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11 Attorneys for Defendants  
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13 Shunmin Hsu, and Oliver Pomazi

14  
15 **IN THE UNITED STATES DISTRICT COURT**  
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
17

18 FEDERAL TRADE COMMISSION,

19 Plaintiff,

20 v.

21 AMERICAN FINANCIAL SUPPORT  
22 SERVICES INC., et al.,

23 Defendants.

Case No. SACV 19-02109 JVS (ADSx)

Assigned to Hon. James V. Selna  
Courtroom 10C

**HOWE, HSU, PALACIOS AND  
POMAZI'S STATUS REPORT RE DEBT  
SETTLEMENT OPERATIONS OF  
ARETE FINANCIAL GROUP LLC**

Date: January 24, 2020

Time: 8:00 a.m.

Location: Courtroom 10C

1 At the conclusion of a hearing on January 21, 2020 concerning the servicing and  
2 control of Arete Financial, LLC's ("Arete") debt settlement customers that were affected  
3 by Arete's suspension of operations following service of the temporary restraining order in  
4 this action, the Court ordered Plaintiff, the FTC, and Defendants Howe, Hsu, Palacios, and  
5 Pomazi (collectively, the "Arete Individuals") to meet and confer regarding the servicing  
6 of those customers by the Arete Individuals.

7 Having met and conferred with the FTC, the Parties have agreed to certain terms  
8 whereas other proposed provisions remain in dispute. The FTC has filed a proposed order  
9 that highlights the areas the parties dispute.

10 The material matters to which the parties are in disagreement are addressed below  
11 and will be further addressed at the hearing on this matter:

### 12 **1. Notice to Customers**

13 The Arete Individuals do not agree with the onerous notice requirements the FTC  
14 seeks to impose upon them in giving notice to consumers. As previously briefed, the  
15 Complaint is bereft of any allegations concerning the operations of Arete's debt settlement  
16 business. *See, e.g.*, Dkt. 96. Instead, the Complaint is focused on student loan consulting  
17 practices. The FTC's notice provisions not only constitute an undue burden but will cause  
18 consumer confusion and have the tendency to lead to an unnecessary and unwarranted loss  
19 of current customers, thus resulting in decline of gross revenues.

### 20 **2. Accounting**

21 All of Arete's revenues will come from Debt Pay Gateway, which distributes "earned  
22 performance fees" to Arete after (1) Arete negotiates a settlement with a creditor on a  
23 consumer's behalf and (2) the consumer pays, via Debt Pay Gateway, at least one payment  
24 towards that settlement. *See* Dkt. 49-3, ¶¶4-5. The agreed-upon provisions of the proposed  
25 order contemplate 25% of these gross revenues will be set aside in an escrow account, which  
26 will satisfy concerns regarding asset dissipation. To ensure compliance with this order, the  
27 Arete Individuals can provide a monthly statement printed from Debt Pay Gateway for all  
28 funds paid to Arete from which the 25% of gross revenues may be calculated. To the

1 extent there is any question regarding this reporting, the FTC can verify those amounts with  
2 Debt Pay Gateway and the Arete Individuals will not object to such inquiry.

3 The FTC's proposed additional oversight is unreasonable, unwarranted, and unduly  
4 burdensome, and the rationale for such proposed oversight has not been explained. Neither  
5 the FTC nor the Receiver have demonstrated an understanding or expertise as to the  
6 intricacies of running Arete's debt settlement operations and—given the gross revenue set-  
7 aside agreed upon by the parties and lack of any allegations of wrongdoing in Arete's debt  
8 settlement business subject to FTC oversight—Arete's expenditures should not be subject  
9 to such onerous conditions. The FTC should not be permitted to dictate Arete's expenses  
10 given that expenses do not affect the 25% gross revenue set aside. Further, the imposition  
11 of such unduly burdensome and unnecessary requirements will cause the Arete Individuals  
12 to decline to resume operations because resumption will result in substantial costs and time  
13 expenditure, which will prevent them from focusing on the successful operations of the  
14 company.

