No. 12-12811-AA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FEDERAL TRADE COMMISSION, Plaintiff/Appellee,

v.

RANDALL L. LESHIN, et. al., Defendants/Appellants

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF OF PLAINTIFF/APPELLEE FEDERAL TRADE COMMISSION

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September 27, 2012

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 11th Cir. Rule 26.1-1, Appellee the Federal Trade Commission certifies that the list of persons and entities with an interest in this case supplied in the Appellants' initial brief, filed on August 3, 2012, appears to be complete to the best of our knowledge.

STATEMENT REGARDING ORAL ARGUMENT

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OTHER AUTHORITIES

(*) Asterisks denote sources upon which Appellee the Federal Trade Commission chiefly relies. 11th Cir. R. 28-1(e).

JURISDICTIONAL STATEMENT

The district court's jurisdiction derives from 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b) and 6105(b). The district court entered its final order on April 24, 2012, and the notice of appeal was filed on May 22, 2012. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

ISSUES PRESENTED FOR REVIEW

1. Whether the district court properly exercised its discretion to enter a money judgment, in the amount of the unpaid balance of the monetary civil contempt sanction, that can be enforced using traditional legal remedies.

2. Whether the contempt defendants are entitled to relitigate issues that the district court and this Court have already resolved, such as the proper measure of relief to compensate consumers harmed by their contumacious conduct, or their lack of entitlement to a jury trial.

STATEMENT OF THE CASE

This appeal emerges from the same civil law enforcement action as the district court orders that this Court reviewed in *FTC v. Leshin*, 618 F.3d 1221 (11th Cir. 2010) ("*Leshin I*"). This Court affirmed the district court's ruling that the appellants (referred to as the "contempt defendants") had violated a Stipulated Injunction. This Court also affirmed the district court's imposition of a

compensatory civil contempt sanction, requiring the contempt defendants to disgorge the amount of funds that they wrongly collected from consumers by means of their violations of the injunction.

The contempt defendants failed to make any payment toward the $594,987.90 that the district court had required them to disgorge in the orders that this Court affirmed in *Leshin I*. After the FTC discovered that the contempt defendants indeed had assets to turn over, the district court entered a coercive contempt order, commanding that they be taken into custody and incarcerated unless they turned over specific assets. To avoid incarceration, they remitted $92,761.00 – less than 16 percent of the total they owed – in March 2011. On February 16, 2012, the district court issued an order – referred to as the "Money Judgment Order" [D.E. 602] – entering a money judgment against the contempt defendants in the amount of the unpaid balance of the civil contempt sanction ($502,316.90, plus interest) for violating the Stipulated Injunction. The contempt defendants seek review of the Money Judgment Order, as well as the district court's subsequent order denying their motion to amend the judgment, in the present appeal.

STATEMENT OF FACTS

1. In 2006, the Federal Trade Commission ("FTC" or "Commission") brought a civil law enforcement action charging that attorney Randall L. Leshin, Charles Ferdon, and two corporate entities owned by Leshin, had engaged in unfair and deceptive practices, in violation of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 41 *et seq.*, and abusive telemarketing, in violation of the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310, in the course of their "debt consolidation" business. The Commission's complaint alleged that the defendants had blasted out millions of unlawful pre-recorded phone calls to solicit debt consolidation contracts; had secured tens of thousands of contracts based on misleading and deceptive representations about their fees, terms and conditions; and had falsely held themselves out as complying with applicable state consumer protection requirements. *See Leshin I*, 618 F.3d at 1227-28.

The FTC and the defendants agreed to resolve the litigation through a consent decree. The district court entered this agreed-upon order on May 5, 2008 [D.E. 320] ("Stipulated Injunction"), requiring the defendants – as well as an additional affiliated entity known as the Debt Management Counseling Center, Inc. ("DMCCI") – to stop making false representations, charging excessive fees, and engaging in other unlawful practices; to pay for a court-appointed monitor to

oversee their finances and notify consumers of their rights to cancel their debt management contracts or transfer them to alternative providers; to cease collecting fees from consumers who opted to cancel; to cease servicing contracts in states where they were not qualified to do business; and to pay over $40 million for redress to consumers harmed by their illegal practices. The district court subsequently conducted evidentiary hearings, and issued an order resolving certain disputed issues that had arisen concerning the scope of the Stipulated Injunction on

addresses of 2,912 individual consumers entitled to refunds in nine states and specifying the amount due to each one). The district court reiterated its admonition that the contempt defendants' failure to make the required payment in a timely manner could lead to coercive contempt sanctions. *See* Disgorgement Order at 2 (¶ 1). "After disgorgement and any attendant contempt enforcement are

arguments in turn and reject[ed] them all." In particular, this Court concluded that the consumers did, indeed, suffer financial injuries that were properly assessed based on the total amount of fees they paid, and that "the district court did not abuse its discretion by requiring the contempt defendants to disgorge all fees collected on contracts procured in violation of the injunction." *Id*. The Court reasoned as follows:

> Despite the contempt defendants' contention that no consumers were injured by their contumacious activity, consumers entered into contracts based on the misrepresentation that the defendants had the legal authority to conduct business. As a part of these contracts, consumers paid fees that they would not otherwise have paid . . . Ordering disgorgement of all fees collected serves to restore the consumer who would not otherwise have paid the fees or contracted for these services if the consumer had known the contempt defendants were not in compliance with state law. But for the contempt defendants' violation of the injunction, they would not have collected fees from the consumers[.]

