

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No. 3:08-cv-1001-J-34JRK

LATRESE & KEVIN ENTERPRISES INC., a
Florida corporation, also doing business as
HARGRAVE & ASSOCIATES FINANCIAL
SOLUTIONS, LATRESE HARGRAVE, also
known as, LATRESE V. WILLIAMS, individually
and as an officer of LATRESE & KEVIN
ENTERPRISES INC., and KEVIN HARGRAVE,
SR., individually and as an officer of LATRESE &
KEVIN ENTERPRISES INC.,

Defendants.

PRELIMINARY INJUNCTION WITH

This Cause is before the Court on Plaintiff's *Ex Parte* Motion For A Temporary Restraining Order With Ancillary Equitable Relief And A Preliminary Injunction, Pending Decision on Plaintiff's Motion To Show Cause, and supporting memorandum and exhibits. Dkts. 178, 179, 184, 185, 186; Motion), filed on April 13, 2012 by Plaintiff, the Federal Trade Commission ("Commission," "FTC" or Plaintiff), and considered here as a Motion for Preliminary Injunction. Also filed on April 13, 2012 was Plaintiff's *Ex Parte* Motion and Incorporated Memorandum In Support Of Plaintiff's Motion For An Order To Show Cause why Contempt Defendants should not be held in contempt of the Permanent Injunction entered herein. (Dkt. 180; Contempt Motion). The Motion originally was filed with the Court, under seal, pursuant to the *Ex Parte In Camera* Order of the Court, dated April 6, 2012. (Dkt. 176; 04/06/12 Order). On May 15, 2012, the Court entered the *Ex Parte* Temporary Restraining Order With Asset Freeze And Other Equitable Relief And Order Setting Preliminary Injunction Hearing Pending Decision On Plaintiff's Motion For An Order To Show Cause. (Dkt. 189; TRO). In the TRO, the Court enjoined the "Contempt Defendants," as defined therein, from certain conduct, and ordered an asset freeze. Additionally, the Court appointed a Temporary Receiver, and set forth the Contempt Defendants' duty to cooperate with the Temporary Receiver, including the obligation to complete and submit accurate financial statements. The Court ordered that Plaintiffs serve the TRO and accompanying documents on Contempt Defendants by 5:00 p.m. on Thursday, May 17, 2012, and set the matter for a hearing to determine whether to convert the TRO into a Preliminary Injunction, for Tuesday, May 29, 2012 at 10:00 a.m. The Court further directed Contempt Defendants to file

Preliminary Injunction hearing would be limited to written submissions and arguments of counsel. TRO at 24.

The Temporary Receiver assumed control of the Contempt Defendant companies on May 16, 2012. (Dkt. 157; Preliminary Report of Temporary Receiver). Additionally, the Contempt Defendants were served on May 16, 2012, with a copy of the TRO, and a copy of Plaintiff's Motion and Contempt Motion, and accompanying documents. See *id.*; (Dkts. 190, 165-1). On May 21, 2012, the Court conducted a hearing on the Temporary Receiver's Motion to Employ Counsel. (Dkt. 161; 05/21/12 Minutes). At that hearing, which was attended by counsel for Plaintiff and for Contempt Defendants, the Court directed that all *ex parte* sealed documents be placed on the public record. (Dkt. 161).

On May 29, 2012, the Court conducted a hearing on Plaintiff's Motion, which was construed at this point in the proceedings to be a Motion for Preliminary Injunction. The record of that hearing is incorporated herein. Contempt Defendants and their counsel received notice of the Preliminary Injunction hearing when they were served with the TRO on May 16, 2012. Counsel for the parties and for the Temporary Receiver were in attendance at the hearing, as were the individual Defendants, Latrese Hargrave and Kevin Hargrave, and the Temporary Receiver. Having considered the Motion, Memorandum, declarations and exhibits filed in support thereof, and in accordance with Rule 65(a), Federal Rules of Civil Procedure (Rule(s)) Rule 4.06, Local Rules, United States District Court, Middle District of Florida (Local Rules(s)), as well as the applicable statute, 15 U.S.C. § 53(b), and the arguments of counsel, the Court makes the following findings for purposes of resolving this Motion:

