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

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

DECLARATION OF DOUGLAS S. SMITH, Ph.D.
PURSUANT TO 28 U.S.C. § 1746 AND FEDERAL RULE OF EVIDENCE 1006

I have personal knowledge of the facts set forth below and am competent to testify about them. If called as a witness, I could and would testify as follows:

(1) I am an economist in the Federal Trade Commission's Bureau of Economics, Division of Consumer Protection, where I have worked since September 2011. I have a PhD in Economics from the University of Michigan, and a BA in Applied Math with an Economics Focus from Harvard University.

(2) I have published peer reviewed articles on "Robust Mechanism Design and Dominant Strategy Voting Rules" and "Robustly Ranking Mechanisms" in the journals *Theoretical Economics* and *American Economic Review (Papers and Proceedings)* respectively.

(3) As part of my work for the Bureau of Economics, I estimate the amount of consumer harm an unfair or deceptive practice caused. Where appropriate, such estimates include analyzing a defendant's business records.

(4) I previously submitted a declaration, dated September 28, 2020, regarding consumer payments from contracts executed on or after January 1, 2016. I also submitted a second declaration, dated November 25, 2020, regarding consumer payments from contracts executed on or before June 30, 2012.

(5) As I did previously, I used the same Lending Pro data about which the FTC's expert, Eric C. Lioy, testified at trial, and that connects payments to specific contracts for Sanctuary Belize. The Lending Pro data I reviewed and analyzed for Sanctuary Belize contains 91,377 entries over 1,893 separate accounts. I also used LendingPro data that connects payments to specific contracts for Kanantik. The Lending Pro data I reviewed and analyzed for Kanantik contains 20,224 entries over 420 separate accounts. Because it is sufficiently voluminous that the Court cannot conveniently examine it, I have summarized these records pursuant to Federal Rule of Evidence 1006. For the Sanctuary Belize data, analysis began on January 1, 2009 (when the LendingPro records begin) and ended on November 30, 2018 (when they stop). This is consistent with prior calculations in this matter. For Kanantik data, the analysis began on September 1, 2014 (when the LendingPro records begin) and ended on July 24, 2019 (when they stop).

(6) I have made various estimates regarding the redress proposal submitted to the court by Craig Hibbert ("the Hibbert Proposal"), the proposed redress plan submitted by the Federal Trade Commission ("the FTC Plan"), and their relative effects on the outcomes for consumers. I have also provided various estimates regarding the contracts held by consumers

with regards to the Sanctuary Belize and Kanantik developments. Apparently due to the Defendants' record keeping practices, this data is not entirely accurate or complete, and my estimates may be affected by deficiencies in the records.

(7) I consolidated pairs of accounts into one account where both accounts related to the same contract and removed other accounts that appeared not to reflect payment toward a unique contract eligible for redress. After those steps I find a combined 1,700 contracts for Sanctuary Belize and Kanantik. Using 575 for the number of fully-paid lots, which is the number Hibbert uses in the filings associated with the Redress Plan, fully-paid lots account for 33.8% of all lots, and partly-paid lots account for 66.2%. In this document, when discussing the data, I will use the terms "consumer" and "contracts" interchangeably, referring to this universe of 1,700.

(8) Where assumptions regarding redress amounts are necessary for a given estimate, I made the following assumptions about the funds that will be available for cash redress: in the case of Sanctuary Belize, that the available cash redress for a first round distribution is enough to provide a 15% rate of redress under the FTC Plan, as well as a second round distribution of $10,000,000 total; in the case of Kanantik, that the available cash redress for a first round distribution is $0, and for a second round distribution $2,000,000 total.

(9) In my calculations, I adopt the following interpretation of the Hibbert Proposal's Option B for redress (hereafter, "Hibbert-B"), regarding outcomes for consumers who participate in the plan and either choose to sign a new contract and remain an owner, or who choose not to sign a new contract and not to remain an owner.

(10) Hibbert-B offers the option for a consumer to not sign a new contract, and receive a first round pro-rata distribution based on the total amount they paid on the contract.

(11) Hibbert-B gives those consumers who choose to keep their lot the choice to either receive a 25% discount on the new contract price of their lot, receive the same or more cash redress than they would receive if they elected not to keep their lot, or to receive a combination of a partial discount and partial cash redress.

(12) Those consumers opting for a discount must agree to not transfer their lot for at least one and up to five years, with the combination of discount and redress they can receive depending how many years of the restriction they agree to. In the chart, "redress" refers to the amount of cash redress they would receive if they chose to sign a new contract with no discount. (To be precise, a new contract with no discount and a "comparison discounted price" of 100% of their original price, as defined below.) So for example, "Give up 80% of redress" corresponds to receiving 20% of the pro-rata share of cash redress that they would receive if they chose to sign a new contract with no discount.

