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1
2 **UNITED STATES DISTRICT COURT**
3 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

4 **OAKLAND DIVISION**

5
6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 v.

9 MORTGAGE SOLUTIONS FCS, INC., a
10 corporation, also d/b/a Mount Diablo Lending,

11 and

12 RAMON WALKER, individually and as an officer
13 of Mortgage Solutions FCS, Inc.,

14 Defendants.
15

Case No. 4:20-cv-00110

**[Proposed] STIPULATED ORDER
FOR PERMANENT INJUNCTION,
CIVIL PENALTIES, AND OTHER
RELIEF**

16 Plaintiff, the United States of America, acting upon notification and authorization to the
17 Attorney General by the Federal Trade Commission (“Commission” or “FTC”), filed its
18 Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”), for a permanent
19 injunction, civil penalties, and other equitable relief in this matter, pursuant to Sections 13(b) and
20 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 56(a)(1).
21 Defendants have waived service of the summons and the Complaint. Plaintiff and Defendants
22 stipulate to the entry of this Stipulation and Order (“Order”) to resolve all matters in dispute in
23 this action between them.
24

25
26 THEREFORE, IT IS ORDERED as follows:
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FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45; violated the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x (the “FCRA”); violated the rule regarding the Privacy of Consumer Financial Information (“Regulation P”), 12 C.F.R. Part 1016, issued pursuant to Title V, Subtitle A, of the Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. §§ 6801-6804; and violated of the rule regarding the Standards for Safeguarding Customer Information (“Safeguards Rule”), 16 C.F.R. Part 314, issued pursuant to Title V, Subtitle A, of the Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. §§ 6801(b), 6805(b)(2). Specifically, the Complaint charges that Defendants failed to accurately disclose their privacy practices, failed to develop and implement an adequate information security program, and improperly disclosed customers’ sensitive personal financial information.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
5. Defendants and Plaintiff waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. **“Clear(ly) and Conspicuous(ly)”** means that a required disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the notice, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything

1
2 else in the communication.

3 8. When the representation or sales practice targets a specific audience, such as children, the
4 elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that
5 group.

6 B. “**Consumer Report**” means any written, oral, or other communication of any
7 information by a Consumer Reporting Agency bearing on a consumer’s credit worthiness, credit
8 standing, credit capacity, character, general reputation, personal characteristics, or mode of living
9 which is used or expected to be used or collected in whole or in part For a Permissible Purpose.
10

11 C. “**Consumer Reporting Agency**” means any person which, for monetary fees, dues, or on
12 a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling
13 or evaluating consumer credit information or other information on consumers for the purpose of
14 furnishing Consumer Reports to third parties, and which uses any means or facility of interstate
15 commerce for the purpose of preparing or furnishing Consumer Reports.
16

17 D. “**Corporate Defendant**” means Mortgage Solutions FCS, Inc., also doing business as
18 Mount Diablo Lending, and its successors and assigns.
19

20 E. “**Covered Business**” means Corporate Defendant, any business that Corporate Defendant
21 controls, directly or indirectly, and any business that Individual Defendant controls, directly or
22 indirectly.
23

24 F. “**Covered Incident**” means any instance in which any United States federal, state, or
25 local law or regulation requires a Covered Business or Individual Defendant, to notify any U.S.
26 federal, state, or local government entity that Nonpublic Personal Information collected or
27 received, directly or indirectly, by a Covered Business from or about an individual consumer
28 was, or is reasonably believed to have been, accessed, acquired, or shared without authorization.

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2 G. **“Customer Relationship”** means a continuing relationship between a consumer and a
3 business under which the business provides one or more Financial Services to the consumer that
4 are to be used primarily for personal, family, or household purposes.

5 H. **“Defendants”** means the Individual Defendant and the Corporate Defendant,
6 individually, collectively, or in any combination.

7
8 I. **“Excepted Disclosures”** means disclosures of Nonpublic Personal Information made:

9 1. In connection with:

10 a. Servicing or processing a financial product or service that a consumer requests or
11 authorizes;

12 b. Maintaining or servicing the consumer’s account with a Covered Business, or with
13 another entity as part of a private label credit card program or other extension of
14 credit on behalf of such entity; or

15 c. A proposed or actual securitization, secondary market sale (including sales of
16 servicing rights), or similar transaction related to a transaction of the consumer.