Id. at 1237-38.

The Court further rejected the contempt defendants' characterization of the sanction imposed by the district court as "punitive or criminal contempt sanctions" and their assertion that "the district court violated their right to due process[.]" *Id.* at 1238. Rather, the Court held, the requirement that the contempt defendants pay out all fees they collected "is remedial in nature" because it "attempts to restore the status quo before the contempt defendants, in violation of the injunction, represented to consumers that they could lawfully enter into contracts in certain

states. Moreover, the contempt sanctions are civil in nature because the sanctions were imposed to compensate consumers for the losses they sustained." *Id.* at 1239. The Court concluded that the contempt defendants thus received all the due process protections to which they were entitled: "notice and an opportunity to be heard." *Id.*

Finally, the Court declined to address the contempt defendants' challenge to the district court's statement concerning the possible conversion of the contempt defendants' monetary obligations to a money judgment, finding that the issue was not ripe for review. *Id.*

3. The contempt defendants failed to pay any portion of the judgment by the date specified in the Disgorgement Order. The Commission conducted asset discovery and identified specific amounts that the contempt defendants held in various banks and other financial institutions. It moved for a coercive contempt order compelling them to turn over those assets promptly. The district court assessed the evidence and determined that the contempt defendants – already in contempt of the 2008 Stipulated Injunction – were in contempt again, this time violating the 2010 Disgorgement Order. *See* Report and Recommendations at 25-26 [D.E. 557] (February 15, 2011); Order Affirming Magistrate Judge's Report at 2 [D.E. 563] (March 8, 2011) ("Coercive Contempt Order") (adopting findings

and conclusions recommended by magistrate judge). The court found that the contempt defendants had not made a good-faith effort to comply with the Disgorgement Order, *see*

Thus, the district court ordered that, unless the contempt defendants turned over $92,761.00 held in specific accounts identified by the FTC within 10 days, they would be taken into custody and incarcerated – and would remain incarcerated until turning over those assets. Coercive Contempt Order at 4-5.

The contempt defendants turned over $92,761.00 – less than 16 percent of the total amount they owed – to the FTC within the 10-day period set forth in the Coercive Contempt Order.[1] The district court found that, by doing so, the "Contempt Defendants complied with the Court's March 8, 2011 [Coercive Contempt] Order and have purged themselves of the finding of civil contempt set forth therein." Order on Motion for Order Determining Compliance at 3 [D.E. 587] (April 26, 2011) ("Coercive Contempt Compliance Order").

The district court, however, never vacated, amended, or modified the original Contempt Ruling and Disgorgement Order that this Court affirmed in *Leshin I*. Nor did the court state that the contempt defendants were purged or relieved of their remaining monetary obligations. To the contrary, the district court made it clear that the contempt defendants were still obligated to pay the remaining balance of the compensatory contempt sanction, reiterating that "the FTC may

[1] The Commission used these funds to distribute partial redress payments to customers identified in the Monitor's report.

apply to convert to a money judgment any unpaid balances of the disgorgement amount of $594,987.90, plus interest[.]" Coercive Contempt Order at 5.

The contempt defendants made no further payments, and on September 7, 2011, the Commission moved to convert the unpaid balance of the compensatory civil contempt sanction ($502,316.90, plus interest) into a money judgmentCongCommwMa51 4

to pay the amount necessary to redress the financial harms that they caused to consumers; they owed precisely the same amount before and after the district court adopted the Money Judgment Order. That order merely changed the mechanism by which the FTC could obtain satisfaction of the contempt defendants' preexisting financial obligation. (*See infra*, Part I.A.)

The contempt defendants wrongly argue that, by showing their inability to pay the full amount of the civil contempt sanction, they "purged" themselves of any further obligations under the district court's original contempt orders. But the district court specifically rejected their claim of inability to pay, and made clear that they are still required to satisfy the remaining unpaid balance. Moreover, inability to pay is a defense to *coercive* civil contempt sanctions, but not to *compensatory* sanctions. The contempt defendants can purge their contempt of the Stipulated Injunction only by making a full payment to satisfy the original judgment, and thereby remedy the injuries they caused to consumers. (*See infra*, Part I.C.)

