

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ENTERPRISE FINANCIAL GROUP, INC.	§	
	§	
<i>Plaintiff,</i>	§	CIVIL ACTION NO.
	§	
v.	§	3:16-CV-3467-G
	§	
INTEGRITY PROTECTION GROUP, LLC;	§	
ADSERV INC.; GREENLIGHT AUTO	§	
PROTECTION, LLC;	§	
PROECO SOLUTIONS, INC.; OWEN A.	§	
MCCOLLOUGH, an Individual; JOSEPH TYLER	§	
WALSKI, an Individual; JASON RANDALL COX,	§	
an Individual; DAVID GLENWINKEL, an Individual;	§	
KRISTI CROWLEY, an Individual; and KEVIN	§	
DEVOTO, an Individual	§	
	§	
<i>Defendants.</i>	§	

PLAINTIFF’S FIRST AMENDED ORIGINAL COMPLAINT

I. INTRODUCTION

COMES NOW, Enterprise Financial Group, Inc., a Texas Corporation, and files this Plaintiff’s First Amended Original Complaint against Defendants Integrity Protection Group, LLC;-, Greenlight Auto Protection, LLC, Adserv, Inc., ProEco Solutions, Inc., Owen McCoullgh, Joseph Tyler Walski, Joseph Randall Cox, David Glenwinkel, Kristi Crowley and Kevin Devoto, and in support thereof, would show the Court the following:

II. PARTIES & SERVICE OF PROCESS

1. Enterprise Financial Group, Inc. (hereinafter “EFG”) is a corporation organized and existing under the laws of the State of Texas, having its principal place of business at 122 W. Carpenter Freeway 6th Floor, Irving, Dallas County, Texas 75039, within the jurisdiction of this Court.

2. Defendant Integrity Protection Group, LLC (“Integrity”) is a California company. Upon information and belief, its principle place of business is 22762 Aspan Street, Lake Forest, California 92630. Integrity Protection Group, LLC may be served with process by serving its registered agent, Owen A. McCullough, 22762 Aspan Street, Suite 202, Lake Forest, California 92630.

3. Defendant Adserv Inc. (“Adserv”) is a California company not authorized to do business in Texas. Upon information and belief, its principle place of business is 3240 Professional Drive, Auburn, California 95602. Adserv, Inc. may be served with process by serving its registered agent David Glenwinkel, 3240 Professional Drive, Auburn, California 95602.

4. Defendant Greenlight Auto Protection, LLC. (“Greenlight”) is a Missouri company not authorized to do business in Texas. Upon information and belief, its principle place of business is 3240 Professional Drive, Auburn, California 95602. Greenlight Auto Protection, LLC. may be served with process by serving its registered agent Registered Agents, Inc., 117 South Lexington Street, Suite 100, Harrisonville, Missouri 64701.

5. Defendant ProEco Solutions, Inc. (“ProEco”) is a Missouri company not authorized to do business in Texas. Upon information and belief, its principle place of business is 3240 Professional Drive, Auburn, California 95602. ProEco Solutions, Inc. may be served with process by serving its registered agent VCorp Agent Services, Inc., 2847 S. Ingram Mill Road, Suite A 100, Springfield, Missouri 65804.

6. Defendant Owen McCullough is also a principal of the Defendant entities. Upon information and belief, McCullough is a resident of the State of California. He may be served with process by serving him at 22762 Aspan Street, Suite 202, Lake Forest, California 92630.

7. Defendant Joseph Tyler Walski is also a principal of Defendant entities. Upon information and belief, Walski is a resident of the State of Missouri. He may be served with process by serving him at 17 Aspen Ridge Court, St. Peters, Missouri 63376.

8. Defendant Joseph Randall Cox is also a principal of Defendant entities. Upon information and belief, Cox is a resident of the State of Missouri. He may be served with process by serving him at 47 Scarsdale Court, St. Charles, Missouri 63003.

9. Defendant David Glenwinkel is also both a principal of Defendant entities. Upon information and belief, Glenwinkel is a resident of the State of California. He may be served with process by serving him at 12760 Luther Road, Auburn, California 95603.

10. Defendant Kristi Crowley is also both a principal of Defendant entities. Upon information and belief, Croley is a resident of the State of California. She may be served with process by serving her at 1505 Black Bear Street, Roseville, California 95747.