17
18 2. To protect the confidentiality or security of Defendants’ records pertaining to the
19 consumer, service, product, or transaction;

20
21 3. To protect against or prevent actual or potential fraud, unauthorized transactions, claims,
22 or other liability;

23 4. For required institutional risk control or for resolving consumer disputes or inquiries;

24 5. To persons holding a legal or beneficial interest relating to the consumer;

25 6. To persons acting in a fiduciary or representative capacity on behalf of the consumer;

26
27 7. To provide information to insurance rate advisory organizations, guaranty funds or
28 agencies, agencies that are rating Defendants, persons that are assessing Defendants’

1 compliance with industry standards, and Defendants’ attorneys, accountants, and auditors;

2
3 8. To the extent specifically permitted or required under provisions of law, to law
4 enforcement agencies, self-regulatory organizations, or for an investigation on a matter
5 related to public safety;

6 9. To a Consumer Reporting Agency;

7
8 10. In connection with a proposed or actual sale, merger, transfer, or exchange of all or a
9 portion of a business or operating unit if the disclosure of Nonpublic Personal Information
10 concerns solely consumers of such business or unit;

11 11. To comply with Federal, state, or local laws, rules and other applicable legal
12 requirements;

13
14 12. To comply with a properly authorized civil, criminal, or regulatory investigation, or
15 subpoena or summons by Federal, state, or local authorities; or

16 13. To respond to judicial process or government regulatory authorities having jurisdiction
17 over Defendants for examination, compliance, or other purposes as authorized by law.

18 J. **“Financial Service”** means:

19
20 1. Extending credit and servicing loans. Making, acquiring, brokering, or servicing loans or
21 other extensions of credit (including factoring, issuing letters of credit and accepting drafts)
22 for the company’s account or for the account of others;

23 2. Activities related to extending credit. Any activity usual in connection with making,
24 acquiring, brokering or servicing loans or other extensions of credit, including:

25 a. Real estate and personal property appraising. Performing appraisals of real estate
26 and tangible and intangible personal property, including securities.

27 b. Arranging commercial real estate equity financing. Acting as intermediary for the
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2 financing of commercial or industrial income-producing real estate by arranging for the
3 transfer of the title, control, and risk of such a real estate project to one or more investors,
4 if the bank holding company and its affiliates do not have an interest in, or participate in
5 managing or developing, a real estate project for which it arranges equity financing, and
6 do not promote or sponsor the development of the property.
7

8 c. Asset management, servicing, and collection activities. Engaging under contract
9 with a third party in asset management, servicing, and collection of assets of a type that
10 an insured depository institution may originate and own, if the company does not engage
11 in real property management or real estate brokerage services as part of these services.
12

13 d. Real estate settlement servicing. Providing real estate settlement services.

14 3. Leasing personal or real property. Leasing personal or real property or acting as agent,
15 broker, or adviser in leasing such property if:

16 a. The lease is on a nonoperating basis;

17 b. The initial term of the lease is at least 90 days;

18 c. In the case of leases involving real property:

19 i. At the inception of the initial lease, the effect of the transaction will yield
20 a return that will compensate the lessor for not less than the lessor's full
21 investment in the property plus the estimated total cost of financing the
22 property over the term of the lease from rental payments, estimated tax
23 benefits, and the estimated residual value of the property at the expiration
24 of the initial lease; and
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26 ii. The estimated residual value of property shall not exceed 25 percent of the
27 acquisition cost of the property to the lessor.
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2 4. Financial and investment advisory activities. Acting as investment or financial advisor to
3 any person, including (without, in any way, limiting the foregoing):

4 a. Serving as investment adviser to a registered investment company, including
5 sponsoring, organizing, and managing a closed-end investment company;

6 b. Furnishing general economic information and advice, general economic statistical
7 forecasting services, and industry studies; or

8 c. Providing educational courses, and instructional materials to consumers on
9 individual financial management matters;

10
11 5. Credit insurance. Acting as principal, agent, or broker for insurance (including home
12 mortgage redemption insurance) that is:

13 a. Directly related to an extension of credit by the bank holding company or any of
14 its subsidiaries; and