### 15 **3. Paying Arete Employee Back Wages**

16 Arete's Bank of America bank account ending in 9768 contains a balance of  
17 \$377,774.14, according to the Receiver's report. Dkt. 57-1 (Report 16:19–20). This  
18 represents employee payroll for the period prior to the Court's TRO.

19 The Arete Individuals have requested that these amounts be unfrozen to allow  
20 employees to be paid the salary that they earned. The FTC objects to this request and has  
21 suggested that the employees make a claim against the receivership estate instead.  
22 However, there is no procedure in the preliminary injunction order for employees to make  
23 payroll/salary claims. Moreover, it is unclear whether the Receiver plans to pay wage  
24 claims shortly or wait until the resolution of the case to do so, if at all. Further, requiring  
25 the employees to make a claim against the receivership estate presents an unnecessary and  
26 undue burden, particularly for employees who are unsophisticated with respect to the  
27 receivership process and have not been provided a mechanism, either by the FTC or the  
28 Receiver, by which to make wage claims.

1 Finally, the Receiver and the FTC’s objection to paying back wages is inconsistent  
2 with California wage payment laws, which, among other things, require (1) wages earned  
3 between the 1st and 15th days of any calendar month to be paid no later than the 26th day  
4 of the month during which the labor was performed and (2) wages earned between the 16th  
5 and last day of the month to be paid by the 10th day of the following month. Cal. Lab.  
6 Code § 204.

7 For the Arete Individuals to be able to successfully run its business and service its  
8 clients, it will likely have to rely on many of the employees who formally serviced the debt  
9 settlement accounts. However, those employees have little incentive to return given that  
10 they have not been paid back wages.

11 There is not a sound reason to prevent payment of wages in the amount of  
12 \$377,774.14, which are monies that were set aside for this purpose prior to the TRO. No  
13 Arete Individual will be paid from this payroll account. They simply want employees to be  
14 treated fairly and receive their earned wages from the payroll account that was frozen  
15 because of the TRO, prior to being asked to work at Arete again.

16 **4. Future Debt Settlement Practices**

17 The only matter before the Court for hearing on January 21, 2020 was the disposition  
18 and servicing of current debt settlement clients of Arete, which the Receiver sought, with  
19 FTC’s approval. Given the lack of any evidence of wrongdoing in the Arete Individuals’  
20 operation of Arete’s debt settlement business, the future operations of Arete beyond the  
21 scope of the matters currently before the Court should not be the subject of this order.  
22 Instead, the Arete Individuals seek separate briefing regarding whether they may, at a future  
23 date, resume operations of Arete’s debt settlement business beyond the servicing of  
24 previously enrolled clients.

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1 Dated: January 23, 2020

BIENERT | KATZMAN PC

2 By: /s/ Ariana Seldman Hawbecker

3 Thomas H. Bienert, Jr.

4 Ariana Seldman Hawbecker

5 Ali Matin

6 *Attorneys for Carey G. Howe, Ruddy*

7 *Palacios, Shunmin Hsu, and Oliver Pomazi*

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**CERTIFICATE OF SERVICE**

I declare that I am a citizen of the United States and am employed in Orange County, California; my business address is 903 Calle Amanecer, Suite 350, San Clemente, California 92673. I am over the age of 18 and not a party to the above entitled action.

I am employed by a member of the United States District Court, and at whose direction I caused service of the following **STATUS REPORT** on all parties in this action via the method of service described below.

**[X] BY ELECTRONIC TRANSMISSION:** Pursuant to Fed. R. Civ. P. 5 and the controlling Local Rules, I electronically filed the foregoing document with the Clerk of the District Court using its CM/ECF System pursuant to the Electronic Case Filing provision of the United States District Court General Order and the EGovernment Act of 2002, which electronically notifies said parties in this case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 23, 2020, at San Clemente, California.

/s/ Garrison Giali  
Garrison M. Giali