11. Defendant Kevin Devoto is also both a principle of Defendant entities. Upon information and belief, Devoto is a resident of the State of California. He may be served with process by serving him at 183 Crescent Bay Drive, Laguna Beach, California 95651.

II. JURISDICTION & VENUE

12. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 1332 because all Defendants have citizenship outside the state of Texas and the amount in controversy exceeds \$75,000.00, excluding interest and costs. 28 U.S.C. §§ 1332(a). Venue is proper because all Defendants subjected themselves to the State of Texas by purposefully contracting with a Texas entity and contractually agreeing to be bound by the laws of the State of Texas with venue in Dallas County, Texas.

III. FACTUAL BACKGROUND

13. EFG was founded more than 36 years ago by an established and nationally recognized auto dealer, Robert W. Moore. EFG administers a broad array of insurance-like consumer protection products, including extended vehicle service contracts, vehicle return programs, paint-less dent repair coverage, tire and wheel programs, and home warranties. EFG is probably most recognized for the award-winning Hyundai Assurance program, which provided consumer protection to more than one million customers.

14. EFG sells its products in forty-nine (49) states through several distribution models: vehicle dealerships, OEMs and lenders, and direct-to-consumers through independent call centers.

15. In June of 2014, as the “Seller,” Defendants separately entered into a contract with EFG agreeing to sell vehicle service contracts (“Service Contracts”) to customers under a Service Contract Program (“Contract Program”) designed and administered by EFG – the “Administrator.” *See* Enterprise Financial Group, Inc. Greenlight Seller Agreement for Administrative Services effective June 27, 2014 and Integrity Seller Agreement for Administrative Services effective June 27, 2014. In total, Defendants entered into the following relevant contracts: (1) the Integrity Call Center Seller Agreement dated November 11, 2015; (2) the Integrity 38 Month to Month Financed Addendum dated December 14, 2015; (3) the Integrity Seller Agreement for Administrative Services effective June 27, 2014 (4) the Integrity Amendment to the 38 Month to Month Financed Addendum dated June 26, 2014; (5) the Greenlight Call Center Seller Agreement dated November 11, 2015; (6) the Greenlight 38 Month to Month Financed Addendum dated November 11, 2015; and, (7) The Greenlight Seller Agreement for Administrative Services dated June 27, 2014 (8) the Greenlight Amendment to the 38 Month to Month Financed Addendum dated June 24, 2014 (collectively the “Agreement(s)”) attached hereto as Exhibit “A” and incorporated by reference herein. McCollough, Cox and Walski personally guaranteed the Greenlight Seller Agreement for Administrative Services

dated June 27, 2014 and the Addendum. McCollough personally guaranteed the Integrity Seller Agreement for Administrative Services effective June 27, 2014 and Addendum (collectively, the “Seller Admin Agreements”).

16. The Integrity and Greenlight Call Center Agreements and Addendums are identical and will be referred to collectively as the “Call Center Agreements.” The Integrity and Greenlight Seller Admin Agreements are identical and will be referred to collectively as such. Defendants recognized that as the Administrator, EFG had expertise in administering such Service Contracts and that Defendants desired to have the Administrator to maintain and administer the Contract Program for the benefit of the Seller and the Service Contract holder. *See id.*

17. Defendants Integrity and Greenlight agreed in their respective Agreements to refund the Service Contract holder in the event of a cancellation within thirty (30) days. *See* § K, page 3 of the Call Center Agreement. Defendants Integrity and Greenlight also agreed to remit to the Administrator funding representing Seller Cost relating to each Service Contract sold as the Seller upon the Seller’s receipt of Administrator’s monthly Billing Statement. *See id.* §§ g and i. Defendants Greenlight, McCollough, Cox and Walski personally guaranteed the repayment to Plaintiff of “ALL payment advances and amounts owed to EFG in the event of early cancellation by any customer.” *See* Greenlight 38 Month to Month Financed Addendum dated November 11, 2015, ¶ 12.

