

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

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UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
LUEBKE BAKER AND ASSOGATES, INC., an)
Illinois corporation,)
)
KEVIN J. LUEBKE, individually and as a)
officer of the corporation,)
)
MATTHEW T. SCOTT, individually)
)
LESLIE M. FARRAR, individually and)
)
JOEL P. FERGUSON, individually)
)
Defendants, and)
)
JULISSA W. LUEBKE,)
)
Relief Defendant.)
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Civil Action No. 1:12-cv-1145

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION

WHEREAS, Plaintiff, the United States of America, has commenced this action by

by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law,

to settle and resolve all matters in dispute arising from the Complaint as of the date of entry of this Stipulated Final Judgment and Order for Permanent Injunction ("Order"), and without Defendants or Relief Defendant admitting any of the matters alleged in the Complaint other than jurisdictional facts;

THEREFORE, on the joint motion of Plaintiff, Defendants, and Relief Defendant, it is ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction of the subject matter of the parties.
2. The Complaint states a claim upon which relief may be granted against Defendants and Relief Defendant under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19 of the Federal

pending as of the date of entry of this Order, then these claims are excepted from the automatic stay pursuant to 11 U.S.C. § 362(b)(4)

6. Entry of this Order is in the public interest.

7. Defendants and Relief Defendant stipulate to the entry of this Order freely and without coercion. Defendants and Relief Defendant further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

8. Plaintiff, Defendants, and Relief Defendant waive all rights to appeal or otherwise challenge or contest the validity of this Order.

9. Plaintiff, Defendants, and Relief Defendant shall each bear their own costs and attorneys' fees incurred in this action. Defendants and Relief Defendant have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412.

DEFINITIONS

For the purpose of this Order, the following definitions shall apply

A. "Individual Defendants" means Kevin J. Luebke, Matthew T. Scott, Leslie M. Farrar, and Joel P. Ferguson;

B. "Corporate Defendant" means F a Á R ð @ ö b pendingr W7FVB AEÂ 6AE -x0

ORDER

I. CIVIL PENALTY AND EQUITABLE MONETARY RELIEF

IT IS THEREFORE ORDERED that,

A. Judgment is entered against Defendants, jointly and severally, for civil penalties, in the amount of TWO MILLION, THREE HUNDRED AND FORTY THOUSAND DOLLARS (\$2,340,000), pursuant to Section 5(m)(1A) of the FTC Act, 15 U.S.C. § 45(m)(1A), for violations of the FDCPA. Provided, however, that this judgment for civil penalties shall be suspended subject to the provisions of the Section titled "Right to Reopen."

B. Judgment is entered against Defendants, jointly and severally, for equitable monetary relief in the form of disgorgement, in the amount of SEVEN HUNDRED AND THIRTY THOUSAND DOLLARS (\$730,000), for violations of the TE Act with respect to the collection of debts purportedly owed to Cross Media Marketing Corp. and Media Outsourcing Inc., both doing business as Consolidated Media Services. Provided, however, that this judgment for equitable monetary relief in the form of disgorgement shall be suspended subject to the provisions of the Section titled "Right to Reopen."

C. Judgment is entered against Defendants, jointly and severally, for equitable monetary relief in the form of restitution, including attendant expenses of administration of any restitution fund, or disgorgement, in the amount of FORTY-FIVE THOUSAND DOLLARS (\$45,000), for violations of the TSR in connection with the upsale Defendants' Credit Solutions program. Provided, however, that this judgment for equitable monetary relief in the form of restitution shall be suspended subject to the provisions of the Section titled "Right to Reopen." Defendants Luebke Baker and Associates, hc. and Kevin J Luebke shall cooperate

fully to assist the Commission in identifying consumers who may be entitled to restitution under this Subsection.

D. Judgment is entered against Relief Defendant for equitable monetary relief in the form of disgorgement in the amount of FOUR HUNDRED AND TWENTY THOUSAND DOLLARS (\$420,000). Provided, however, that this judgment shall be suspended subject to the provisions of the Section titled "Right to Reopen." Provided further that this judgment against Relief Defendant shall be deemed satisfied if the judgments under Subsections B and C of this Section have been paid in full through the cumulative payments of Defendants and Relief Defendant.

E. Within ten (10) days of the entry of this Order, Defendant Leslie M. Farar is ordered to pay the Commission TWENTY THOUSAND DOLLARS (\$20,000) in the form of a wire transfer to the Commission, or such agent as the Commission may direct.

F. In the event of any default in payment under this Section by Defendant, which default continues for fifteen (15) days beyond the due date of payment, the full judgment amounts, less any amounts already paid by Defendants in this case ordered in Subsections A, B and C of this Section, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable by the defaulting Defendant.

