UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-CV-80619-WPD

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

STRATEGIC STUDENT SOLUTIONS LLC, a limited liability company, STRATEGIC CREDIT SOLUTIONS LLC, a limited liability company, STRATEGIC DEBT SOLUTIONS LLC, a limited liability company, STRATEGIC DOC PREP SOLUTIONS LLC, a limited liability company, STUDENT RELIEF CENTER LLC, a limited liability company, CREDIT RELIEF CENTER LLC, a limited liability company, and

DAVE GREEN, individually and as an officer of STRATEGIC STUDENT SOLUTIONS LLC, STRATEGIC CREDIT SOLUTIONS LLC, STRATEGIC DEBT SOLUTIONS LLC, STRATEGIC DOC PREP SOLUTIONS LLC, STUDENT RELIEF CENTER LLC, and CREDIT RELIEF CENTER LLC,

Defendants, and

DG INVESTMENT PROPERTIES LLC,

Relief Defendant.

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS MOTION FOR AN ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

I. INTRODUCTION

The Federal Trade Commission ("FTC") respectfully submits this memorandum in support of its request that the Court enter a preliminary injunction to continue the suspension of a student loan debt relief and credit repair operation that has bilked consumers out of millions of dollars. Not only have the Defendants failed to raise a genuine issue of material fact, the Individual Defendant has also demonstrated, through his flagrant violations of the Court's temporary restraining order, why a preliminary injunction is crucial in this case. The question before the Court at the preliminary injunction stage, as it was upon Plaintiff's motion for a temporary restraining order, is whether the FTC has demonstrated a likelihood of success on the merits and whether the balance of the equities favors injunctive relief.

The FTC has demonstrated a likelihood of success via more than a thousand pages of documents submitted along with 24 declarations. Eighteen of those declarations are from Defendants' victims, many of whom supplied documents supporting their testimony. Defendants, represented by counsel, failed to file any response or opposition to the FTC's motion. And, as discussed below, since issuance of the temporary restraining order the FTC has uncovered *additional* evidence of Defendants' unlawful conduct.

Separately, the Individual Defendant has bolstered the FTC's case with respect to the balancing of the equities prong of the preliminary injunction standard. After being served with this Court's order, Defendant Green has violated the Order on no less than four occasions: (1) by transferring $250,000 from a bank account subject to the asset freeze to his mortgage servicer to apply to his home mortgage; (2) by attempting to move over $107,800 subject to the asset freeze from one of his accounts to his mortgage servicer; (3) by attempting to divert consumer-facing phone numbers used to effectuate the scam to a different phone line under a new company name; and (4) by attempting to transfer over $202,000 from a bank account held overseas to his mortgage servicer.

Thus, both pillars of the FTC's request for a preliminary injunction—the likelihood of success on the merits and whether the balance of the equities favors injunctive relief—are

stronger now than they were upon the Court's entry of the temporary restraining order. This additional evidence demonstrates that a preliminary injunction is necessary to protect consumers from additional harm.

II. PROCEDURAL HISTORY

On May 15, 2017, the FTC filed Plaintiff's *Ex Parte* Motion for a Temporary Restraining Order, Asset Freeze, Appointment of a Receiver, Immediate Access, and Other Equitable Relief, and an Order to Show Cause Why a Preliminary Injunction Should Not Issue and Memorandum in Support. (Dkt. No. 7, hereinafter "TRO Motion.") On the same date, the Court issued the *Ex Parte* Temporary Restraining Order with Asset Freeze, Appointment of a Temporary Receiver, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue. (Dkt No. 10, hereinafter "Order.") Among other things, the Order granted the Receiver and the FTC immediate access to Defendants' business premises. The FTC served the Order on the Defendants on May 17, 2017. (Dkt Nos. 15-22.) Specifically, the FTC served the Order on the Individual Defendant, Dave Green ("Green"), at 9:55am on May 17, 2017. (Dkt. No. 15.)

III. ADDITIONAL EVIDENCE FROM DEFENDANTS' BUSINESS PREMISES FURTHER DEMONSTRATES A LIKELIHOOD OF SUCCESS ON THE MERITS

In addition to the volumes of evidence previously submitted by the FTC in supported of its TRO Motion, the FTC has discovered the following evidence of statutory violations, based on a limited and expedited review of hard-copy and electronic documents found in Defendants' business premises.

