

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-61017-ALTONAGA/SELTZER

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

POINTBREAK MEDIA, LLC, etc., et.al.,

Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES  
OF STEFFAN MOLINA, PERFECT IMAGE ONLINE, LLC  
AND PINNACLE PRESENCE, LLC**

Pursuant to Federal Rule of Civil Procedure 12, the Defendants, PERFECT IMAGE ONLINE, LLC (“PIO”), PINNACLE PRESENCE, LLC (“PPL”) and STEFFAN MOLINA (“Molina”) (hereinafter referred to as the “Molina Defendants”), by and through the undersigned counsel, hereby files and asserts the following Answer and Affirmative Defenses to the allegation of the Amended Complaint made by the Plaintiff, FEDERAL TRADE COMMISSION (“FTC”):

**ANSWER**

1. The Molina Defendants admit the following numbered paragraphs: 1 (for jurisdictional purposes only – but otherwise denied as to the entitlement of any alleged remedy), 2, 3, 12 and 15.

2. The Molina Defendants deny the following numbered paragraphs due to the lack of specific knowledge of the allegations, but would still demand strict proof thereof: 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, and 18.

3. The Molina Defendants deny the following numbered paragraphs due to the lack of specific knowledge of the alleged joint activity, but specifically and expressly deny the allegations

as to the Molina Defendants as a non-participant in such activity, and would demand strict proof thereof: 19-173 and 180-197.

4. The Molina Defendants specifically and expressly deny the following numbered paragraphs, and would demand strict proof thereof: 21, 99, 174-179, 198-204, 205-207, 208-210, 211-213, 214-223, 224-225, 226-227, and 228-232.

5. The Molina Defendants would readopt, reaver and reallge their prior answers to the above numbered paragraphs to the extent they have been reincorporated into causes of action by and through the following numbered paragraphs: None.

#### AFFIRMATIVE DEFENSES

6. For his first affirmative defense, Molina would show unto the Court that, at all times material hereto, he made no false or deceptive statement to any customer or potential customer of Modern Spotlight Group, LLC or Perfect Image Online, LLC regarding any of the services offered by Modern Spotlight Group, LLC or Perfect Image Online, and, as a consequence thereof, the Plaintiff is barred from any remedy, legal or equitable, against Molina, individually.

7. For his second affirmative defense, Molina would show unto the Court that, at all times material hereto, he did not direct any employee of Modern Spotlight Group, LLC or Perfect Image Online, LLC to make a false or deceptive statement to any customer or potential customer of Modern Spotlight Group, LLC or Perfect Image Online, LLC regarding any of the services offered by Modern Spotlight Group, LLC or Perfect Image Online, and, as a consequence thereof, the Plaintiff is barred from any remedy, legal or equitable, against Molina, individually.

8. For his third affirmative defense, Molina would show unto the Court that, at all times material hereto, no customer or potential customer of Modern Spotlight Group, LLC or Perfect Image Online, LLC relied to his or her detriment upon any false or deceptive statement of

Molina regarding any of the services offered by Modern Spotlight Group, LLC or Perfect Image Online, and, as a consequence thereof, the Plaintiff is barred from any remedy, legal or equitable against Molina, individually.

9. For his fourth affirmative defense, Molina would show unto the Court that, at all times material hereto, no customer or potential customer of Modern Spotlight Group, LLC or Perfect Image Online, LLC relied to his or her detriment upon any false or deceptive statement of any employee of Modern Spotlight Group, LLC or Perfect Image Online, LLC at the direction of Molina regarding any of the services offered by Modern Spotlight Group, LLC or Perfect Image Online, and, as a consequence thereof, the Plaintiff is barred from any remedy, legal or equitable against Molina, individually.

10. For their fifth affirmative defenses, the Molina Defendants would show unto the Court that, at all times material hereto: the FTC fails to state a claim upon which relief can be granted under Section 5 of the FTC Act, 15 U.S.C. § 45, as the FTC has not demonstrated that well-qualified claims are false, have a tendency to deceive, or that adjudication is in the public interest, and, as a consequence thereof, the Plaintiff is barred from any remedy, legal or equitable against the Molina Defendants.

11. For their sixth affirmative defenses, the Molina Defendants would show unto the Court that, at all times material hereto: the FTC alleges that it can seek restitution and other forms of redress. However, any relief the FTC impliedly may seek was legally and proximately caused by other persons, entities, or forces, over which the Molina Defendants ECM no control and for which it had no responsibility. The Molina Defendants did not, does not, and cannot control how the Co-Defendants, individually or jointly, market and sell their services to the alleged victims in

this cause of action, and, as a consequence thereof, the Plaintiff is barred from any remedy, legal or equitable against the Molina Defendants.