18. The month-to-month vehicle service contract lasted thirty-eight (38) months. Each approved Service Contract was sold only with respect to a qualifying vehicle at a fee designated as the Seller Cost, which was set forth in EFG’s then current rate chart. *See* Call Center Agreements. The purchase price of a Service Contract is set by Defendants and typically financed by a lender. Essentially, Defendants were to sell Service Contracts that EFG was to administer. A portion of sales proceeds

were reserved by Administrator in the event that the customer canceled the Service Contract prior to full payment.

19. Once EFG received the Seller Cost from Defendants under the Agreement for the sale of a Service Contract, the Administrator would advance Defendants their commission for selling an EFG Service Contract to a consumer.

20. If a Service Contract was cancelled at the lender's request, or by a default by the Service Contract holder in repayment obligations to the lender, Defendants were required to refund, to any entity which has financed the purchase price of a Service Contract. Defendants' then retained a portion of the amount financed by that entity. *See id.* at § k.

21. If, instead, a cancelled Service Contract was not financed, Defendants agreed that the customer would receive the customer's pro-rata portion of the portion of the total retail price of the Service Contract retained by Defendants. Such pro-rated portion was to be determined by EFG in accordance with the Service Contract's terms and applicable law. The Agreement also provided that Defendants would pay EFG any cancellation fee outlined in the Service Contract, or such other amount as state law or regulation shall provide, for each cancelled Service Contract, regardless of the reason for the cancellation. Further, EFG would deduct such amount from the pro-rata share of the Seller Cost returned to Defendants or paid directly to the customer. *See id.* In the event that EFG paid Defendants an amount representing a pro-rata portion of the Seller Cost relating to a cancelled Service Contract, Defendants were solely responsible for remitting the full amount of any cancellation refund to the purchaser of the cancelled Service Contract, or any other party entitled to receive such refund under applicable law. *See id.* Termination of the Agreement for any reason does not release Defendants from their duties under the Agreements. *See id.*

22. Under § 10(c) of the Call Center Agreements, if Integrity or Greenlight failed to properly remit funds to EFG for any Service Contract issued by it, Integrity and Greenlight agreed to

indemnify and hold EFG harmless and agreed to promptly reimburse EFG for all costs and expenses of Administrator resulting from their failure to remit such funds. *See id.* Such costs and expenses may include, without limitation, the costs of vehicle repair, the Seller Cost and any amounts of any cancellation refunds. The failure of Greenlight and Integrity to properly remit funds for any Service Contract issued by it is a material breach of the Call Center Agreements. All payments for service contracts shall be payable to EFG and Defendants shall be solely responsible for monies made payable to any other party.

23. Under § 13(a) of the Call Center Agreements and ¶ 14 of the Addendums, Defendants agreed that the validity, interpretation, and performance of the Agreements shall be controlled by and construed under the laws of the State of Texas. Additionally, under § 2(q), Greenlight and Integrity agreed to provide EFG full and free access with three (3) days' notice during business hours at Defendants' office or place where Defendants' records are kept to inspect books, records and files relating to the businesses covered by Defendants' Contract Program, but only as they relate to EFG's program.

24. At all relevant times, EFG timely fulfilled and will fulfill in the future all of its obligations that it owes under the Agreements.

25. Defendants agreed that EFG would retain reserves against the Defendants' commissions and selling costs; pay charges in excess of the Seller's advances from those reserves; that EFG would provide reporting to the Seller as needed; that both parties agree that the reserves may be adjusted (higher or lower) once cancellations are projected for future obligations; that any remaining funds, after cancellations, adjustments of claims, and disbursement of all charges and fees, will be for the benefit of the Seller; and, most importantly, prior to the disbursement of the remaining unused holdback reserves, EFG reserves the authority to deduct from the remaining unused holdback reserves any amounts owed by Seller as it relates to EFG programs utilized by Seller. *See id.*

26. The cancellation rate of Service Contracts sold by Defendants is materially higher than the cancellation rate for the same or similar products sold by other sellers. This higher cancellation rate is the principal cause of EFG's losses at issue. Upon information and belief, Defendants are inducing EFG's customers to cancel the Service Contract with EFG and purchase other similar products from competing administrators in order to obtain additional commissions from such EFG competitors while retaining and absconding with the excess commissions earned from the sale of the original EFG product.