Years of no transfer	5% discount	10% discount	15% discount	20% discount	25% discount
1	Give up 100% of redress				
2	Give up 80% of redress	Give up 100% of redress			
3	Give up 60% of redress	Give up 80% of redress	Give up 100% of redress		
4	Give up 40% of redress	Give up 60% of redress	Give up 80% of redress	Give up 100% of redress	
5	Give up 20% of redress	Give up 40% of redress	Give up 60% of redress	Give up 80% of redress	Give up 100% of redress

(13) Consumers choosing an undiscounted new contract also must choose a number of years of no transfer restriction, from 1 to 5. Depending on their choice of number of years, the consumer may receive redress as if they had paid more for their lot than they actually paid. How much more depends on a number I have labeled the "comparison discounted price" in the table below. The comparison discount price is equal to the maximum discount a consumer could get on a discounted price contract with the same number of years of no transfer.

Years of no transfer	Comparison discounted price (% of contract price)
1	95%
2	90%
3	85%
4	80%
5	75%

(14) If the consumer taking a non-discounted contract has paid off a higher percentage of their contract than their comparison discounted price (based on the number of years of no transfer they select), then the consumer receives an additional amount of pro-rata cash redress as if they had originally paid an additional amount, equal to the amount the consumer paid above their comparison discounted price divided by two.

(15) Hibbert-B specifies that only those consumers who take a new contract in Sanctuary Belize will receive cash redress after the first distribution. (The Hibbert Proposal presents another option, Option A, that also has the same feature.) However, it does not describe how relative shares of later distributions will be allocated among holders of new contracts. Given this ambiguity, I assume that later distributions will be allocated among holders of new contracts in the same relative portions as the first distribution.

(16) For both first and later distributions of cash redress, under Hibbert-B a consumer's cash redress depends on the choices they make regarding whether to take a new contract and under what terms. For a given amount of redress funds, that means that a consumer's choice will affect how much redress they receive and consequently how much redress is available for other consumers. Consequently, consumer's decisions are interdependent

in the sense that if some consumers choose to take a smaller share of redress, that will increase the amount of redress going to other consumers, and choosing a larger share of redress will have the opposite effect. This interdependence makes it impossible to know how much cash redress a given consumer will receive, based on their decision, until after all other consumers' decisions have been made. Therefore, a consumer cannot predict with certainty how much redress they are choosing to receive (or give up) when making their decision.

(17) Based on this understanding of Hibbert-B, and using the LendingPro data described above, for each contract I calculate the optimal choice of new contract, based on the information available to consumers at the time of the decision, an expectation of a base rate of 15% cash redress and assuming that all consumers accept a five year transfer restriction. I calculate that for the vast majority – over 99% – of lot purchasers, the best financial option under Hibbert-B is to either take the full 25% discount or the maximum cash redress.

(18) I estimated redress outcomes under Hibbert-B and the FTC Plan under two scenarios, using the assumptions about redress listed above. In the first scenario, I assume that all consumers sign new contracts. I estimate redress for each individual participant, and for the aggregates of fully-paid consumers and partly-paid consumers. I estimate that in this scenario, fully-paid consumers receive $14,803,834.78 more in cash redress than under the FTC Plan. Cash redress to partly-paid consumers decreases by an identical estimated $14,803,834.78.

(19) In the second scenario, I assume that consumers sign new contracts only if they have already paid at least 30% of their contract. This means that a Sanctuary Belize consumer has to pay at most a remaining 35% of their original contract amount, and a Kanantik consumer has to pay at most 25% of their original contract amount. I estimate redress for each individual participant, and for the aggregates of fully-paid and partly-paid consumers. I estimate that in this scenario, fully-paid consumers receive $10,199,728.45 more in cash redress than under the FTC Plan. Cash redress to partly-paid consumers decreases by an identical estimated $10,199,728.45.

(20) Hibbert-B proposes lower maximum discounts than the FTC Plan: 25% for both Sanctuary Belize consumers and Kanantik consumers, compared to 35% for Sanctuary Belize and 45% for Kanantik. I estimated the aggregate increase in new contract payments required across all consumers under Hibbert-B relative to the FTC Plan at $23,851,299.91.

(21) As noted above, due to the dependence of the rate of redress on other consumers' choices under Hibbert-B, it is impossible to determine the rate of pro rata redress before the consumers make their choices regarding new contracts. Using the LendingPro data, I estimated that the potential first round redress rate could vary from less than 15% to greater than 25%. For a consumer who paid $200,000 and elects to receive no discount, that would mean a difference of more than $20,000. This contrasts with the FTC's Plan, where every group of consumers recover exactly the proportion of the overall recovery corresponding to their portion of total consumer payments, and the rate of pro-rata redress can be determined in advance of consumer's choices, given the amount of funds available for redress. I further estimate that under certain conditions, an individual fully-paid lot owner's redress under Hibbert-B could reach 195% of their redress under the FTC Plan.