1. On October 20, 2008, Plaintiff filed its Complaint for Injunctive and Other Equitable Relief (Dkt. No. 1) pursuant to Section 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b) and 57b, Section 410(b) of the Credit Repair Organizations Act (“CROA”), 15 U.S.C. § 1679h(b), and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, accompanied by a Motion for Temporary Restraining Order. (Dkt. No. 4). The Court entered a Temporary Restraining Order With Asset Freeze and Other Equitable Relief on October 23, 2008 (Dkt. No. 18), followed by a Stipulated Preliminary Injunction As To Latrese & Kevin Enterprises, Inc., Latrese W. Hargrave and Kevin Hargrave, Sr. With Asset Freeze And Other Equitable Relief (Dkt. No. 26), entered on November 3, 2008.

2. On January 27, 2010, the Court entered summary judgment in favor of the FTC (Dkt.

4. In its Contempt Motion, Plaintiff contends that Defendants Kevin and Latrese Hargrave, individually, and through three companies, BFS Empowerment Financial Services Inc., Help My Credit Now Credit Services Inc., and Kevtrese Enterprises Inc. (“Contempt Defendants”), acting in concert and participation with the Hargraves, are violating at least three provisions of the Permanent Injunction, specifically by misrepresenting that they can improve substantially consumers’ credit profiles and credit scores by permanently removing negative information from consumers’ credit reports even where that information is accurate and not obsolete, in violation of Section I.A and II.A of the Permanent Injunction; and by charging or receiving an up-front fee for the performance of credit repair services.

5. There is good cause to believe that Contempt Defendants have actual notice of the Final Order of Permanent Injunction and the ability to comply with that Order;

6. Based on the evidence and materials in the Record, the Court finds, for purposes of the Motion, that there is good cause to believe that Contempt Defendants have violated, and continue to violate provisions of the Permanent Injunction in the course of advertising, marketing, promoting, offering for sale, or sale of credit repair services to consumers throughout the United States by:

- a. Misrepresenting they can improve substantially consumers’ credit profiles and credit scores by permanently removing negative information from consumers’ credit reports, even where such information is accurate and not obsolete, in violation of Sections I.A and II.A of the Permanent Injunction; and

b. Charging or receiving money or other valuable consideration for the performance of credit repair services, before such services are fully performed, in violation of Section II.B of the Permanent Injunction.¹

7. Based on the verified papers of Plaintiff, which have provided specific facts, the Court finds that there is good cause to enter a Preliminary Injunction in order to preserve the Court's ability to grant effective final relief in this action and to prevent concealment by Contempt Defendants of their assets and evidence including corporate and/or business records.

8. The Court has considered Plaintiff's likelihood of ultimate success and weighed the equities, and finds that a preliminary injunction providing for an asset freeze, the continued appointment of a temporary receiver, continued access to the business premises, and other equitable relief is in the public interest. Specifically, as set forth in the record at the hearing on this Motion, the Court determines that Plaintiff has established that (1) it has a substantial likelihood of success on the merits of its Contempt Motion; (2) irreparable injury will be suffered unless the Temporary Restraining Order is transformed into a Preliminary Injunction; (3) the threatened injury to Plaintiff and consumers, as well as to the integrity of the Court's Permanent Injunction Order, outweighs whatever damage the proposed Preliminary Injunction may cause the Contempt Defendants; and (4) transforming the Temporary Restraining Order into a Preliminary Injunction would not be adverse to the public interest.

9. Pursuant to Fed. R. Civ. P. 65(c), no security of the United States or an officer or agency thereof will be required for the issuance of this Preliminary Injunction.

