

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JUDGMENT
AND PERMANENT INJUNCTION
14-CV-122S

FEDERAL CHECK PROCESSING, INC., et al.,

Defendants, and

EMPOWERED RACING LLC

Relief Defendant.

Plaintiff Federal Trade Commission (“FTC”) commenced this civil action on February 24, 2014, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 814(a) of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692(a). On motion by the FTC, on February 24, 2014, this Court entered an *ex parte* temporary restraining order (“TRO”) with asset freeze, appointment of a receiver, and other equitable relief against Defendants Federal Check Processing, Inc., Federal Recoveries, LLC, Federal Processing, Inc., Federal Processing Services, Inc., United Check Processing, Inc., Central Check Processing, Inc., Central Processing Services, Inc., Nationwide Check Processing, Inc., American Check Processing, Inc. (a/k/a American Check Processing, Inc.), State Check Processing, Inc., Check Processing, Inc., US Check Processing, Inc., Flowing Streams, F.S., Inc., Mark Briandi, and William Moses, and Relief Defendant Empowered Racing LLC. On March 5, 2014, this Court extended the TRO until March 20, 2014. On March

17, this Court extended the TRO until March 24, 2014. On March 24, 2014, this Court entered a Stipulated Preliminary Injunction against the Defendants.

On August 26, 2015, the FTC moved for summary judgment pursuant to Federal

FINDINGS

The Court finds:

1. This is an action by the FTC instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a). The Complaint seeks both permanent injunctive relief and equitable monetary relief for the Defendants' alleged deceptive acts or practices as alleged therein.
2. The FTC has the authority under Sections 13(b) of the FTC Act, and Section 814 of the FDCPA, to seek the relief it has requested, and the Complaint states a claim upon which relief can be granted against Defendants.
3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over each Defendant pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), and 1692l.
4. Venue in the Western District of New York is proper 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).
5. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce, and the FDCPA, 15 U.S.C. § 1692-1692p, which prohibits abusive, deceptive and unfair collection practices. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the FDCPA, and to secure such equitable relief as may be appropriate in each case, including

acts and practices of the Corporate Defendants.

constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act,
15 U.S.C. § 45(a).

other conduct in order to disgrace the consumer; (f) using a false representation or deceptive means to collect or attempt to collect a debt, or to obtain information concerning a consumer; and (g) failing to disclose in the initial communication with a consumer that Defendants are debt collectors attempting to collect a debt and that any information obtained will be used for that purpose, in violation of Sections 807(1-2, 4-5, 7, 10-11) of the FDCPA, 15 U.S.C. § 1692e(1-2, 4-5, 7, 10-11).

15. On numerous occasions, in connection with the collection of debts, Defendants have communicated with third parties for purposes other than acquiring location information about a consumer, without having obtained directly the prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a post judgment judicial remedy, in violation of Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b).
16. In numerous instances, in connection with the collection of debts, Defendants have failed to provide consumers, either in the initial communication with a consumer or in a written notice sent within five days after the initial communication, with statutorily-required information about the debt and the right to dispute the debt in violation of Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a).
17. The Relief Defendant, Empowered Racing, has received, directly or indirectly, funds and other assets from Defendants in the amount of \$92,000 that are

of this Order in connection with the provision of debt collection products or services; and (d) provides such other ancillary relief as is necessary to assist the FTC and the Court in monitoring Defendants' compliance with such a permanent injunction.

23. Defendants have received at least \$10,852,396 that was derived unlawfully from payments by consumers as a direct result of Defendants' violations of Section 5(a) of the FTC Act and the FDCPA.
24. It is proper in this case to enter a monetary judgment in the amount of \$10,852,396 against Defendants, jointly and severally, as equitable monetary relief in the form of restitution, rescission of contracts, and disgorgement for their violations of Section 5 of the FTC Act and the FDCPA.
25. Because these funds were fraudulently derived, Defendants did not acquire good title to these funds. Accordingly, Defendants held those funds in constructive trust on behalf of the injured consumers.
26. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies that may be provided by law, including both civil and criminal remedies.
27. Pursuant to Federal Rule of Civil Procedure 65(d) the provisions of this Order are binding upon each Defendant, their successors and assigns, and their officers, agents, employees, and attorneys, and upon those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.
28. Entry of this Order is in the public interest.