27. As additional consideration for the Payment Advances from EFG for business placed by Defendants, Defendants and the seller's owners (Owen McCoullgh, Joseph Tyler Walski, Joseph Randall Cox, David Glenwinkel, Kristi Crowley and Kevin Devoto) ("Seller's Owners") promised to repay ALL unearned payment advances and amounts owed to EFG in the event of early cancellation by any customer and they agreed that the cancellation of the Agreements did not alter the obligations of Defendants for repayment to EFG. *See* Amendment to 38 Month Financed Addendum dated November 11, 2015 at ¶7(b) and ¶15 (the "Amendment(s)").

28. In paragraph 15 of the Amendments, Defendants and the Seller's Owners agreed that the Amendments together with the Agreements shall be binding on and enforceable against the transferee, assignee and purchaser of Defendants or any tangible or intangible assets of Defendants or the Seller's Owners. *See* Amendment ¶15.

29. At all relevant times, EFG timely fulfilled and will fulfill in the future all of its obligations that it owes under the Agreements.

30. Based on the above framework, Integrity and Seller's Owners currently owe EFG approximately \$299,784.44. This amount will continue to increase as Defendants continue to breach the Agreements.

31. Based on the above framework, Greenlight and Seller's Owners currently owe EFG approximately \$637,620.³² This amount will likely continue to increase as Defendants continue to breach the Agreements.

32. To make matters worse, once Defendants sign up a customer for an EFG Service Contract, that Service Contract is between the customer and EFG only. Defendants are not a party to the Service Contract. The Agreements protect EFG and specifically state that Defendants are not to change or alter or interfere with the Service Contract between EFG and the customer. Based on information and belief, Defendants have been interfering and causing the customers to cancel their Service Contracts so the Defendants can keep the Payment Advances.

33. The normal cancellation rate is approximately 35%. Defendants average more than 70%. This fact alone shows that Defendants likely causing customers to cancel their contracts and then sign up with another vendor, thus making another Payment Advance.

34. Further, based on information and belief, Greenlight and Integrity have been changing their names to Adserv and ProEco for the purpose of avoiding paying Plaintiff.

35. Defendant Owen McCollough has consistently mislead Plaintiff and Defendants materially breached their obligations under the Agreements and fraudulently induced EFG to enter into the Agreements without the intent to ever fulfil their obligations under the Agreements.

IV. CAUSES OF ACTION

A. Count One - Breach of Contract Against All Defendants.

36. Plaintiff EFG re-alleges and incorporates by reference each and every allegation set forth above.

37. Plaintiff EFG and Defendants, directly or indirectly, entered into several valid and enforceable Agreements, including the Integrity Call Center Seller Agreement dated November 11, 2015, the Integrity 38 Month to Month Financed Addendum dated June 26, 2014, the Integrity

Amendment to the 38 Month to Month Financed Addendum dated November 11, 2015, the Greenlight Call Center Seller Agreement dated November 11, 2015, the Greenlight 38 Month to Month Financed Addendum dated June 25, 2014, the Greenlight Amendment to the 38 Month to Month Financed Addendum dated November 11, 2015, whereby these certain Defendants agreed to use EFG's Protected Intellectual Property to market, advertise, and sell EFG's Service Contracts and related products, use certain advancements for marketing and advertising activities, and other financial obligations as discussed herein.

38. Such certain Defendants breached their obligations under the Agreements as set forth above.

39. Plaintiff fully performed its obligations under the Agreements.

40. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered economic losses and seeks all actual damages, attorneys' fees and costs of court.

B. Count Two – Fraud Against All Defendants.

41. Plaintiff EFG re-alleges and incorporates by reference each and every allegation set forth above.

42. Defendants and their agents made material representations to Plaintiff which were false as set forth above.

43. At the time Defendants and their agents made the representations, individually or in any combination, Defendants and their agents knew them to be false, or made the representations recklessly, as positive assertions, without any regard for their truth.

44. Defendants and their agents intended Plaintiff EFG to act on the representations, and EFG did, in fact, rely upon and act on the false representations by, among other things, entering into the Agreements.

45. As a result of Defendants and their agents' fraudulent representations and EFG's reliance thereon, EFG suffered injury. Therefore, Plaintiff seeks to recover both actual and exemplary damages.