¹ This finding is based solely on the record as it stands at this stage of the proceedings, and is made for the purpose of resolving the Motion for Preliminary Injunction. This conclusion does not resolve the issues presented by Plaintiff's Contempt Motion.

10. Accordingly, for these reasons, it is hereby

ORDERED:

Plaintiff's *Ex Parte* Motion For A Temporary Restraining Order With Ancillary Equitable

5. **“Contempt Defendants”** mean all of the Individual Defendants, Corporate Defendants, and Receivership Defendants, individually, jointly, or in any combination.

6. **“Credit repair organization”** shall have the meaning ascribed to that term in Section 403(3) of the Credit Repair Organizations Act, 15 U.S.C. §1679a(3).

7. **“Credit repair service”** means any service, in return for payment of money or other consideration, for the express or implied purpose of: (1) improving any consumer’s credit record, credit history, or credit rating; or (2) providing advice or assistance to any consumer with regard to any activity or service the purpose of which is to improve a consumer’s credit record, credit history, or credit rating.

8. **“Credit-Related products, programs, or services”** means any product, program, or service which is advertised, offered for sale, or sold to consumers as a method by which consumers may establish or obtain any extension of credit or credit device, including, but not limited to, credit cars, loans, or financing, or as a method to consolidate or liquidate debts.

9. **“Document”** is synonymous in meaning and equal in scope to the term as defined in Federal Rule of Civil Procedure 34(a), and includes both documents and electronically stored information, including, but not limited to, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

10. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

11. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

12. **“Plaintiff”** means the Federal Trade Commission (“Commission” or “FTC”).

13. The term **“and”** also means **“or,”** and the term **“or”** also means **“and.”**

14. **“Telemarketing”** means any plan, program or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. § 310, that is conducted to induce the purchase of goods or services by means of the use of one or more telephones.

15. **“Seller,” “telemarketer,”** and **“inbound telephone call”** are as defined in Section 310.2 of the Telemarketing Sales Rule, 16 C.F.R. § 310.2.

I. ASSET FREEZE

IT IS ORDERED that Contempt Defendants and all other persons or entities in active concert or participation with them who receive actual notice of this Preliminary Injunction by personal service or otherwise, are hereby **ENJOINED** from:

A. Assigning, concealing, converting, disbursing, dissipating, encumbering, liquidating, loaning, pledging, selling, spending, transferring, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, artwork, automobiles, coins, consumer lists, contracts, precious metals, shares of stock, uncashed checks, or other assets, wherever located, that are:

1. owned or controlled by, or in the actual or constructive possession of any Contempt Defendant;

2. owned or controlled by, or held for the benefit of, directly or indirectly, any Contempt Defendant, in whole or in part;
3. held by an agent of any Contempt Defendant as a retainer for the agent's provision of services to any Contempt Defendant; or
4. owned or controlled by, or in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with, any

E. Incurring liens or other encumbrances on real property, personal property, or other asset held in the name, individually or jointly, of any Contempt Defendant, or any entity directly or indirectly owned, managed or controlled by any Contempt Defendant.

IT IS FURTHER ORDERED that the assets affected by this Section shall include both

of the assets or other property held by, under its control, or on behalf of any Contempt Defendant in any account maintained in the name of, or for the benefit or use of, any Contempt Defendant, in whole or in part, except as directed by further order of this Court, or, for assets held in the name of the Receivership Defendants, as directed by the Temporary Receiver appointed herein;

B. Deny Contempt Defendants access to any safe deposit boxes, commercial mail boxes, or storage facilities that are titled in the name, individually or jointly, of any Contempt Defendant, or otherwise subject to access by any Contempt Defendant. Notwithstanding this subsection, the Temporary Receiver appointed herein shall be provided with access to any safe deposit box individually or jointly titled in the name of, subject to access by, or held for the benefit of any Receivership Defendant.