A. Defendants Misled Consumers Into Believing That Monthly Payments Were Being Applied To Their Loan Balances, And That Their Loans Could Be Forgiven In Three Years

Count I in the FTC's complaint alleges, in part, that Defendants misrepresented to consumers that the monthly fee consumers were paying to them would be applied to their loans, when in fact that monthly fee was simply collected by Defendants for their own benefit. In

addition to the evidence previously discussed in the TRO motion, a notebook detailing "customer concerns" lists the following issues supporting this claim:

> "(1) Did not understand payments would not be going to servicer
>
> …
>
> (3) Perception that payments are paying off loan balance
>
> (4) Misrepresented – feel like being scammed..."

(PX25 Att. F.) An electronic spreadsheet of consumer complaints kept by Defendants confirms that this was a prevalent and recurring issue, as processing employees reported the following:

- "Cx called in to say she was under the impression that the $49.99 was going towards her loan and after she had finish paid [sic] the $49.99 her loans will be forgiven."
- "Cx said [asked] if the payments she are [sic] making is going towards her loan."
- "Cx called in to say she [sic] still receiving bills from her servicer ECMC and she thinks SSS should be taken care of her loans. Cx want to know if the money she is paying to SSS is going towards her loan."
- "[Customer] called in to say when she got enrolled in the program at first she had the impression that the fee she was paying to SSS will be going towards her loan and after 4 months Fed Loan contacted her to let she [sic] know that she had a past due amount and that was when she notice [sic] the money was not going towards her loan."
- "Client called in to say she spoke with some one to say if the money she is paying is not going towards her loan she don't want to do this. Client also states that she's under the impression that we are paying off her loans."
- "[C]lient say that she wants a document to say how much she will be paying towards her loan as she was advised that 233.00 would go towards her loans."

(PX25 Att. EE.)

Indeed, Defendants' internal documents reveal that they consciously fed this misunderstanding. One document exhorting sales reps to "CLOSE, CLOSE, CLOSE"[1] states

[1] Defendants' sales representatives were incentivized by a commission schedule to sign up consumers for their student loan modification service. (PX25 Att. D.)

that "Strategic student solution makes the good faith payment [to the creditor or servicer] *out of fees we charge*." (PX25 Att. C.) (emphasis added.) In reality, consumers testified that Defendants did not make any payments to their creditors or loan servicers. (*See* TRO Motion Section II.B.1.b and PX04 ¶ 5; PX05 ¶ 11; PX06 ¶ 12; PX09 ¶ 6; PX12 ¶ 10; PX13 ¶ 6; PX16 ¶ 6; PX17 ¶ 8; PX18 ¶¶ 10, 13; PX20 ¶ 8; PX22 ¶ 13.)

Defendants' own consumer call recordings provide additional evidence that reasonable consumers purchasing Defendants' services would believe that their payments to Defendants were being applied towards their loans.[2] The recordings show that after collecting personal information from consumers about their loans and incomes, Defendants' representatives told consumers that they qualified for loan forgiveness or payment reduction programs and quoted their new monthly payment amount. (PX25 Atts. HH at 11:3-20, 14:12-19; II at 8:7 to 9:14; JJ at 15:7-10; KK at 16:19 to 18:14.) The representatives did not clarify that the consumers might have to make a separate payment to their loan servicers, instead continually referring to a single monthly payment amount, (PX25 Atts. II at 8:7-9:14; KK at 16:19 to 18:14), or otherwise assuring consumers that the monthly payment was not "going in our [Defendants'] pocket," but rather to consumers' loan servicers, (PX25 Att. JJ at 21:25 to 22:22). Indeed, in one recording, Defendants' representative explicitly told the consumer that after making his monthly payment to Defendants "you'll get a statement each month from the Department of Education stating that you've made your monthly payment . . . [and] it is set up automatically for you." (PX25 Att. HH at 34:21-23, 35:4-5.)

Green was aware of consumers' mistaken understanding of Defendants' fee collection practices. On one call, he personally discussed the issue with an aggrieved consumer who was receiving collection notices from her loan servicer and promised to set up payment forwarding to

[2] Defendants' consumer call recordings also demonstrate that they promised consumers that their credit would be improved as a result of Defendants' program. (PX25 Atts. GG at 16:25 to 17:2 ("So you want to make sure your credit is in tiptop shape. We make sure of that for you."); HH at 37:3-4 ("It [the credit repair services] will raise your score quite a bit."); JJ at 14:9-10 ("once we muck through this process, your credit is going to go through the roof . . . .").)

the loan servicer, agreeing that the consumer "shouldn't have to think about it." (PX25 Att. GG at 9:1-8, 12:14 to 13:3, 13:17-19.) And despite Green's insistence that Defendants' fee collection practices are "all explained in [consumers'] contract," (PX25 Att. GG at 8:13-14), consumers are not given a chance to read Defendants' unclear, inconspicuous disclaimers buried in the contract after they are given Defendants' deceptive sales pitch. One call representative hurried a disabled veteran to sign the contract and said that he was "trying to scream through this [the sign up process]" after the disabled veteran said "I'm dosed up right now" after taking medication. (PX25 Att. JJ at 33:12-15.)

