

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

UNDER SEAL MINUTES

CASE NO.: CV 15-02357 SJO (JEMx) DATE: April 6, 2015

TITLE: Federal Trade Commission v. Wealth Educators, Inc. et al.

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PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz Not Present
Courtroom Clerk Court Reporter

COUNSEL PRESENT FOR PLAINTIFF: Not Present
COUNSEL PRESENT FOR DEFENDANTS: Not Present

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PROCEEDINGS (in chambers): ORDER GRANTING PLAINTIFF'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE, AND OTHER RELIEF AND ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE

This matter is before the Court on Plaintiff Federal Trade Commission's ("Plaintiff" or "FTC") Ex Parte Application ("Application") for Temporary Restraining Order, Asset Freeze, and Other Relief and Order to Show Cause Why Preliminary Injunction Should Not Issue, filed March 31, 2015, under seal. For the following reasons, the Court **GRANTS** Plaintiff's Application.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff's complaint makes the following allegations. Defendant Wealth Educators, Inc., ("Wealth Educators" or the "Corporate Defendant"), is a California corporation located at 3200 Wilshire Blvd., Suite 808, Los Angeles, California 90036. (Compl. ¶ 6.) Wealth Educators has also done business as Family 1st Preservations, Family 1st Home Loans, Legal Affiliates and Associates, Legal Educators & Co., Family 1st Home Preservation, Legal Educators USA & Co., Stargate Mutual & Associates, Providence Financial Advocates, and Providence Financial Audits. (Compl. ¶ 6.)

Defendant Veronica Sesma ("Sesma") is the sole owner and officer of Wealth Educators. (Compl. ¶ 7.) Sesma has also done business as Sesma Consulting. (Compl. ¶ 7.) Sesma is the domain registrant for the following websites used by Defendants to market and sell mortgage assistance relief services to consumers: legalaffiliatescorp.org; family1sthps.com; legaleducatorsco.org; legaleducatorsusa.org; thelegaleducators.com; smassociates.org; pfadvocates.com; and pfaudits.com. (Compl. ¶ 7.) She is the sole signer on each of the Defendants' bank accounts, into which consumer funds are deposited. (Compl. ¶ 7.)

From at least October 2012 to the present, Defendants have engaged in a course of conduct to advertise, market, sell, provide, offer to provide, or arrange for others to provide Mortgage Assistance Relief Services ("MARS"), including mortgage loan modification services. (Compl. ¶ 9.) Defendants have marketed their services primarily via outbound telemarketing calls to consumers.

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(Compl. ¶ 10.) Defendants also have marketed their services on the Internet, including through use of the following websites: family1sthps.com; legaleducatorsco.org; legaleducatorsusa.org; thelegaleducators.com; smassociates.org; pfadvocates.com; and pfaudits.com. (Compl. ¶ 10.)

Many of the Defendants' customers are financially distressed homeowners. (Compl. ¶ 11.) Defendants promise consumers that they will lower the consumer's monthly mortgage payment, mortgage interest rate, or obtain loan forbearance, a loan modification, or other loan restructuring. (Compl. ¶ 11.) Defendants purport to be a legal firm and to provide the consumer with legal assistance through a network of affiliated legal service providers, including forensic loan audits and other services that will identify errors in their mortgage loan documents, ferret out predatory lending practices, gather information that Defendants will use to defend against foreclosure, and win concessions from lenders. (Compl. ¶ 12.)

Defendants charge an initial up-front fee ranging from \$1000 to \$5000, prior to completing any of the promised MARS. Defendants accept payment by personal check, cashier's check, money order, electronic fund transfer, MoneyGram, and Western Union. (Compl. ¶ 13.) Defendants represent that if they are unable to secure the promised MARS they will fully refund all fees paid by the consumers. (Compl. ¶ 13.) In numerous instances, Defendants have failed to obtain any relief for their customers, and have not provided the promised refund. (Compl. ¶ 14.)

Defendants initiate contact with consumers through unsolicited outbound telemarketing calls and inbound telephone calls from consumers responding to claims on Defendants' websites. (Compl. ¶ 15.) Defendants' websites have included the following claims:

AMERICA'S LEADING HOME PRESERVATION LEGAL SERVICES. We act on behalf of homeowners to work with your lender and avoid the lengthy and costly process of foreclosure and the stressful act of eviction that follows. . . . Everyday, we're helping distressed homeowners, and we can help you, get a "fresh start" by: Presenting a solution to your lender and negotiating favorable terms for all concerned, Protecting your credit and your home from further degradation, Minimizing your debt obligations, and expediting the process to a successful resolution. . . . Our staff consists of professionals experienced in underwriting, servicing, and loan originations. We have a national network of 100+ legal aids working with local programs and organizations...to validate compliance with federal, state, and local regulations, and include an evaluations (sic) of the guidelines of Fannie Mae, Freddie Mac, Ginnie Mae, FHA, VA, and various private investors.