C. If not already accomplished, provide to the Temporary Receiver appointed herein and the Commission, within three (3) business days of notice of this Preliminary Injunction, a sworn statement setting forth:

1. The identification number of each account or asset titled in the name, individually or jointly, of any Contempt Defendant, or to which any Contempt Defendant is a signatory, or which is held on behalf of, or for the benefit or use of, any Contempt Defendant or subject to any Contempt Defendant's control, including all trust accounts on behalf of any Contempt Defendant or subject to any Contempt Defendant's control;

2. The balance of each such account, or a description and appraisal of the value of such asset, as of the close of business on the day on which notice of this Order is

received, and, if the account or asset has been closed or removed, or more than \$1,000 withdrawn or transferred from it within the last ninety (90) days, the date of the closure or removal of funds, the total funds removed or transferred, and the name and account number of the person or entity to whom such account, funds, or other asset was remitted; and

3. The identification and location of any safe deposit box, commercial mail box, or storage facility that is titled in the name, either individually or jointly, of any Contempt Defendant, or is otherwise s

E. Cooperate with all reasonable requests of the Temporary Receiver relating to

which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by the preceding Section of this Preliminary Injunction, including, but not limited to:

A. Sending any statement, letter, fax, e-mail or wire transmission, or telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms of a foreign trust agreement, until such time as all assets have been fully repatriated pursuant to the preceding Section of this Preliminary Injunction and

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Preliminary Injunction, or of the fact that repatriation is required pursuant to a Court Order, until such time as all assets have been fully repatriated pursuant to the preceding section of this Preliminary Injunction.

V. APPOINTMENT OF A TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Dan Edelman of Dixon Hughes Goodman, LLP² remains appointed Temporary Receiver for Receivership Defendants and any affiliates or subsidiaries thereof controlled by any Receivership Defendant(s), with the full powers of an equity Receiver. The Temporary Receiver shall comply with all laws, rules, and local rules governing federal equity receivers. The Temporary Receiver shall be the agent of this Court in acting as Temporary Receiver under this Preliminary Injunction with directions and authority to:

² Mr. Edelman’s biography and the expected billing rates of Dixon Hughes Goodman, LLP are provided in Plaintiff’s *Ex Parte* Second Recommendation for a Temporary Receiver (Dkt. 188), filed on May 8, 2012.

A. Assume full control of the Receivership Defendants and all powers of the Receivership Defendants' directors, officers and managers, and remove all Individual Defendants, and any officer, independent contractor, employee, attorney or agent of the Receivership Defendants, from control and management of the Receivership Defendants;

B. Take immediate and exclusive custody, control, and possession of all the assets, funds, property, mail and documents of, or in the possession or in the custody of, or under the control of, the Receivership Defendants, wherever situated, including, but not limited to: (1) 1416

E. Prevent the withdrawal or misapplication of funds entrusted to the Receivership Defendants, and otherwise protect the interest of customers or clients;

F. Manage and administer the Receivership Defendants by performing all acts incidental thereto that the Temporary Receiver deems a m

K. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this

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N. Upon notice to this Court and all parties, the Temporary Receiver shall be permitted to seek authorization to obtain receiver's certificates as is reasonably required and/or necessary to carry out and fulfill the duties and obligations of the Temporary Receiver noted herein.

VI. COMPENSATION OF THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the Temporary Receiver, and all personnel hired by the Temporary Receiver (including those hired upon receipt of the required prior approval of the Court as set forth above), shall be entitled to reasonable compensation, upon Court approval, for the services they render to the receivership estate, from the assets now held by, in the possession or control of, or which may be received from the Receivership Defendants. The Temporary Receiver shall file with the Court and serve on the parties a request for the payment, outlining the services rendered and the related fees and expenses. Payment shall be made after Court approval. The Temporary Receiver shall not receive payment from or increase his or her fee rate billed to the receivership estate without prior approval of the Court.