(22) I note that material representations by definition affect how consumers value a product or service. I also note the economic principle that increasing the price of a good, such as lots, will generally lead to fewer purchases of that good.

(23) I now look at some examples of consumer outcomes under the Hibbert-B Proposal and calculate various numbers relevant to their outcomes, depending on their choices. I

consider a partly paid consumer who has a lot of price $200,000, and has paid $40,000. If they choose to take the maximum discount of 25% under Hibbert-B, they will have a new contract price of $150,000, and will need to spend an additional $110,000. Because they took the maximum discount, they will also receive no redress. If they fully pay for the lot under the new contract, and the lot is only worth $50,000, then their total expenditure will exceed the lot value by $100,000.

(24) If a second consumer has a fully paid contract for $150,000 on an identical lot, they can elect to hold onto the fully paid lot and receive their full redress. Assuming their rate of redress is 15%, and that they accept a five year no transfer restriction, they will then receive $25,312.50 in redress. (Because of the five year no transfer restriction, they receive 15% of $150,000 multiplied by 112.5%.) Therefore, if their lot is also worth $50,000 their net expenditure (after redress) will exceed the lot value by $74,687.50. The difference between the outcome for this second consumer and the first consumer is equal to the difference in redress received, namely $25,312.50, resulting from the second consumer fully purchasing an identical lot at a lower contract price.

(25) I now consider a consumer who paid $350,000 for a fully-paid lot. Under Hibbert-B, if that consumer agrees to a five year no transfer restriction, their comparison discounted price would be 75% of $350,000, or $262,500. They would receive the full rate of redress on both the $350,000 they spent, and on an additional $87,500 corresponding to half the difference between $350,000 and $262,500. If the redress rate is 15%, the consumer would receive 15% of $393,750, equal to $59,062.50. Their cash redress would therefore be equal to 16.9% of their original cost. For a consumer who paid $250,000 towards a $350,000 contract, their maximum redress would be 15% of their original cost, equal to $37,500.

(26) I calculated estimated redress for a $288,150.00 lot contract where the owner has paid $238,157.17, equal to 83% of the contract price. Using the same assumptions regarding the amount of redress funds described above, I estimated cash redress payments under four scenarios, corresponding to the four combinations of whether redress is determined by the FTC Plan or Hibbert-B, and whether the consumer elects to sign a new contract or elects to abandon their lot. Under the FTC Plan, if the consumer elects to abandon the lot the consumer receives an estimated $53,731.47 in redress. Under the FTC Plan, the consumer also receives an estimated $53,731.47 in redress if they sign a new contract, and because she automatically receives a discount greater than 17%, does not have to pay anything under the new contract. Under Hibbert-B, if the consumer elects to abandon the lot the consumer receives an estimated $35,723.58, while if the consumer elects to sign a new contract with a 20% discount they receive an estimated $13,435.56. If the realized value of the lot is 95% of the original contract price, then the value of the lot would be $273,742.50.

(27) I made some further calculations based on the LendingPro data. Using the LendingPro data, I calculated the average lot price for fully paid owners across both Sanctuary Belize as $164,582.07, and for partly paid owners as $179,289.93.

(28) I estimated how many partly paid consumers would have zero further payment obligations under the FTC Plan, by calculating how many partly paid consumers had paid at least 65% of their principal for Sanctuary Belize contracts, or 55% for Kanantik contracts. I found that there were 164 such consumers. Assuming a pro-rata redress rate of 15%, I further estimated how many partly paid consumers' new contract payments would exceed their pro-rata redress payments by calculating how many Sanctuary Belize consumers had paid between 50% and 65% of their principle, and calculated that 102 consumers satisfied that condition.

(29) I observe the following about the contracts in the LendingPro data: (1) many consumers paid monthly or at other regular intervals, over multiple years, and contracts started in a variety of years; (2) for individual contracts, consumer payments were not always consistent in amount, or timeliness; and (3) consumers sometimes received discounts, refunds, partial refunds or credit towards another lot.

(30) I read the document titled, “Consumer Committee and Owner Response To FTC Redress Plan.” I observed that on page 11, a table presents values for the total cost to the respective owners of a partly paid lot and a fully paid lot, using the same lot price. The presented cost for the fully paid lot owner is calculated by adding estimated costs of inflation and lost income to the contract price. The presented cost for the partly paid lot owner, however, includes no calculation of estimated costs of inflation or lost income.

(31) I also estimated the number of lot purchasers who were not fully paid and had not made recent payments at the time of FTC intervention. I calculated that the number of such cases was greater than 700.

Executed in Washington, D.C. on March 12, 2021.

/s/ Douglas S. Smith, Ph.D.