15 b. Limited to ensuring the repayment of the outstanding balance due on the
16 extension of credit in the event of the death, disability, or involuntary unemployment of
17 the debtor.
18

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20 K. **“For a Permissible Purpose”** means:

21 1. In connection with a credit transaction involving the consumer whose report is to be
22 obtained or used and involving the extension of credit to, or review or collection of an
23 account of, that consumer; or

24 2. For employment purposes; or

25 3. In connection with the underwriting of insurance involving the consumer; or

26 4. In connection with a determination of the consumer’s eligibility for a license or other
27 benefit granted by a governmental instrumentality required by law to consider an applicant’s
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2 financial responsibility or status; or

3 5. In connection with a valuation of, or an assessment of the credit or prepayment risks
4 associated with, an existing credit obligation; or

5 6. Otherwise in connection with a legitimate business need for the information—

6 a. In connection with a business transaction that is initiated by the consumer; or

7 b. To review an account to determine whether the consumer continues to meet the
8 terms of the account.
9

10 L. **“Individual Defendant”** means Ramon Walker.

11 M. **“Information Security Program”** means a comprehensive policy that is written in one
12 or more readily accessible parts and contains administrative, technical, and physical safeguards
13 that are appropriate to Defendants’ size and complexity, the nature and scope of Defendants’
14 activities, and the sensitivity of any customer information at issue.
15

16 N. **“Nonpublic Personal Information”** means

17 1. Personally Identifiable Financial Information;

18 2. Any list, description, or other grouping of consumers (and publicly available information
19 pertaining to them) that is derived using any Personally Identifiable Financial Information
20 that is not publicly available.
21

22 O. **“Opt Out Notice”** means a Clear and Conspicuous notice that accurately explains
23 consumers’ right to opt out of disclosures of Nonpublic Personal Information to nonaffiliated
24 third parties. Such notice must state:

25 1. That Defendants disclose or reserve the right to disclose Nonpublic Personal Information
26 about the consumer to a nonaffiliated third party;

27 2. That the consumer has the right to Opt Out of that disclosure; and
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2 3. A reasonable means by which the consumer may exercise the Opt Out right.

3 P. **“Opt Out”** means to direct that Defendants not disclose Nonpublic Personal Information
4 about that consumer to a nonaffiliated third party, except for Excepted Disclosures.

5 Q. **“Personally Identifiable Financial Information”** means any information:

- 6 1. That a consumer provides to Defendants to obtain a Financial Service from Defendants;
7
8 2. About a consumer resulting from any transaction involving a Financial Service between
9 Defendants and the consumer; or
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11 3. That Defendants otherwise obtain about a consumer in connection with providing a
12 Financial Service to that consumer.

13 R. **“Privacy Notice”** means a Clear and Conspicuous notice that accurately reflects the
14 Defendant’s privacy policies and practices and that Defendants provide to a consumer not later
15 than upon entering into a Customer Relationship with the consumer or, in any event, before
16 disclosing any Nonpublic Personal Information about the consumer to any nonaffiliated third
17 party unless the disclosure is an Excepted Disclosure. Such notice shall include, at a minimum,

- 18 1. The categories of Nonpublic Personal Information that Defendants collect;
19
20 2. The categories of Nonpublic Personal Information that Defendants disclose;
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22 3. The categories of affiliates and nonaffiliated third parties to whom Defendants disclose
23 Nonpublic Personal Information, other than parties to whom Defendants make Excepted
24 Disclosures;
25
26 4. The categories of Nonpublic Personal Information about Defendants’ former customers
27 that Defendants disclose and the categories of affiliates and nonaffiliated third parties to
28 whom Defendants disclose Nonpublic Personal Information about former customers, other
than those parties to whom Defendants make only Excepted Disclosures;

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5. A separate statement of the categories of information Defendants disclose to Service Providers and the categories of Service Providers with whom Defendants have contracted;

6. An explanation of the consumer’s right to opt out of the disclosure of Nonpublic Personal Information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time and any disclosures to which the right does not apply; and

7. Defendants’ policies and practices with respect to protecting the confidentiality and security of Nonpublic Personal Information.