VII. TEMPORARY RECEIVER'S BOND

IT IS FURTHER ORDERED that, if he has not already done so, the Temporary Receiver shall file with the Clerk of this Court, immediately, a bond in the sum of \$ 100,000.00, conditioned that the Temporary Receiver will well and truly perform the duties of the office and duly account for all money and property that he or she marshals. The Temporary Receiver serves as an officer of this Court solely in a representative capacity and is not personally liable for any actions taken in conformity with the duties and responsibilities set forth herein or pursuant to any statute, regulation or other legal authority.

VIII. DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that, if not already accomplished, Contempt Defendants and any other person or entity served with a copy of this Preliminary Injunction, shall immediately or within such time as permitted by the Temporary Receiver in writing, deliver or transfer possession, custody and control of the following to the Temporary Receiver:

- A. All assets of the Receivership Defendants;
- B. All documents of the Receivership Defendants, including, but not limited to, all books and records, financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
- C. All keys, computer and other passwords, entry codes, combinations to locks required or necessary to gain or secure access to any of the assets or documents of the Receivership Defendants, including but not limited to, access to the Receivership Defendants' business premises, means of communication, accounts, computer systems, or other property; and
- D. Information identifying all accounts, employees, properties, or other assets or obligations of the Receivership Defendants.

IX. DUTY TO COOPERATE WITH THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Contempt Defendants and all other persons or entities served with a copy of this Preliminary Injunction shall fully cooperate with and assist the Temporary Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Temporary Receiver that is necessary for the Temporary Receiver to exercise his or her authority; providing any password required to access any computer or electronic files in any

medium; and advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Temporary Receiver.

X. CONTEMPT DEFENDANTS' ACCESS TO PREMISES AND RECORDS

XII. FINANCIAL REPORTS

IT IS FURTHER ORDERED that , if not already accomplished, each Contempt Defendant shall, within three (3) days of service of this Preliminary Injunction, prepare and provide to the Temporary Receiver and counsel for the Commission:

A. A completed financial statement fully disclosing that Contempt Defendant's finances and those of all corporations, partnerships, trusts or other entities that the Contempt Defendant owns, controls, or is associated with, on the form financial statements attached to the Temporary Restraining Order (Dkt. 189) as Attachments A and B. The financial statements shall be accurate as of the date of entry of this Preliminary Injunction and shall be verified under oath; and

B. A signed Consent to Release of Financial Records form, attached to the Temporary Restraining Order as Attachment C, in order to provide the Temporary Receiver and Plaintiff access to Contempt Defendants' records and documents held by financial institutions outside the territorial United States.

XIII. CREDIT REPORTS

IT IS FURTHER ORDERED that the Commission may obtain credit reports concerning Individual Contempt Defendants Latrese Hargrave and Kevin Hargrave pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from which such report is requested shall provide it to the Commission.

XIV. PRESERVE RECORDS AND REPORT NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Contempt Defendants and all other persons or entities in active concert or participation with them who receive actual notice of this Preliminary Injunction by personal service or otherwise, are hereby **ENJOINED** from:

- A. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise

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statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

XV. STAY OF ACTIONS

IT IS FURTHER ORDERED that, except by leave of the Court, during the pendency of the Temporary Receivership ordered herein, the Contempt Defendants and all other persons and entities acting for or on behalf of Contempt Defendants hereby are stayed from taking any action to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of the Receivership Defendants, the Temporary Receiver,6.125 -2.33 THass-..rsg.90 TD.0007 Tc7 TcSpsi/c3 T./c3 T./c3

by or in the possession of the Receivership Defendants, or the Temporary Receiver, or any agent of the Temporary Receiver; and

D. Doing any act or thing to interfere with the Temporary Receiver taking control,

XVII. BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that, during the pendency of this Preliminary Injunction, the Contempt Defendants, which includes the Individual Defendants, and all persons or entities in active concert or participation with any of them who receive actual notice of this Preliminary Injunction, by personal service or otherwise, are **ENJOINED** from engaging in any business activities, employment, c5r partic