(Compl. ¶ 16.)

Defendants have told consumers that they can secure for them a loan modification through a government-sponsored program, or otherwise obtain a loan modification that will lower their monthly mortgage payment and reduce their mortgage interest rate for an initial up-front fee of

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\$1000 to \$5000, and that in most cases the process will be completed within three to four months. (Compl. ¶ 17.) Defendants have quoted a specific dollar amount that the mortgage payment will be reduced each month, or promised a mortgage interest rate substantially lower than the rate the consumer is currently paying. (Compl. ¶ 18.) Defendants also say that they are successful in obtaining a restructure or modification of the consumer's mortgage in the majority of cases. (Compl. ¶ 18.) Defendants have stated a specific percentage, such as 98%, success rate in obtaining a loan modification and represent to consumers that they have a working relationship with the consumer's lender. (Compl. ¶ 18.) Defendants tell consumers, many of whom have made timely mortgage payments, that in order to obtain the promised MARS, consumers should stop making mortgage payments to their lenders. (Compl. ¶ 19.) Defendants have also told consumers not to communicate with their lenders during the loan restructure process. (Compl. ¶ 19.) In numerous instances, Defendants tell consumers that if they are unable to obtain the promised loan modification, Defendants will fully refund the fee the consumer paid. (Compl. ¶ 20.)

Defendants send consumers who agree to pay for their services a packet of written materials via email and in some instances regular mail. (Compl. ¶ 21.) Consumers are told they must complete the forms in the packet and return the completed forms with the requested financial documents and the agreed upon fee. (Compl. ¶ 21.) The materials include: (1) a cover letter from an apparently fictitious CEO, Perry Simmons, explaining that Defendants will be providing a loan audit, urging the consumer to return the requested materials so that they can determine if the consumer qualifies for Defendants' loan restructuring services, and advising the consumer that a legal assistant is available to speak with them about their file; and (2) "Clients Rights and Responsibilities," advising the consumer to forward all correspondence from the lender to Defendants and stating that the process in most instances is completed within 135 days after it is assigned to a negotiator; and (3) the "Client Retention Agreement," which states:

This is a written agreement ("Agreement") that California law requires attorneys to have with their clients. The offices of [name of company], a Professional Corporation, (hereinafter referred to as "Attorney" and/or "Firm"), will provide services to [name of consumer] set forth below:

The Firm's responsibility shall be to vigorously protect your property, to resolve the dispute you have with your financial lender, and to conduct a loan compliance audit for you as you have directed or will direct against various financial institutions for violating their legal obligations toward you that you represent is evidenced by documents in your files justifying legal action.

Scope of Representation – Such representation to resolve your case shall be limited to the following:

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- II. Force the lender to adjust the current terms, eliminate or reduce any delinquent or missed payments.
- III. Reduction of current loan balance, reduced rate.
- IV. Loan to be converted to a longer term. Fixed Rate.
- V. Reduction of any current or future interest rate changes.
- VI. Negotiate short sale when necessary.
- VII. Negotiate Deed in Lieu when necessary.

(Compl. ¶ 21.) The materials sent to consumers also include: (1) a "Cease and Desist Letter" advising the lender not to communicate with the consumers pursuant to the Fair Debt Collection Practices Act; (2) a "Qualified Written Request" under Section 6 of the Real Estate Settlement Procedures Act; (3) an Authorization Form permitting Defendants to communicate on the consumer's behalf with the lender; (4) a document checklist for the consumer's financial records; (5) a Making Home Affordable Request application; and (6) a Financial Hardship Package. (Compl. ¶ 22.) The consumer must complete and sign all forms and return the requested financial records and hardship letter along with their payment to the Defendants. (Compl. ¶ 22.)

Defendants require and accept payment of between \$1000 and \$5000 prior to the consumer executing a written agreement with the lender or servicer that incorporates an offer for MARS. (Compl. ¶ 23.) Often, Defendants permit consumers to split the advance payment by sending two checks, one post-dated for the following month. (Compl. ¶ 23.) In some instances, Defendants tell consumers that the fee covers the cost of negotiations with the lender and processing paperwork or closing the new loan, and Defendants tell others that the fee covers legal representation by the Defendants. (Compl. ¶ 23.) The materials sent to consumers also guarantee a "100% refund of service fee" if the consumer does not receive one of the following: "Loan Modification, Forbearance, Reinstatement, Repayment Plan, Loan Restructure, Short Sale Agreement Packaging and Monitoring, Deed in Lieu of Foreclosure, Negotiating the Principal Balance/Delinquent Debt, Prolong the Foreclosure Process, Negotiate lease back from the bank, Negotiate a "Cash For Keys," Postponement of at least ONE Trustee sale," resulting from Defendants' services. (Compl. ¶ 24.)