S. **“Service Provider”** means a nonaffiliated third party to which Defendants disclose Nonpublic Personal Information so that the third party can perform services for Defendants or functions on Defendants’ behalf, and with whom Defendants have entered into a contractual agreement that prohibits the third party from disclosing or using the information other than to carry out the purposes for which Defendants disclosed the information, including for a use that would qualify the disclosure as an Excepted Disclosure in the ordinary course of business.

ORDER

I. PROHIBITION AGAINST MISREPRESENTING PRIVACY PRACTICES

IT IS ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, are permanently restrained and enjoined from misrepresenting, expressly or by implication, Defendants’ privacy and data security practices, including whether, how, and for what purposes Defendants collect, use, transfer, and/or disclose personal information about consumers.

II. INJUNCTION CONCERNING USING OR OBTAINING CONSUMER REPORTS

IT IS FURTHER ORDERED that Defendants and Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the sale of any good or service, are hereby permanently restrained and enjoined from using or obtaining a Consumer Report for any purpose other than For a Permissible Purpose.

III. INJUNCTION CONCERNING THE PROVISION OF PRIVACY NOTICES

IT IS FURTHER ORDERED that Defendants and Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with Defendants’ provision of any Financial Service are hereby permanently restrained and enjoined from failing to provide a Privacy Notice to each consumer with whom Defendants form a Customer Relationship or about whom Defendants make a disclosure of Nonpublic Personal Information, other than an Excepted Disclosure, to a nonaffiliated third party.

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2 **IV. PROHIBITION AGAINST IMPROPER DISCLOSURE OF NONPUBLIC**
3 **PERSONAL INFORMATION**

4 IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, employees,
5 and attorneys, and all other persons in active concert or participation with any of them, who
6 receive actual notice of this Order, whether acting directly or indirectly, in connection with
7 Defendants’ provision of any Financial Service, are permanently restrained and enjoined from
8 disclosing to any nonaffiliated third party any Nonpublic Personal Information about a consumer
9 unless
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11 A. The disclosure is to a Service Provider or is an Excepted Disclosure; or

12 B. Defendants have:

- 13
14 1. Clearly and Conspicuously disclosed to the consumer, separate and apart from any
15 “privacy policy,” “data use policy,” “statement of rights and responsibilities” page, or other
16 similar document, including any notice provided pursuant to Provision III of this order: (1)
17 the categories of nonpublic personal information that will be disclosed to such third parties
18 and (2) the identity or specific categories of such third parties; and
19
20 2. Obtained the relevant consumer’s affirmative express consent.

21 **V. MANDATED INFORMATION SECURITY PROGRAM**

22 IT IS FURTHER ORDERED that each Covered Business shall not transfer, sell, share,
23 collect, maintain, or store Nonpublic Personal Information unless the Covered Business
24 establishes and implements, and thereafter maintains, a comprehensive Information Security
25 Program that protects the security, confidentiality, and integrity of such Nonpublic Personal
26 Information. To satisfy this requirement, each Covered Business must, at a minimum:
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28 A. Document in writing the content, implementation, and maintenance of the Information

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2 Security Program;

3 B. Provide the written program and any evaluations thereof or updates thereto to a senior
4 officer responsible for its Information Security Program at least once every twelve (12) months
5 and promptly after a Covered Incident;

6 C. Designate a qualified employee or employees to coordinate and be responsible for the
7 Information Security Program;

8 D. Assess and document, at least once every twelve (12) months and promptly following a
9 Covered Incident, internal and external risks to the security, confidentiality, or integrity of
10 Personal Information that could result in the unauthorized disclosure, misuse, loss, theft,
11 alteration, destruction, or other compromise of such information;

12 E. Design, implement, maintain, and document safeguards that control the internal and
13 external risks to the security, confidentiality, or integrity of Nonpublic Personal Information
14 identified in response to sub-Provision VI.D. Each safeguard shall be based on the volume and
15 sensitivity of the Personal Information that is at risk, and the likelihood that the risk could be
16 realized and result in the unauthorized access, collection, use, alteration, destruction, or
17 disclosure of the Personal Information.