DEFINITIONS

1. **“Corporate Defendants”** means Federal Check Processing, Inc. (a New York corporation), Federal Recoveries, LLC (a New York limited liability company), Federal Processing, Inc. (a New York corporation), Federal Processing Services, Inc., (a New York corporation), United Check Processing, Inc. (a New York corporation), Central Check Processing, Inc. (a New York corporation), Central Processing Services, Inc. (a New York Corporation), Nationwide Check Processing, Inc., a/k/a National Processing Services (a Colorado Corporation),

4. **“Debt collection activities”** means any activities of a debt collector to collect or attempt to collect, directly or indirectly, a debt owed or due, or asserted to be owed or due, another.
5. **“Debt collector”** means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term also includes any creditor who, in the process of collecting its own debts, uses any name other than its own which would indicate that a third person is collecting or attempting to collect such debts. The term also includes any person to the extent such person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt.
6. **“Defendants”** means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination, and each of them by whatever names each might be known.
7. **“Financial-related product or service”** means any product, service, plan, or program represented, expressly or by implication, to:
 - A. provide to any consumer, arrange for any consumer to receive, or assist any consumer in receiving, an extension of consumer credit;
 - B. provide to any consumer, arrange for any consumer to receive, or assist any consumer in receiving, credit repair services;

- C. provide to any consumer, arrange for any consumer to receive, or assist any consumer in receiving, any secured or unsecured debt relief product or service;

8.

or deed of foreclosure sale for a person's dwelling, any other sale of collateral, any repossession of a person's dwelling or other collateral, or otherwise save a person's dwelling or other collateral from foreclosure or repossession; (C) obtain any forbearance or modification in the timing of payments from any secured or unsecured holder of any mortgage, loan, debt, or obligation; (D) negotiate, obtain, or arrange any extension of the period of time within which the person may (i) cure his or her default on the mortgage, loan, debt, or obligation, (ii) reinstate his or her mortgage, loan, debt, or obligation, (iii) redeem a dwelling or other collateral, or (iv) exercise any right to reinstate the mortgage, loan, debt, or obligation or redeem a dwelling or other collateral; (E) obtain any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling or other c

ORDER

BAN ON DEBT COLLECTION ACTIVITIES

- I. IT IS THEREFORE ORDERED** that the Defendants, whether acting directly or through an intermediary, are permanently restrained and enjoined from:
- A. Participating in debt collection activities; and
 - B. Advertising, marketing, promoting, offering for sale, selling, or buying, any consumer or commercial debt or any consumer information relating to a debt.

**PROHIBITED MISREPRESENTATIONS RELATING TO FINANCIAL
RELATED PRODUCTS OR SERVICES**

- II. IT IS FURTHER ORDERED** that the Defendants and their officers, agents, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any financial-related product or service, are hereby permanently restrained and enjoined from:
- A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:
 - 1. The terms or rates that are available for any loan or other extension of credit;
 - 2. Any person's ability to improve or otherwise affect a consumer's credit record, credit history, or credit rating or ability to obtain credit;

C. Failing to destroy such consumer information in all forms in their

Relief Defendant is ordered to pay to the FTC \$92,000. Such payment must be made within fifteen (15) business days of entry of this Order by electronic fund transfer in accordance with the instructions provided by a representative of the FTC. The monetary judgment set forth in this Section IV is enforceable against any asset owned jointly by, on behalf of, for the benefit of, or in trust by or for, the Relief Defendant, whether held as tenants in common, joint tenants with or without the right of survivorship, tenants by the entirety, and/or community property.