Defendants made similar misrepresentations, and fielded similar complaints, regarding their supposed ability to deliver complete loan forgiveness to consumers within three years. (PX25 Atts. X (customer "was going to report us to the Virginia Attorney General as we are a scam and a fraud as no one can forgive a person's loan in 3 years"); CC (customer claims that Defendants promised her loan forgiveness in three years); EE ("client say [sic] that she was advised that she would pay us and her loan would be forgiven after 3 years"); *cf.* (PX25 Att. II at 9:8-14, stating that payments "will go down to zero on the 37th month and will stay that way for the duration of the loan . . . and whatever is left after is totally forgiven."))

Additionally, in contrast to Defendants' "guarantee of service," (PX25 Atts. HH at 15:17-18, 32:19-22; JJ at 40:22-23), another notebook memorializes an instruction that "[r]eps need to stop telling clients that we can't do anything for them, and that they will receive a full refund." (PX25 Att. B.) An email to Defendants' sales representatives similarly directs them to discourage cancellation requests: "please make all efforts to save cancellations. It is a growing concern, that we are not trying hard enough to save clients." (PX25 Att. W.)

B. Through Lawsuits, Investigations, Customer Complaints, and Online Reviews, Green Was Aware That His Companies' Business Practices Were Unlawful

The FTC has not only found additional evidence of Defendants' illegal activities, but also additional evidence of Defendant Green's knowledge of that misconduct.

In FTC matters, courts have held that the presence of customer and BBB complaints, lawsuits, and state law enforcement inquiries serves as evidence of individual defendants' knowledge of misconduct. *See FTC v. MacGregor*, No. 08–55838, 2009 WL 5184070 at *3 (9th Cir. Dec. 30, 2009) (individual defendant possessed requisite knowledge for purposes of injunctive and monetary relief in light of numerous customer complaints and investigations by Better Business Bureau and state attorneys general); *see also FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993, 1011 (N.D. Ind. 2000) (citing *FTC v. NCH, Inc.*, No. Civ. A. No. CV–94–138–LDG, 1995 WL 623190 at *3 (D. Nev. Sept. 5, 1995)) (individual "defendants who know of government inquiries or investigations into their own or their associates' behavior may be charged with knowledge for purposes of imposing monetary liability under the FTC Act.")

Here, the FTC has gathered additional evidence demonstrating Green's knowledge of the wrongdoing. This includes individual customer complaints,[3] private lawsuits,[4] and state law enforcement inquiries.[5] There is also evidence that Green was tracking other federal law enforcement proceedings against student loan modification businesses. Indeed, Defendants had articles in their files summarizing a complaint by the Consumer Financial Protection Bureau ("CFPB") alleging misconduct similar to that alleged here – namely, illegal upfront fees and recurring monthly payments that the defendants, unbeknownst to their victims, kept for themselves. (PX25 Atts. I, J; *see also* PX25 Att. H (excerpt of news article found in Defendants' premises with the following line highlighted: "[b]y law, these [student debt consulting] companies must renegotiate settle, or reduce at least one debt before collecting fees for the service.")) Indeed, Green had *two* such CFPB complaints sitting on the printer in his office during the immediate access. (PX25 Atts. M and N.) And Green had open on his computer the

[3] (PX25 Atts. G (consumer complaining that she paid more than $1,500 in fees for student loan relief without any cessation of garnishment deductions or other changes to her loan repayment terms); Z (consumer complaining that she was misled by Defendants' representatives regarding the amount of her monthly payment); AA (collection of consumer complaints sent to Green); CC; DD.)

[4] (PX25 Atts. E, K.)

[5] (PX25 Atts. L, P, Q, R, S, T, Y.)