18 F. Assess, at least once every twelve (12) months and promptly following a Covered
19 Incident, the sufficiency of any safeguards in place to address the risks to the security,
20 confidentiality, or integrity of Nonpublic Personal Information, and modify the Information
21 Security Program based on the results;

22 G. Test and monitor the effectiveness of the safeguards at least once every twelve (12)
23 months and promptly following a Covered Incident, and modify the Information Security
24 Program based on the results;

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2 H. Select and retain service providers capable of safeguarding Nonpublic Personal
3 Information they access through or receive from each Covered Business, and contractually
4 require service providers to implement and maintain safeguards for Personal Information; and

5 I. Evaluate and adjust the Information Security Program in light of any changes to its
6 operations or business arrangements, a Covered Incident, or any other circumstances that
7 Defendants know or have reason to know may have an impact on the effectiveness of the
8 Information Security Program. At a minimum, each Covered Business must evaluate the
9 Information Security Program at least once every twelve (12) months and modify the
10 Information Security Program based on the results.
11

12 **VI. INFORMATION SECURITY ASSESSMENTS BY A THIRD PARTY**

13
14 IT IS FURTHER ORDERED that, in connection with compliance with Provision VI of
15 this Order titled Mandated Information Security Program, Defendants must obtain, for each
16 Covered Business, initial and biennial assessments (“Assessments”):

17 A. The Assessments must be obtained from a qualified, objective, independent third-party
18 professional (“Assessor”), who: (1) uses procedures and standards generally accepted in the
19 profession; (2) conducts an independent review of the Information Security Program; and (3)
20 retains all documents relevant to each Assessment for five (5) years after completion of such
21 Assessment and will provide such documents to the Commission within ten (10) days of receipt
22 of a written request from a representative of the Commission. No documents may be withheld
23 on the basis of a claim of confidentiality, proprietary or trade secrets, work product protection,
24 attorney client privilege, statutory exemption, or any similar claim.
25

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27 B. For each Assessment, Defendants shall provide the Associate Director for Enforcement
28 for the Bureau of Consumer Protection at the Federal Trade Commission with the name and

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2 affiliation of the person selected to conduct the Assessment, which the Associate Director shall
3 have the authority to approve in his sole discretion.

4 C. The reporting period for the Assessments must cover: (1) the first 180 days after the
5 issuance date of the Order for the initial Assessment; and (2) each 2-year period thereafter for ten
6 (10) years after issuance of the Order for the biennial Assessments.

7
8 D. Each Assessment must: (1) determine whether each Covered Business has implemented
9 and maintained the Information Security Program required by Provision VI of this Order, titled
10 Mandated Information Security Program; (2) assess the effectiveness of each Covered Business's
11 implementation and maintenance of sub-Provisions VI.A-I; (3) identify any gaps or weaknesses
12 in the Information Security Program; and (4) identify specific evidence (including, but not
13 limited to documents reviewed, sampling and testing performed, and interviews conducted)
14 examined to make such determinations, assessments, and identifications, and explain why the
15 evidence that the Assessor examined is sufficient to justify the Assessor's findings. No finding
16 of any Assessment shall rely solely on assertions or attestations by a Covered Business's
17 management. The Assessment shall be signed by the Assessor and shall state that the Assessor
18 conducted an independent review of the Information Security Program, and did not rely solely on
19 assertions or attestations by a Covered Business's management.

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21
22 E. Each Assessment must be completed within sixty (60) days after the end of the reporting
23 period to which the Assessment applies. Unless otherwise directed by a Commission
24 representative in writing, Defendants must submit each Assessment to the Commission within
25 ten (10) days after the Assessment has been completed via email to DEbrief@ftc.gov or by
26 overnight courier (not the U.S. Postal Service) to Associate Director for Enforcement, Bureau of
27 Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington,
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2 DC 20580. The subject line must begin, “FTC v. Mortgage Solutions FCS, Inc., FTC File No.
3 1823199.” All subsequent biennial Assessments shall be retained by Defendants until the order
4 is terminated and provided to the Associate Director for Enforcement within ten (10) days of
5 request.