C. Count Three - Fraud by Non-Disclosure Against All Defendants.

46. Plaintiff EFG re-alleges and incorporates by reference each and every allegation set forth above.

47. Defendants concealed from or failed to disclose certain material facts to EFG as set forth above, including, without limitation, that Defendants never intended to properly remit the funds which would be due and owing under the Agreements.

48. Defendants owed a legal duty to EFG to disclose the facts to EFG because Defendants made representations that created a substantially false impression and/or voluntarily disclosed some, but not all, of the information, including, but not limited to, that Defendants were adequately financed and financially able to comply the terms of the Agreements.

49. Defendants knew that EFG was ignorant of the facts and that EFG did not have an equal opportunity to discover the facts.

50. Defendants were deliberately silent when they had a duty to speak, and by failing to disclose the facts, Defendants intended to induce Plaintiff to enter into the Agreements.

51. As a result of Defendants and their agents' fraudulent non-disclosures and EFG's reliance thereon, EFG suffered injury. Therefore, EFG seeks to recover both actual and exemplary damages.

D. Count Four - Tortious Interference with Existing and Future Contractual or Business Relationships Against all Defendants.

52. Plaintiff EFG re-alleges and incorporates by reference each and every allegation set forth above.

53. EFG has ongoing and prospective business contracts and relationships with customers whose information is contained in its Protected Intellectual Property.

54. Upon information and belief, Defendants have misappropriated EFG's Protected Intellectual Property and solicited the customers contained in such Protected Intellectual Property (using the confidential Protected Intellectual Property constituting trade secrets) and intentionally interfered with these contracts and relationships.

55. Upon information and belief, Defendants have tortiously interfered with EFG's current business contracts and relationships with its customers contained in its Protected Intellectual Property by soliciting or otherwise contacting these customers in an attempt to either sell these customers a product from a competitor of EFG, enticing them to break, breach, terminate, cancel, and/or rewriting said customers' current contract with EFG. For purposes of clarity, "rewriting" means to induce a current customer of EFG to cancel or otherwise terminate their contract within the term and provisions of said contract so that it could be "rewritten" with a competitor.

56. Further, but for the tortious and wrongful actions of the Defendants, EFG would have entered to a contractual relationship with prospective or renewing customers whose information is contained in EFG's Protected Intellectual Property. Defendants' actions were performed with a conscious desire to prevent the relationship from occurring.

57. Defendants' interference in current and prospective business contracts and relationships proximately caused EFG to suffer actual and economic damages.

E. Count Five - Costs & Attorneys' Fees Against all Defendants.

58. Plaintiff EFG re-alleges and incorporates by reference each and every allegation set forth above.

59. Under Texas Civ. Prac. & Rem. Code Section 38.001(8), under provisions of the Relevant Contracts, and under Tex. Civ. Prac. & Rem. Code Section 134.005(b), EFG request all costs and reasonable and necessary attorneys' fees incurred by or on behalf of EFG, including the value of their time at the customary hourly rate each charges for other clients, and all fees necessary in the

event of an appeal of this cause to the Court of Appeals and Supreme Court of Texas, as the Court deems equitable and just.

PRAYER

WHEREFORE, PREMISES CONSIDERED Plaintiff Enterprise Financial Group, Inc. prays that Defendants Integrity Protection Group, LLC; Greenlight Auto Protection, LLC; Greenlight Auto Group, Inc; Owen McCullough, Joseph Tyler Walski, Joseph Randall Cox, David Glenwinkel, Kristi Crowley and Kevin Devoto, be cited to appear and answer, and that on final trial of the cause, judgment be entered for EFG against Defendants for:

- (i) EFG's actual and exemplary damages in an amount in excess of the minimum jurisdictional limits of the Court;
- (ii) Prejudgment and post-judgment interest at the maximum rate allowed by law;
- (iii) Reasonable and necessary attorney's fees and taxable court costs; and
- (iv) Such other and further relief to which Plaintiff may be entitled at law or in equity.

Respectfully submitted,

SHIELDS LEGAL GROUP

/s/ R. Brian Shields

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was electronically filed on March 20, 2017, and served on all parties receiving electronic notice from the Court's ECF notification system in the above-referenced bankruptcy case.

/s/ R. Brian Shields