BBB profile page for Defendant Strategic Debt Solutions, LLC, showing a "D-" rating, (PX 25 Att. FF), and was personally involved in efforts to remove negative online feedback regarding his businesses, and post positive feedback as a replacement, (PX25 Att. V (Green writing to an overseas service provider that he wants to "replace" bad BBB and Google customer reviews on his website with good reviews; also stating "I am interested in your service if it can be effective in removing from Google negative postings and also if it can add positive feed backs [sic]"); *see also* PX25 Att. BB (provider outlines strategy "to do Positive Review Marketing (with rotation of internet IP & positive statements)"). Green also had, on his desk, a letter from one of his payment processors advising him that Defendant Strategic Debt Solutions had an excess "unauthorized return rate for ACH activity." (PX25 Att. O.) High ACH return or chargeback rates are a strong indicator of fraud. *See FTC v. Direct Benefits Grp., LLC*, No. 6:11-CV-1186-ORL-28, 2013 WL 3771322, at *15 (M.D. Fla. July 18, 2013) (citing chargeback rates as indicative of deception); *FTC v. HES Merch. Servs. Co.*, No. 6:12-CV-1618-ORL-22, 2014 WL 6863506, at *6 (M.D. Fla. Nov. 18, 2014), *aff'd sub nom. FTC v. HES Merch. Servs. Co., Inc.*, 652 F. App'x 837 (11th Cir. 2016) (individual defendant's receipt of information pertaining to chargeback tended to show his awareness of a high probability of fraud and intentional avoidance of truth).

IV. THE BALANCE OF EQUITIES REQUIRES INJUNCTIVE RELIEF

The harm that Defendants' victims and potential victims face should Defendants be permitted to resume operations and regain access to their assets far outweighs Defendants' private interests to continue operating an unlawful business. Recent events have further demonstrated why a preliminary injunction is necessary to prevent further harm to consumers and to preserve the Court's ability to effectuate final relief. Specifically, the Individual Defendant's actions since the issuance of the Order evidence his disregard for the legal process and demonstrate the urgent need for a continued asset freeze. After being served with the order on May 17, 2017, (*see* Section II *supra*), Defendant Green engaged in repeated violations of the Court's Order:

- On May 18, 2017, the day after receiving the order, Defendant Green transferred $250,000 from one of his accounts to A&D Mortgage, which holds the mortgage on his residence, (PX25 ¶ 16 and Atts. NN and OO), to apply those funds to his home mortgage, (PX25 ¶ 14 and Att. MM). That transfer was processed and the funds are no longer liquid.
- On May 19, 2017, Defendant Green attempted (unsuccessfully) to withdraw $107,800 from one of the accounts subject to the asset freeze. (PX25 ¶ 13 and Att. LL.)
- On May 22, 2017, Defendant Green requested that FreeVoice, a telecommunications provider servicing Defendants' consumer-facing telephone numbers, copy his existing systems to a new corporate name, "Credit Repair USA." (PX25 ¶ 17 and Att. PP.)
- On May 22, 2017, Defendant Green transferred $202,679.15 from an overseas account in the name of DG Call Sales Solutions to A&D Mortgage, again to apply the money to the mortgage on his personal residence. Defendant Green is the CEO of DG Call Sales Solutions. (PX25 ¶ 9 and Att. U.)

Green's repeated violations and attempted violations of the Order, to transfer phone lines to a new company and to dissipate assets, demonstrate the urgent need to continue to preserve assets to enable the Court to effectuate final relief for the victims of Defendants' scam.

V. PROPOSED ORDER

To prevent ongoing consumer injury, the attached proposed preliminary injunction order would continue the conduct relief, asset freeze, appointment of the Receiver, and other provisions of the Order. It is substantially similar to the previous Order, with some adjustments to reflect the current stage of the case, and a modification to ensure that personal credit cards are covered under the asset freeze. This is necessary because the Individual Defendant has used personal credit cards for business expenses and commingled personal and corporate funds, (PX26 ¶ 5), and has repeatedly attempted to dissipate assets. (*See* Section IV *supra*.) This provision is similar to those in previous preliminary injunction orders issued in the Southern District of Florida. *See, e.g. FTC v. Jeremy Lee Marcus*, No. 17-cv-60907-CMA, ECF No. 21

(S.D. Fla. May 17, 2017); *FTC v. Pinnacle Payment Servs., LLC*, No. 1:13-cv-03455-TCB, ECF. No. 40 (S.D. Fla. Nov. 4, 2013).

VI. CONCLUSION

A preliminary injunction is necessary to protect consumers from further harm and to ensure the possibility of effective final relief for consumers who have been bilked out of millions of dollars and left worse off than before signing up for Defendants' program. For the above stated reasons, the FTC respectfully requests that the Court issue the proposed preliminary injunction.

Respectfully submitted,

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Dated: May 25, 2017

/s/*Miya Tandon*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all counsel of record via ECF on May 25, 2017.

/s/ Miya Tandon
Miya Tandon