In numerous instances, Defendants remain in contact with the consumer until the second payment check has cleared the bank. (Compl. ¶ 25.) Thereafter, in numerous instances, when consumers attempt to contact Defendants for status updates, Defendants often fail to answer or return consumers' telephone calls or emails. (Compl. ¶ 25.) When consumers are able to reach Defendants, Defendants typically string the consumer along requiring them to resend documents or telling them that their files are being handled and everything is going smoothly. (Compl. ¶ 25.)

Defendants prevent consumers from contacting them or seeking refunds by changing the name under which they operate approximately every six months. (Compl. ¶ 26.) When they change their business name they also change their website, and in some instances phone numbers and

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mailing addresses. (Compl. ¶ 26.) Defendants have changed their business name at least four times in the past two years without notifying consumers. (Compl. ¶ 26.) Defendants have marketed and sold MARS under the names Family 1st Home Preservations, Legal Educators USA & Co., Stargate Mutual & Associates; Providence Financial Advocates; and currently are using the name Providence Financial Audits. (Compl. ¶ 26.)

After consumers have agreed to work with Defendants and paid the requested advance fees, in numerous instances Defendants have failed to obtain a loan modification, principal reduction, or other promised MARS. (Compl. ¶ 27.) In many instances, when consumers have contacted their lender, they have discovered that Defendants never contacted the lender, or taken any steps to initiate modification proceedings. (Compl. ¶ 27.)

Consumers are unable to obtain refunds when Defendants fail to provide the promised MARS. (Compl. ¶ 28.) Consumers who have paid Defendants' fees have suffered significant economic injury, including paying thousands of dollars to Defendants and receiving little or no service in return; falling behind or further behind on mortgage payments; incurring penalties; and even going into foreclosure. (Compl. ¶ 28.)

On March 31, 2015, Plaintiff filed the instant Application under sininancial 31-.00. (Compl. ¶ 26.)

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powers under the final proviso of § 13(b) and as a result[,] this [c]ourt's inherent equitable powers may be employed to issue a preliminary injunction, including a freeze of assets, during the pendency of an action for permanent injunctive relief.").

The exercise of this broad, equitable authority is particularly appropriate where, as here, the public interest is at stake. See *FTC v. Gem Merchandising Corp.*, 87 F.3d 466, 469 (11th Cir. 1996). When the public interest is implicated, the courts' equitable powers "assume an even broader and more flexible character than when only a private interest is at stake." *Id.* (citations omitted).

In addition, § 19(b) of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant relief as it finds necessary to redress injury to consumers resulting from violations of a trade regulation rule, including the TSR. Congress provides that such relief may include, but should not be limited to, "rescission or reformation of contracts, the refund of money [and] return of property." 15 U.S.C. § 57b(b).

The standard for a TRO is the same as for a preliminary injunction. See *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 & n.7 (9th Cir. 2001). To obtain preliminary injunctive relief, a moving party must typically show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief; (3) that the balance of equities tips in favor of the moving party; and (4) that an injunction is in the public interest.5 TD-.000

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it will take to obtain a loan modification, and by omitting required disclosures. See 12 C.F.R. §§ 1015.3(b)(2), 1015.4, 1015.5(a).

In support of this Regulation O claim, Plaintiff has again provided extensive evidence that Defendants falsely claimed that refunds would be provided if modifications were unsuccessful. (See, e.g., Exs. PX4 152-53, ¶¶ 7-11, 15; PX5 174, ¶ 10; PX6 225, ¶ 15; PX8 325-27, ¶¶ 7-17; PX10 335-36, ¶¶ 6-7; PX11 338-41, ¶¶ 3-20; PX12 392-93, ¶ 7-11.) Plaintiff also provides substantial evidence for Defendants' other alleged violations of Regulation O. The Court finds that the extensive evidence provided is sufficient to demonstrate a likelihood of success on the merits with respect to Plaintiff's Regulation O claim against Defendant Wealth Educators.