- C. All funds paid pursuant to this Order shall be deposited into a fund administered by the FTC or its agents to be used for equitable relief, including, but not limited to, consumer redress, any attendant expenses for the administration of redress, and to satisfy any Court authorized payments to the Permanent Receiver. In the event that direct redress to consumers is wholly or partially impracticable, or funds remain after redress is completed, the FTC may apply any remaining funds for such

- D. Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.
- E. The judgment entered pursuant to this Section is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment, or forfeiture.
- F. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to the FTC their taxpayer identifying numbers and/or social security numbers, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of this Order.
- G. Pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any Defendant to the FTC, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

TURNOVER OF FROZEN ASSETS

V. IT IS FURTHER ORDERED that:

- A. In partial satisfaction of the monetary judgment against Defendants set forth in Section IV of this Order, any financial or brokerage institution, escrow agent, title company, commodity trading company, business entity, or person, whether located within the United States or outside the United

States, that holds, controls or maintains accounts or assets of, on behalf of, or for the benefit of, any Defendant shall turn over such account or asset to the FTC within five (5) business days of receiving notice of this Order by any means, including but not limited to via facsimile. In particular:

1. All financial institutions holding accounts in the name of, or for the benefit of, any Receivership Entity within ten (10) business days from receipt of a copy of this Order, transfer to the Receiver or his designated agent all funds, if any, in such accounts, including, but not limited to:

a. Key Bank, N.A., shall, within ten (10) business days from receipt of a copy of this Order, transfer to the Receiver or his designated agent all funds held in account number xxxxxxxx in the name of William J. Brown, as Receiver for Federal Recoveries LLC;

b. ~~First Citizens Bank, N.A. shall, within ten (10) business days of receipt of a copy of this Order, transfer to the Receiver or his designated agent all funds held in account number xxxxxxxx in the name of William J. Brown, as Receiver for Federal Recoveries LLC;~~

Check Processing Inc. These funds shall be considered assets of the receivership estate.

2. RBS Citizens Bank, N.A., shall, within ten (10) business days from receipt of a copy of this Order, transfer to the FTC or its

- C. In order to partially satisfy the monetary judgment set forth in Section IV of this Order, Defendant William Moses shall, within ten (10) business days from receipt of a copy of this order, surrender to the Receiver in the manner the Receiver reasonably requests title to the following vehicles listed on the March 20, 2014 financial statement that Defendant Moses provided to the FTC: (i) the 2011 Chevrolet Camaro; (ii) the 2013 Toyota Tundra; and (iii) the Motorcycle listed as having an acquisition cost of \$8500 and a current value of \$5000. The vehicles shall be considered assets of the receivership estate.
- D. In order partially to satisfy the monetary judgment set forth in Section IV of this Order, each Defendant shall provide an accounting of, and turn over to the FTC, within fifteen (15) business days following the entry of this Order, up to the amount of the monetary judgment, all assets, real and personal, where ever located within the United States held either: (a) by such Defendant, (b) for such Defendant's benefit, or (c) under such Defendant's direct or indirect control, jointly or singly, including, but not limited to, all assets placed in trust by, for, for the benefit of, on account of, or on behalf of any Defendant.
- E. Defendants shall cooperate with the Receiver in the preparation and completion of any tax returns for the Receivership Entities which the Receiver may file.

CONTINUATION OF RECEIVER

VI. IT IS FURTHER ORDERED that William J. Brown shall continue as a permanent receiver over the Receivership Defendants with full powers of a permanent receiver, including but not limited to those powers set forth in the Stipulated Preliminary Injunction entered by the Court in this matter on March 24, 2014, and including full liquidation powers. The Receiver is directed to wind up the Receivership Defendants and liquidate all assets within 120 days after entry of this Order, but any party or the Receiver may request that the Court extend the

dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defendant must report any change in:
 - (a) name, including aliases or fictitious name, or residence address;

DC 20580. The sub

COMPLIANCE MONITORING

X. IT IS FURTHER ORDERED that, for the purpose of monitoring the Defendants'

limits the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

- D. Upon written request from a representative of the FTC, any consumer reporting agency must furnish consumer reports concerning the Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

ENTRY OF JUDGMENT

- XI. IT IS FURTHER ORDERED** that there is no just reason for delay of entry of this judgment, and that, pursuant to Federal Rule of Civil Procedure 54(b), the Clerk immediately shall enter this Order as a final judgment as to defendants Federal

RETENTION OF JURISDICTION

XII. IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED, this 12th day of October, 2016.

/s/William M. Skretny
William M. Skretny
United States District Judge