12. For their seventh affirmative defenses, the Molina Defendants would show unto the Court that, at all times material hereto: the Molina Defendants have acted in good faith in all of its practices, and, as a consequence thereof, the Plaintiff is barred from any remedy, legal or equitable against the Molina Defendants.

13. For their eighth affirmative defenses, the Molina Defendants would show unto the Court that, at all times material hereto: there is no danger of recurrence of alleged similar violations, and the FTC's requested relief is not reasonably related to the Molina Defendant's alleged violations. The FTC must demonstrate that a "cognizable danger of current violation" exists before an injunction may issue, and there is insufficient evidence that such danger exists. Further, the Molina Defendants have demonstrated, that they affirmatively takes steps to ensure that it does not violate the FTCA Guides. When determining the likelihood of recurrence, courts consider the deliberate nature of the presently alleged violation and the defendant's past record concerning unfair advertising practices. *See, F.T.C. v. Hang-Ups Art Enterprises, Inc., CV 95-0027 RMT(JGX), 1995 WL 914179 (C.D. Cal. Sept. 27, 1995)*. The lack of any deliberate conduct in violation of law and that the Molina Defendants have no past record of law violation precludes the FTC from relying on injunctive relief.

14. For their ninth affirmative defenses, the Molina Defendants would show unto the Court that, at all times material hereto: the Plaintiff's argument, if adopted, violate the Molina Defendants' First Amendment right to communicate truthful commercial speech. The FTC thus lacks authority to impose its requested relief. The Molina Defendant's ECM's practices are truthful and, to the extent the FTC perceives any implication arising from the claims to be misleading, are

fully correctible through use of reasonable qualifications, which qualifications are less speech restrictive alternatives. The FTC precludes truthful disclosure of Google Services and Google Goods, which are available to consumers, and, as a consequence thereof, the Plaintiff is barred from any remedy, legal or equitable against the Molina Defendants.

15. For their tenth affirmative defense, the Molina Defendants would show unto the Court that, at all times material hereto: the FTC's allegations are based upon arbitrary and capricious regulatory practices and policies that are not based on substantial evidence. The FTC has not legal basis to conclude that the Molina Defendants are jointly or individually liable for the allegations set forth in the Complaint, and, as a consequence thereof, the Plaintiff is barred from any remedy, legal or equitable against the Molina Defendants.

16. For their eleventh affirmative defense, the Molina Defendants would show unto the Court that, at all times material hereto: the Molina Defendants did not breach any lawful duty owed to consumers for the transactions and events which are the subject matter of the Complaint, and, as a consequence thereof, the Plaintiff is barred from any remedy, legal or equitable against the Molina Defendants.

17. For their twelfth affirmative defense, the Molina Defendants would show unto the Court that, at all times material hereto: any monetary relief should be offset or set-off by the benefits received by consumers, refunds paid to consumers, and the costs associated with the sale of services, and, as a consequence thereof, the Plaintiff should only be entitled to a limited, if any, remedy, legal or equitable against the Molina Defendants.

18. For their thirteenth affirmative defense, the Molina Defendants would show unto the Court that, at all times material hereto: the Plaintiff's claims, in whole, or in part, are barred by

the doctrine of accord and satisfaction, and, as a consequence thereof, the Plaintiff should only be entitled to a limited, if any, remedy, legal or equitable against the Molina Defendants.

19. For their fourteenth affirmative defense, the Molina Defendants would show unto the Court that, at all times material hereto: the Molina Defendants are entitled to set-off, contribution, and/or indemnity should any damages be awarded against them, in the amount of settlement amounts or damages received by customers with respect to the same alleged injuries giving rise to private causes of action, if any.

20. For their fifteenth affirmative defense, the Molina Defendants would show unto the Court that, at all times material hereto: the Molina Defendants, at no time attempted to deceive anyone or purposefully obscure information, and, as a consequence thereof, the Plaintiff is barred from any remedy, legal or equitable against the Molina Defendants.

21. The Molina Defendants hereby gives notice that they intend to rely upon any other defense that may become available or appear during the course of continuing or ongoing investigation and discovery in this case. The Molina Defendants hereby reserve the rough to assert other and related defenses, as may become available in the event of a determination that this action, or some part thereof, is governed by the substantive law of another state or jurisdiction.

WHEREFORE the above Defendants demand the entry of a judgment against the Plaintiff as follows: (a) that the Plaintiff recover nothing, either by way of damages or other legal or equitable remedy and go henceforth without day; (b) an award of reasonable attorney's fees and taxable costs to the above Defendants as the prevailing party in this litigation; (c) trial by jury on all factual issues as matter of right and; (d) such further relief as this Court deems to be just and proper under the facts and circumstances of this matter.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above pleading has been filed with the Clerk of Court through the CM/ECF Filing System, and served electronically on all counsel of record through the System on the 10th day of August, 2018.

Respectfully submitted,

Aaron M. Cohen, P.A.  
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