6 **VII. COOPERATION WITH THIRD PARTY INFORMATION SECURITY**
7
8 **ASSESSOR**

9 IT IS FURTHER ORDERED that Defendants, whether acting directly or indirectly, in
10 connection with any Assessment required by Provision VII of this Order titled Information
11 Security Assessments by a Third Party, must:

- 12 A. Disclose all material facts to the Assessor, and must not misrepresent in any manner,
13 expressly or by implication, any fact material to the Assessor’s: (1) determination of whether
14 Defendants have implemented and maintained the Information Security Program required by
15 Provision VI of this Order, titled Mandated Information Security Program; (2) assessment of the
16 effectiveness of the implementation and maintenance of sub-Provisions VI.A-I; or (3)
17 identification of any gaps or weaknesses in the Information Security Program; and
18
19 B. Provide or otherwise make available to the Assessor all information and material in their
20 possession, custody, or control that is relevant to the Assessment for which there is no reasonable
21 claim of privilege.
22

23 **VIII. ANNUAL CERTIFICATION**

24 IT IS FURTHER ORDERED that, in connection with compliance with Provision VI of
25 this Order titled Mandated Information Security Program, Defendants shall:

- 26
27 A. One year after the issuance date of this Order, and each year thereafter, provide the
28 Commission with a certification from a senior corporate manager, or, if no such senior corporate

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2 manager exists, a senior officer of each Covered Business responsible for each Covered
3 Business's Information Security Program that: (1) each Covered Business has established,
4 implemented, and maintained the requirements of this Order; (2) each Covered Business is not
5 aware of any material noncompliance that has not been (a) corrected or (b) disclosed to the
6 Commission; and (3) includes a brief description of any Covered Incident. The certification
7 must be based on the personal knowledge of the senior corporate manager, senior officer, or
8 subject matter experts upon whom the senior corporate manager or senior officer reasonably
9 relies in making the certification.
10

11 B. Unless otherwise directed by a Commission representative in writing, submit all annual
12 certifications to the Commission pursuant to this Order via email to DEbrief@ftc.gov or by
13 overnight courier (not the U.S. Postal Service) to Associate Director for Enforcement, Bureau of
14 Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington,
15 DC 20580. The subject line must begin, "FTC v. Mortgage Solutions FCS, Inc., FTC File No.
16 1823199."
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18 IX. COVERED INCIDENT REPORTS

19 IT IS FURTHER ORDERED that Defendants, for any Covered Business, within a
20 reasonable time after the date of discovery of a Covered Incident, but in any event no later than
21 ten (10) days after the date the Covered Business first notifies any U.S. federal, state, or local
22 government entity of the Covered Incident, must submit a report to the Commission. The report
23 must include, to the extent possible:
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25 A. The date, estimated date, or estimated date range when the Covered Incident occurred;

26 B. A description of the facts relating to the Covered Incident, including the causes of the
27 Covered Incident, if known;
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2 C. A description of each type of information that triggered the notification obligation to the
3 U.S. federal, state, or local government entity;

4 D. The number of consumers whose information triggered the notification obligation to the
5 U.S. federal, state, or local government entity;

6 E. The acts that the Covered Business has taken to date to remediate the Covered Incident
7 and protect Personal Information from further exposure or access, and protect affected
8 individuals from identity theft or other harm that may result from the Covered Incident; and

9 F. A representative copy of each materially different notice required by U.S. federal, state,
10 or local law or regulation and sent by the Covered Business or any of its clients to consumers or
11 to any U.S. federal, state, or local government entity.

12
13 Unless otherwise directed by a Commission representative in writing, all Covered Incident
14 reports to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by
15 overnight courier (not the U.S. Postal Service) to Associate Director for Enforcement, Bureau of
16 Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington,
17 DC 20580. The subject line must begin, “FTC v. Mortgage Solutions FCS, Inc., FTC File No.
18 1823199.”
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21 **X. MONETARY JUDGMENT FOR CIVIL PENALTY**

22 IT IS FURTHER ORDERED that:

23 A. Judgment in the amount of one hundred and twenty thousand dollars (\$120,000) is
24 entered in favor of Plaintiff against Individual Defendant and Corporate Defendant, jointly and
25 severally, as a civil penalty.

26
27 B. Defendants are ordered to pay to Plaintiff, by making payment to the Treasurer of the
28 United States, one hundred and twenty thousand dollars (\$120,000), which, as Defendants

1 stipulate, their undersigned counsel holds in escrow for no purpose other than payment to
2 Plaintiff. Such payment must be made within 7 days of entry of this Order by electronic fund
3 transfer in accordance with instructions previously provided by a representative of Plaintiff.
4

5 **XI. ADDITIONAL MONETARY PROVISIONS**

6 IT IS FURTHER ORDERED that:
7

8 A. Defendants relinquish dominion and all legal and equitable right, title, and interest in all
9 assets transferred pursuant to this Order and may not seek the return of any assets.

