

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2), (c)(1), (c)(2), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 458. The FTC enforces 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.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).

DEFENDANTS

6. Defendant RCG Advances, LLC ("RCG"), formerly known as Richmond Capital Group LLC and also doing business as Veroy Capital Funding and Ram Capital Funding, is a New York limited liability company. RCG lists its address as 111 John Street Suite 1210, New York, NY 10038. RCG transacts or has transacted business in this District and throughout the United States. At times material to this Complaint, acting alone or in concert with others, RCG has advertised, marketed, offered, or distributed financing to businesses throughout the United States.

District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

COMMON ENTERPRISE

11. Defendants RCG and Ram (collectively, “Corporate Defendants”) have operated as a common enterprise while engaging in the unlawful acts and practices alleged below. Corporate Defendants have conducted the business practices described below using common officers, managers, business functions, employees, and office locations, and managed funds. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Giardina, Braun, and Reich have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

COMMERCE

12. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

Overview

13.

14. Defendants purport to provide immediate funds in a specific amount in exchange for consumers' agreement to repay a higher amount from future business revenues. The repayment amount is remitted over time through daily debits from consumers' bank accounts.

15. In advertising their financing products to consumers, Defendants falsely claim that their financing products do not feature a personal guaranty or upfront costs. In addition, Defendants promise consumers a specific amount of financing, but provide a much smaller amount. Defendants also engage in unfair collection practices, including, in some instances, by filing confessions of judgment against consumers in circumstances not permitted by their financing agreements and threatening physical violence, and unauthorized debits from consumers' accounts.

Defendants' Misrepresentations Regarding Their Financing Products

16. Defendants advertise their financing products on the Internet. On their website Defendants claim that their financing product requires "no personal guaranty of collateral from business owners."

17. In reality, Defendants' financing contracts do include "personal guaranty" that consumers must agree to:

Personal Guaranty of Performance The undersigned Guarantor(s) hereby guarantees to RCG, Merchant's good faith, truthfulness and performance of all of the representations, warranties, covenants made by Merchant in the Merchant Agreement in Sections thereof 2.3, 2.5, 2.6, 2.9, 2.10, 2.11, 2.12, 2.13 and 2.14, as each agreement may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations"). Guarantor's obligations are due at the time of any breach by Merchant of any representation, warranty, or covenant made by Merchant in the Agreement.

18. In previous versions of their contracts, Defendants included the following provision:

Personal Guaranty. In the event of a Default under Sections 2.3, 2.5, 2.6, 2.9, 2.10,

2.11, 2.12, 2.13, and 2.14 hereof, should RCG determine that the Purchase Amount cannot be obtained from the Merchant's business, RCG will enforce its rights against the

Defendants' Collections Practices

21. In order to obtain funding, Defendants require businesses and their owners to confess judgment to the full amount owed under the contract, so that Defendants can immediately proceed to court to collect a purportedly owed judgement. At the same time, Defendants' contracts provide that Defendants will not hold consumers in breach if payments are

24. In other instances, Defendants filed confessions of judgment against consumers who did not breach relevant provisions of Defendants' financing agreements, including one consumer who was still continuing to make daily payments to Defendants.

25. Because Defendants' confessions of judgment require both the business entity and the individual owner to confess judgment to the entire repayment amount upon filing the confession of judgment in court, Defendants in many instances are able to seize consumers' business and personal assets. Consumers do not expect to face a confession of judgment filing because, in a number of instances, consumers have not breached the relevant provisions in the financing agreement or were promised that they would not be held in breach if they could not pay due to a slowdown in business revenues. Numerous consumers report being financially devastated by Defendants' confession of judgment filings.

26. Defendants also make threatening collection calls to consumers, frequently using obscene or profane language to induce them to continue making payments. For example, Defendants have threatened violence or other criminal means to harm the physical person, reputation, or property of the consumer or third parties if they do not continue making their daily payments. Defendants' representatives told one consumer they were going to "break his jaw" if he did not make the required payments, and told another consumer they would "come down there and beat the s**t out of you." Defendants threatened another consumer that if he did not pay, they would ruin his reputation by falsely accusing him of being a child molester.

27. Defendants' threats caused or likely caused consumers to fear for their physical safety and forego important contractual and legal rights, including the right to have their payments reduced or reconciled, and induced the payment of a disputed payment obligation.

Defendants' Unauthorized Withdrawals

28. Defendants make unauthorized withdrawals from consumers' accounts. For example, although Defendants' contracts state that they will debit the specific daily amount once on each business day, Defendants in many instances make two withdrawals from consumers' accounts on a single day following a banking day. Consumers do not authorize these additional payments, do not expect to have their accounts debited twice in one day, and often face financial hardships and overdrawn accounts as a result. When consumers complain about the unauthorized debits, Defendants in many instances do not refund the additional amounts withdrawn.

29. Based on the facts and violations of law alleged in this Complaint, the FTC has reason to believe that Defendants are violating or are about to violate laws enforced by the Commission

VIOLATIONS OF THE FTC ACT

30. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

31. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

32. Acts or practices are unfair under Section 5 of the FTC Act if they cause likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. §45(n).

Count I

that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

38. Therefore, Defendants' acts or practices as set forth in Paragraph 36 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), (n).

Count III

Unfair Collection Threats

39. In numerous instances, Defendants ~~unlawfully~~ seek to induce consumers to make payments, including by threatening to use violence or ~~other~~ unlawful or criminal means to harm the physical person, reputation, or property of the consumer or third parties ~~to~~ or consumers' businesses.

40. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

41. Therefore, Defendants' acts or practices as set forth in Paragraph 39 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), (n).

Count IV

Unauthorized Withdrawals

42. In numerous instances, Defendants ~~withdrew~~ funds from consumers' bank accounts without the express informed consent of those consumers.

43. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

44.

B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of monies, and

C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

ALDEN F. ABBOTT
General Counsel

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