G. Defendants and Relief Defendant relinquish all dominion, control, and title to the funds paid under this Section to the fullest extent permitted by law. Defendants and Relief Defendant shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

H. The Commission, at its sole discretion, may apply funds received pursuant to Subsection E of this Section to the judgment for restitution under Subsection C of this Section or the judgment for disgorgement under Subsection B of this Section. In the event that direct restitution to consumers of the amount set forth in Subsection C of this Section is wholly or partially impracticable, or funds remain after complete restitution has been made, the Commission may apply any remaining funds for other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants and Relief Defendant shall not have the right to challenge the Commission's choice of remedies or the manner of distribution under this Section. The Commission, in its sole discretion, may use a designated agent to administer consumer restitution.

I. The judgment amount set forth in Subsection A of this Section represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, therefore, is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7). Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof in any subsequent civil litigation filed by or on behalf of the Commission to enforce its rights to any payment or money judgment pursuant to Subsection A of this Section.

J. Defendant Kevin J. Luebke agrees (1) that the judgment ordered by Subsection B of this Section is not dischargeable in bankruptcy and (2) to the concurrent filing by the Commission in his bankruptcy case of: (a) a Complaint to Determine Nondischargeability of Debt (in the form attached as Attachment A) and (b) a Stipulated Judgment for

Nondischargeability of Debt (in the form attached as Attachment B) which Defendant Kevin J. Luebke has executed concurrently with his execution of this Order determining that the judgment ordered by Subsection B of this Section, including the conditions set forth in the Section of this Order titled "Right to Reopen," are excepted from discharge pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A) are pursuant

the judgments ordered in Subsections A, B, and D of the Section titled "Civil Penalty and Equitable Monetary Relief," by amounts already paid by any Defendant or the Relief Defendant in this case. The reinstated judgment(s) shall become immediately due and payable by the Defendant or Relief Defendant, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on any unpaid balance. Provided, however, that in all other respects this Order shall remain in full force and effect.

5. That legal action will be taken against a consumer

6. The consequences of paying or not paying a debt, in whole or in part, and

B. In connection with collecting or attempting to collect a debt or obtain information concerning a consumer, representing or assisting others in representing expressly or by implication, that a consumer owes a debt or the amount of debt, unless, at the time of making the representation, Defendants have a reasonable basis for making such representation. Provided that, in those cases in which Defendants (i) are required by Subsection A of the Sec

1. a consumer at any time, has questioned, disputed, ~~challenged~~ the accuracy or completeness of the information on which Defendants are relying to make any representation that the consumer owes a debt or as to the amount of a debt; or
2. a person acting reasonably would question or dispute the accuracy or completeness of the information on which Defendants are relying to make any representation that a consumer owes a debt or as to the amount of debt;

Defendants shall conduct a prompt, reasonable investigation into the accuracy or completeness of such information. Defendants shall make no further attempt to collect the debt until they have completed the investigation and have reasonably concluded that the information is accurate and complete. Provided that nothing in this Section shall require Defendants to conduct an investigation into the accuracy or completeness of the information on which Defendants are relying if Defendants reasonably determine that the consumer's question, dispute, or change is frivolous or irrelevant.

B. For purposes of this Order a "reasonable investigation" shall mean an investigation in which Defendants objectively evaluate and weigh the relevant information and circumstances, including but not limited to:

1. the reliability of the information on which Defendants rely in collecting or attempting to collect the debt, including the credibility of the source of the information;
2. the accuracy and completeness of any information received directly from the creditor;

3. the accuracy and completeness of any information Defendants obtain from third party sources, including data aggregators or brokers and consumer reporting agencies;
4. the strength and credibility of any information provided by the consumer questioning, disputing or challenging the accuracy or completeness of such information or otherwise obtained by Defendants;
5. with respect to information obtained from the consumer, the methods used by Defendants to collect the information, including any conduct the natural consequence of which is to harass, oppress, abuse or mislead any person in connection with the collection of the debt; and
6. any countervailing information that contradicts or calls into question the accuracy or completeness of such information.

C. This Section does not affect Defendants' obligations to comply with all provisions of the FDPA.

V. INJUNCTION AGAINST VIOLATIONS OF THE FDCA

IT IS FURTHER ORDERED that Defendants, and each of their officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether directly or through any entity, corporation, subsidiary, division, affiliate, or other device in connection with acting as a "debt collector" on behalf of a "creditor" in the collection of a "debt" from a "consumer," as those terms are defined in Section 803(6)(4), (5) and (3) respectively, of the FDCA, 15 U.S.C. § 1692a(6), (4)(5) and (3), are permanently restrained and enjoined from taking the following actions:

A. Engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any

5. Using false representations or deceptive means to collect or attempt to collect debts or obtain information concerning a consumer, in violation of Section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10) and

C. Engaging in any other act or practice that would violate the FDCPA, 15 U.S.C. § 1692e et seq. as presently enacted or as it may hereafter be amended.

