UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

    Plaintiff,

      v.

FIRST UNIVERSAL LENDING, LLC, a limited
liability company

SEAN ZAUSNER, individually and as owner,
officer, or manager of First Universal Lending,
LLC,

DAVID ZAUSNER, individually and as owner,
officer, or manager of First Universal Lending,
LLC, and

DAVID J. FEINGOLD, individually and as
officer or manager of First Universal Lending,
LLC,

    Defendants.

Case No. 09-82322-CIV-ZLOCH

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

the plaintiff's claim is and the grounds upon which it rests." *Swierkiewicz v. Sorema N.A.*, 534

U.S. 506, 512 (2002); *accord Atchison, Topeka & Santa Fe Ry. v. Buell*, 480 U.S. 557, 568 n.15

(1987) (under Federal Rule 8, claimant has "no duty to set out all of the relevant facts in his

complaint"). "Specific facts are not necessary in a Complaint; instead, the statement need only

'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'"

Epos Tech., 636 F. Supp.2d 57, 63 (D.D.C. 2009) (quoting *Bell Atlantic v. Twombly*, 550 U.S.

544, 555 (2007))

Thus, the Federal Rules embody "notice pleading" and require only a concise statement

of the claim, rather than evidentiary facts. Accordingly, Defendants' Motion would be

considered properly filed only "where a plaintiff's complaint is 'unintelligab[le] (sic),' not where

a complaint suffers for 'lack of detail.'" *Epos Tech.*, 636 F. Supp. 2d at 63 (citations omitted).

The simplified notice pleading standard relies on liberal discovery rules and summary judgment

motions to define disputed facts and to dispose of unmeritorious claims. *See Swierkiewicz*, 534

U.S. at 512. Indeed, courts have found that if the information sought by the motion is obtainable

through discovery the motion should be denied. *See, e.g.*, *Towers Tenant Ass'n v. Towers Ltd.*

P'ship, 563 F. Supp. 566, 569 (D.D.C. 1983) (denying motion for a more definite statement

because details such as "dates, times, names and places" are "the central object of discovery, and

need not be pleaded").

Here, the FTC's Complaint is not unintelligible or confusing and does not violate Federal

Rule of Civil Procedure 8(a)'s requirement of "a short and plain statement of the claim showing

that the pleader is entitled to relief." The Complaint clearly has a more than sufficient statement

of the claim and more than meets the requirement that it be "short and plain." For example, the

Complaint specifically identifies the actions of Defendants and how those actions are wrongful.

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III .   *The FTC has alleged actual harm*

As stated above, the FTC's Complaint alleges consumer harm and injury in paragraphs

20 through 23, and 35.

IV.   *C b a*

In short, the FTC's Complaint fully complies with the pleading requirements of Federal

Rule of Civil Procedure 8(a) and provides Defendants fair notice of the charges against them and

the grounds therefor. Discovery and argument will add further detail later; in fact, much

additional supporting factual material was provided by Plaintiff in materials filed for the

Temporary Restraining Order and during the Preliminary Injunction hearing. This Court has

subject matter jurisdiction in this matter. Additionally, the FTC has sufficiently alleged harm.

Accordingly, for the reasons set forth herein, the FTC respectfully requests that the Court deny

Defendants' Motion to Dismiss the Complaint with Prejudice.

Dated: December 24, 2009   Respectfully submitted,

                                    __/s/Gideon E. Sinasohn_____
                                    GIDEON E. SINASOHN
                                    Special Florida Bar No. A55001392

                                    HAROLD E. KIRTZ
                                    Special Florida Bar No. A5500743

                                    Attorneys for Plaintiff
                                    Federal Trade Commission
                                    225 Peachtree Street, Suite 1500
                                    Atlanta, Georgia 30303
                                    (404) 656-1366 (Sinasohn)
                                    (404) 656-1357 (Kirtz)
                                    (404) 656-1379 (Fax)
                                    gsinasohn@ftc.gov
                                    hkirtz@ftc.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 24, 2009, I electronically filed the foregoing Plaintiff's Opposition to Defendants' Motion to Dismiss the Complaint with Prejudice with the Clerk of the Southern District of Florida using the CM/ECF system, which will send notice of electronic filing to the following:

David Jon Feingold   using the   n