2. Defendant Veronica Sesma

Plaintiff argues that Defendant Veronica Sesma is individually liable for the corporate violations of Wealth Educators. To establish individual liability for injunctive relief based on corporate violations of Section 5 of the FTC Act, the FTC must show that the corporate misrepresentations or omissions were "of a kind usually relied upon by a reasonably prudent person, resulting in consumer injury," and that the individual "participated directly in the acts or practices or had authority to control them." *F.T.C. v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1138 n.9 (9th Cir. 2010). When a corporation is small and closely held, an individual's status as an officer, or authority to sign documents, can demonstrate that an individual "had the requisite control over the corporation." *F.T.C. v. Publ'g Clearing House, Inc.*, 104 F.3d 1161, 1170-71.

The standard for individual liability for restitution is similar. The Ninth Circuit has stated:

Individuals are personally liable for restitution for corporate misconduct if they "had knowledge that the corporation or one of its agents engaged in dishonest or fraudulent conduct, that the misrepresentations were the type upon which a reasonable and prudent person would rely, and that consumer injury resulted." The knowledge requirement can be satisfied by showing that the individuals "had actual knowledge of material misrepresentations, [were] recklessly indifferent to the truth or falsity of a misrepresentation, or had an awareness of a high probability of fraud along with an intentional avoidance of the truth."

F.T.C. v. Affordable Media, 179 F.3d 1228, 1234 (9th Cir. 1999) (quoting *Publ'g Clearing House*, 104 F.3d at 1171).

Plaintiff has provided evidence in support of Defendant Sesma's individual liability. This evidence shows that Defendant Sesma is the sole owner and member of Wealth Educators, that she is the signatory on its checking accounts and pays for its telephone and internet services used to market MARS. (See Ex. PX1 2-3, 6, ¶¶ 5, 7, 9-13, 23-24, Att. A 9, Att. C-D 15-44, Att. I 99.) This

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evidence also shows examples of specific communications between Defendant Sesma and Wealth Educators' clients. (See *generally* Exs. PX9, PX11.) The Court finds that the extensive evidence provided is sufficient to demonstrate a likelihood of success on the merits with respect to Plaintiff's Section 5(a) and Regulation O claims against Defendant Veronica Sesma.

C. Balance of Equities

Because the injunction will preclude only harmful, illegal behavior, the public equities supporting the proposed injunctive relief outweigh any burden imposed by such relief on Defendants. "A court of equity is under no duty 'to protect illegitimate profits or advance business which is conducted [illegally].'" *CFTC v. British American Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977) (citations omitted). Having found both the likelihood of success on the merits and balance of equities in favor of Plaintiff, the Court **GRANTS** Plaintiff's request for a temporary restraining order against Defendants Wealth Educators and Veronica Sesma.

D. Asset Freeze

Plaintiff additionally seeks to freeze Defendants' assets due to the danger of asset dissipation and destruction of records. The temporary relief sought here is similar to that ordered in prior actions in this district. See *e.g.*, *FTC v. National Consumer Council*, SACV 04-0474 CJC (C.D. Cal. Apr. 23, 2004) (temporary restraining order freezing assets, appointing receiver, prohibiting destruction or alteration of books and records, granting immediate access and inspection, and order permitting expedited discovery and to show cause why a preliminary injunction should not issue). This Court's authority to freeze assets arises from its inherent equitable power to order consumer redress. *Gem Merchandising*, 87 F.3d at 469; *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, 571-572 (7th Cir.) (in a proceeding under § 13(b), district court has the "power to order any ancillary equitable relief necessary to effectuate" its grant of authority), *cert. denied*, 493 U.S. 954 (1989); *Singer*, 668 F.2d at 1112-1113 (power to grant permanent injunctive relief carries with it authority for ancillary equitable relief); *FTC v. Southwest Sunsites, Inc.*, 665 F.2d 711, 717-719 (5th Cir.) (§ 13(b) permits court to exercise full range of traditional equitable remedies), *cert. denied*, 456 U.S. 973 (1982). Without an order freezing all assets, any subsequent order of disgorgement or redress by this Court could be rendered meaningless. Further, when a government agency is a movant, the mere "possibility" (as opposed to likelihood) of dissipation of assets is sufficient to justify a freeze. *Federal Sav. & Loan Ins. Corp. v. Sahni*, 868 F.2d 1096, 1097 (9th Cir. 1989).

In addition to freezing the corporate assets, courts have frozen *individual* defendants' assets where the individual defendants controlled the deceptive activity and had actual or constructive knowledge of the deceptive nature of the practices in which they were engaged. *Amy Travel Service*, 875 F.2d at 573.

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Plaintiff has provided evidence that Defendant Veronica Sesma has used corporate funds to pay