VI. INJUNCTION AGAINST VIOLATIONS OF THE TSR

IT IS FURTHER ORDERED that Defendants, and each of their officers, agents, servants, employees, and those persons in the contact or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device are permanently restrained and enjoined from engaging in any act or practice that would violate any provision of the TSR, 16 C.F.R. Part 310, as presently promulgated or as it may hereafter be amended, including but not limited to, requesting or receiving payment for goods or services represented to remove derogatory information from, or improve, a person's credit history credit record, or credit rating before the time period for providing all the goods or services has expired and Defendants have demonstrated that the promised results have been achieved, in violation of Section 310.4(a) of the TSR, 16 C.F.R. § 310.4(a).

VII. NOTICE REQUIREMENTS

IT IS FURTHER ORDERED that,

A. For a period of five (5) years from the date of entry of this Order, Defendants, and each of their officers, agents, servants, employees, and those persons in the contact or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other

device in connection with acting as a "debt collector" in the collection of "debt" from a "consumer," as those terms are defined in Section 803(6)(5) and (6), respectively of the FDCPA, 15 U.S.C. § 1692a(6)(5) and (6), shall make the following disclosure clearly and

the following notice to all officers, agents, servants, and employees having responsibility with respect to the collection of consumer debts, within thirty (30) days of the date of entry of this Order, and to each employee hired for a period of five (5) years after that date, no later than the time the employee assumes responsibility with respect to the collection of the debts, and shall secure from each person, within thirty (30) days of delivery, a signed and dated statement acknowledging receipt of a copy of the notice

Debt collectors must comply with the federal Fair Debt Collection Practices Act, which limits our activities in trying to collect money from consumers.

Section 806(6) of the Act prohibits placing telephone calls without meaningful disclosure of the caller's identity. For example, it is illegal for a debt collector to transmit false caller identification information when calling a debtor.

Most importantly Section 807 of the Act prohibits you from representing or implying that any action, including garnishment or other legal action, will be taken unless at the time of the representation, the action is lawful and there is a clear intent to take the action.

Further, Section 807 of the Act prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. For example, it is illegal to misrepresent that a debt collection company is a law firm or that the company's collectors are attorneys. It is also illegal to misrepresent the existence of, or terms of, any statutes of limitations for collecting debts.

Individual debt collectors may be financially liable for their violations of the Act.

VIII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of (i) monitoring and investigating compliance with any provision of this Order, and (ii) investigating the accuracy of any

Defendants and Relief Defendant's financial statements upon which the Commission's agreement to this Order is expressly premised:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants and Relief Defendant each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produced documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in each Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including, but not limited to:

1. obtaining discovery from any person, without further leave of Court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45, and 69;
2. having its representatives pose as consumers and suppliers to Defendants or any entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. Defendants each shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to an interview relating in any way to any conduct subject to this Order. The person interviewed may have counsel present. Commi

obtain any documents, materials, tangible things, testimony or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)).

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order to ensure compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order
 1. Individual Defendant shall notify the Commission of the following
 - a. any changes in individual Defendant's residence mailing address, and telephone number within ten (10) days of the date of the change;
 - b. any changes in individual Defendant's employment status (including self-employment) and any change in Individual Defendant's ownership in any business entity within ten (10) days of the date of the change. The notice shall include the name and address of each business that Individual Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of individual Defendant's duties and responsibilities in connection with the business or employment; and
 - c. any changes in individual Defendant's name or use of any aliases or fictitious names within ten (10) days of the date of the change; and
 2. Defendants shall notify the Commission of any changes in structure of Corporate Defendant or any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order including but not limited to: incorporation or other

organization; a dissolution, assignment, sale, merger, or other action; the creation

2. For Corporate and Individual Defendants:
 - a. a copy of each acknowledgment of re

majority

E. Copies of all training materials, scripts, talking points, rebuttals, and recommendations,

B. Individual Defendant as control person: For any business entity that individual Defendant controls, directly or indirectly, or in which individual Defendant has a majority ownership interest, individual Defendant must deliver a copy of this Order, including attachments, to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting". For current personnel, delivery shall be within five (5) days of service of this Order upon individual Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting" delivery shall be at least ten (10) days prior to the change in structure.

C. Individual Defendant as employee or non-control person: For any business where individual Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, delivery shall be at least ten (10) days prior to the change in structure.

FOR THE FEDERAL TRADE COMMISSION:

DEANYA T. KUECKELHAN, DIRECTOR
Southwest Region
Federal Trade Commission

Date: May 11, 2012

/s/ Thomas B. Carte
THOMAS B. CARTER
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FOR DEFENDANTS KEVIN J. LUEBKE AND
LUEBKE BAKER AND ASSOCIATES, INC.

Date: August 19, 2011

/s/ Kevin J Luebke
KEVIN J. LUEBKE, Individually and as President
of Luebke Baker and Associates, Inc.

FOR MATTHEW T. SCOTT