10 B. The facts alleged in the Complaint will be taken as true, without further proof, in any
11 subsequent civil litigation by or on behalf of the Commission, including in a proceeding to
12 enforce its rights to any payment or monetary judgment pursuant to this Order.

13 C. Defendants agree that the judgment represents a civil penalty owed to the government of
14 the United States, is not compensation for actual pecuniary loss, and, therefore, as to the
15 Individual Defendants, it is not subject to discharge under the Bankruptcy Code pursuant to 11
16 U.S.C. § 523(a)(7).
17

18 D. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security
19 Numbers or Employer Identification Numbers), which Defendants must submit to the
20 Commission, may be used for collecting and reporting on any delinquent amount arising out of
21 this Order, in accordance with 31 U.S.C. §7701.
22

23 **XII. ORDER ACKNOWLEDGMENTS**

24 IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this
25 Order:
26

27 A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an
28 acknowledgment of receipt of this Order sworn under penalty of perjury.

1
2 B. For 5 years after entry of this Order, each Individual Defendant for any business that
3 such Defendant, individually or collectively with any other Defendants, is the majority owner or
4 controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order
5 to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees
6 having managerial responsibilities for conduct related to the subject matter of the Order and all
7 agents and representatives who participate in conduct related to the subject matter of the Order;
8 and (3) any business entity resulting from any change in structure as set forth in the Section titled
9 Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current
10 personnel. For all others, delivery must occur before they assume their responsibilities.

11
12 C. From each individual or entity to which a Defendant delivered a copy of this Order, that
13 Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this
14 Order.
15

16 **XIII. COMPLIANCE REPORTING**

17 IT IS FURTHER ORDERED that Defendants make timely submissions to the
18 Commission:
19

20 A. One year after entry of this Order, each Defendant must submit a compliance report,
21 sworn under penalty of perjury:

- 22 1. Each Defendant must: (a) identify the primary physical, postal, and email address and
23 telephone number, as designated points of contact, which representatives of the Commission
24 and Plaintiff may use to communicate with Defendant; (b) identify all of that Defendant's
25 businesses by all of their names, telephone numbers, and physical, postal, email, and
26 Internet addresses; (c) describe the activities of each business, including the goods and
27 services offered, and the involvement of any other Defendant (which Individual Defendants
28

1
2 must describe if they know or should know due to their own involvement); (d) describe in
3 detail whether and how that Defendant is in compliance with each Section of this Order; and
4 (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless
5 previously submitted to the Commission.

6
7 2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all
8 physical, postal, email and Internet addresses, including all residences; (b) identify all
9 business activities, including any business for which such Defendant performs services
10 whether as an employee or otherwise and any entity in which such Defendant has any
11 ownership interest; and (c) describe in detail such Defendant's involvement in each such
12 business, including title, role, responsibilities, participation, authority, control, and any
13 ownership.
14

15 B. For 15 years after entry of this Order, each Defendant must submit a compliance
16 notice, sworn under penalty of perjury, within 14 days of any change in the following:

17 1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the
18 structure of any Corporate Defendant or any entity that Defendant has any ownership interest
19 in or controls directly or indirectly that may affect compliance obligations arising under this
20 Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent,
21 or affiliate that engages in any acts or practices subject to this Order.

22
23 2. Additionally, each Individual Defendant must report any change in: (a) name, including
24 aliases or fictitious name, or residence address; or (b) title or role in any business activity,
25 including any business for which such Defendant performs services whether as an employee
26 or otherwise and any entity in which such Defendant has any ownership interest, and identify
27 the name, physical address, and any Internet address of the business or entity.
28

1
2 C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy
3 petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14
4 days of its filing.

