[47] Depending on its exact location, the bridge would shorten the travel time from Sanctuary Belize to Hopkins considerably.

[48] *See*, *e.g.*, Nisenoff, ECF No. 1141-1 (Feb. 24, 2021); Wilson/Jackson, ECF No. 1155 (Feb. 25, 2021); DeVitto, ECF No. 1161 (Mar. 19, 2021); Hodge/Effenberger, ECF No. 1172 (Mar. 2, 2021); Brown, ECF No. 1176 (Mar. 2, 2021).

Richard Peiser noted, bridge costs in the United States vary, but can be as little as $59 per square foot. PXB ¶ 19. Expenses in Belize are almost certainly lower, where construction costs are generally less. There is also no need for anything beyond an extremely basic prefabricated metal bridge common in remote areas with relatively little traffic. Even assuming that a two-lane (24-foot) wide, 150-foot long bridge[49] would cost $120/square foot, the total cost would be $432,000. This is a relatively insubstantial additional expense for a new developer to undertake given that the developer will already be required to perform millions in other infrastructure development, maintenance, and security. *See* 1117-1 at 46, § VIII(F), *id.* at 12, Def. 39. Most important, the advantages to lot purchasers from increased economic activity at New Sanctuary, improved community relations, and continued coordination with the Government of Belize far outweigh that relatively insubstantial expense.[50]

Conclusion

For all the aforementioned reasons, the Court should approve the proposed Redress Plan so the Receiver can quickly begin work.

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Respectfully Submitted,

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[49] The river is approximately 106 feet wide at its narrowest point along Sanctuary Belize. PXB ¶ 20.

[50] As with *any* expense the Plan imposes, should potential costs significantly exceed expectations or what otherwise makes sense, the FTC expects that the Receiver will return to the Court for additional direction.