5 D. Any submission to the Commission required by this Order to be sworn under penalty of
6 perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I
7 declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full
9 name, title (if applicable), and signature.
10

11 E. Unless otherwise directed by a Commission representative in writing, all submissions to
12 the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight
13 courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of
14 Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington,
15 DC 20580. The subject line must begin: FTC v. Mortgage Solutions FCS, Inc., FTC File No.
16 1823199.
17

18
19 **XIV. RECORDKEEPING**

20 IT IS FURTHER ORDERED that Defendants must create certain records for fifteen (15)
21 years after entry of the Order, and retain each such record for five (5) years. Specifically,
22 Corporate Defendant and each Individual Defendant for any business that such Defendant,
23 individually or collectively with any other Defendants, is a majority owner or controls directly or
24 indirectly, must create and retain the following records:
25

26 A. Accounting records showing the revenues from all goods or services sold;

27 B. Personnel records showing, for each person providing services, whether as an employee
28 or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of

1
2 service; and (if applicable) the reason for termination;

3 C. Copies or records of all consumer complaints and refund requests related to the subject
4 matter of this Order, whether received directly or indirectly, such as through a third party, and
5 any response;

6 D. For five (5) years after the date of preparation of each Assessment required by this Order,
7 all materials and evidence that the Assessor considered, reviewed, relied upon or examined to
8 prepare the Assessment, whether prepared by or on behalf of Respondents, including all plans,
9 reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, and
10 any other materials concerning Respondents' compliance with related Provisions of this Order,
11 for the compliance period covered by such Assessment;

12
13 E. For five (5) years from the date received, copies of all subpoenas and other
14 communications with law enforcement, if such communications relate to Respondents'
15 compliance with this Order;

16
17 F. For five (5) years from the date created or received, all records, whether prepared by or
18 on behalf of Respondents, that tend to show any lack of compliance by Respondents with this
19 Order; and

20
21 G. All records necessary to demonstrate full compliance with each provision of this Order,
22 including all submissions to the Commission.

23 **XV. COMPLIANCE MONITORING**

24 IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance
25 with this Order:

26
27 A. Within 14 days of receipt of a written request from a representative of the Commission or
28 Plaintiff, each Defendant must: submit additional compliance reports or other requested

1
2 information, which must be sworn under penalty of perjury; appear for depositions; and produce
3 documents for inspection and copying. The Commission and Plaintiff are also authorized to
4 obtain discovery, without further leave of court, using any of the procedures prescribed by
5 Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45,
6 and 69.

7
8 B. For matters concerning this Order, the Commission and Plaintiff are authorized to
9 communicate directly with each Defendant. Defendant must permit representatives of the
10 Commission and Plaintiff to interview any employee or other person affiliated with any
11 Defendant who has agreed to such an interview. The person interviewed may have counsel
12 present.

13
14 C. The Commission and Plaintiff may use all other lawful means, including posing, through
15 its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any
16 individual or entity affiliated with Defendants, without the necessity of identification or prior
17 notice. Nothing in this Order limits the Commission's lawful use of compulsory process,
18 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

19
20 D. Upon written request from a representative of the Commission or Plaintiff, any consumer
21 reporting agency must furnish consumer reports concerning Individual Defendants, pursuant to
22 Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

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XVI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this ____ day of _____, 2020.

DONNA M. RYU
UNITED STATES MAGISTRATE JUDGE

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SO STIPULATED AND AGREED:

FOR PLAINTIFF:

THE UNITED STATES OF AMERICA

JOSEPH H. HUNT
Assistant Attorney General
Civil Division

DAVID M. MORRELL
Deputy Assistant Attorney General

Gustav W. Eyler
Director
Consumer Protection Branch

/s/ Speare Hodges
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Trial Attorney, Consumer Protection Branch
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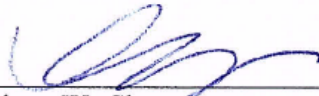
FEDERAL TRADE COMMISSION

 /S/
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FOR DEFENDANTS:



Date: 10/7/19

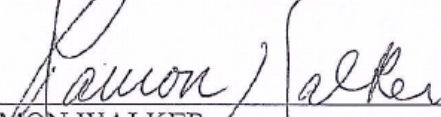
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DEFENDANTS: Mortgage Solutions FCS, Inc. and Ramon Walker



Date: 10/7/2019

RAMON WALKER
INDIVIDUALLY AND AS AN OFFICER OF
MORTGAGE SOLUTIONS FCS, INC.