Principles of *res judicata* and the "law of the case" doctrine foreclose the

sanctions may be imposed upon notice and an opportunity to be heard, with no jury trial – and given this Court's ruling in *Leshin I* that the district court accorded them ample due process before imposing the redress payment obligation that, in substance, is identical to the "money judgment" at issue here. (*See infra*, Part II.)

STANDARD OF REVIEW

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ARGUMENT

I. The District Court Properly Exercised its Discretion to Enter a Money Judgment in the Amount of the Unpaid Portion of the Compensatory Civil Contempt Sanction.

A. The Money Judgment Order Did Not Change the Contempt Defendants' Financial Obligations, and is Not a "New" Remedy or "Different" from the Original Compensatory Sanction.

The contempt defendants' challenge to the Money Judgment Order rests on the premise that, by entering a "money judgment," the district court improperly

paid to date. After issuance of the Money Judgment Order they are still obligated to pay precisely the same amount.[2]

In determining whether contempt orders are "correct as a matter of federal law[,] . . . . the labels affixed either to the proceeding or to the relief imposed . . .

B. Entry of a Money Judgment and Issuance of a Writ of Execution Are Lawful and Well-Precedented Means for Enforcing Recalcitrant Defendants' Duty to Pay a Compensatory Remedy.

Not only was it proper for the district court to recharacterize the sanction as a "money judgment" rather than an "order of disgorgement;" the nature of the relief in this case could have been "properly characterized as a money judgment" all along. *Combs v. Ryan's Coal Co.*, 785 F.2d 970, 980 (11th Cir. 1986). The district court's original Disgorgement Order "made an award of money" that the contempt defendants were to pay to the FTC; "[t]he amount owed was not contingent, nor was the obligation to pay conditioned on whether [defendants] purged themselves of contempt." *Id.* This Circuit has long held that, when defendants "fail[] to fulfill the obligations of the consent decree" requiring payment of a fixed sum, the district court's proper course is to "simply enter[] a final civil judgment determining the current obligations of the [defendants] to the [plaintiff]" and "ordering payment in full of the amount due under the decree[.]" *Id* at 976, 980. This is precisely what the district court did in the Money Judgment Order. *Accord, SEC v. Brennan*

subsequent motion for coercive contempt sanctions to compel defendant's compliance was "part of an effort by the SEC to enforce a money judgment").

The Federal Rules provide that a "money judgment is enforced by a writ of execution, unless the court directs otherwise." Fed. R. Civ. P. 69(a)(1). The exception allowing enforcement through means other than a writ of execution, such as "through the imposition of a contempt sanction," is typically invoked "only [in] cases in which established principles warrant [such forms of] relief, such as when execution would be an inadequate remedy" or other "exceptional circumstances." 13

Contempt Order [D.E. 563]; *see also, e.g.*, *SEC v. Solow*, 682 F. Supp. 2d 1312, 1325-26 (S.D. Fla. 2010). However, the fact that courts *may* enforce payment

The completion of the district court's coercive contempt proceeding without achieving full payment of the original compensatory sanction does not relieve the contempt defendants of their preexisting liability to pay. "The contempt proceeding . . . does not settle or compromise the beneficiary of this sanction from pursuing execution of the award by civil process." *Piambino v. Bestline Products, Inc.*, 645 F. Supp. 1210, 1217 (S.D. Fla. 1986). In *Piambino*, the two contempt defendants were liable to make payments totaling $1 million, pursuant to a previous decision of the Court of Appeals; but they dissipated the assets that might have been available to satisfy that judgment, so that by the time the district court held contempt proceedings on remand, they were adjudged to have the ability to pay only $125,000 and $15,000, respectively. *Id.* at 1215-16. The court held that their payment of these amounts would "discharge them of contempt and end these [coercive] contempt proceedings," but would not extinguish their liability for the preexisting award. *Id.* at 1217. To the contrary, the court recognized that, in the event the contempt defendants might "later [be] found able to provide additional reimbursement," further contempt proceedings would not be held, but "[o]f course, the Plaintiff-Intervenor may attempt to execute a valid judgment entered by this

Court for the remainder due."[4] *Id.* The same is true here, as the district court recognized in the Money Judgment Order.

By recharacterizing the contempt defendants' financial obligation as a "money judgment," the district court did not alter the substance of the sanction in any way, but it properly strengthened the Commission's ability to collect the judgment on behalf of injured consumers.[5] Some courts have held that traditional

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[4] *Piambino* thus stands for precisely the opposite of the proposition for which the contempt defendants cite it. Br. at 16. To be sure, "contempt [proceedings] must come to an end;" but this has no bearing on the defendants' liability to pay the underlying judgment, or on the availability of alternative means to enforce it, such as "a money judgment through ordinary civil process." *Id.* The appellants

legal remedies such as writs of execution, garnishment, levies or attachment of specific assets, and the like (*see* Fed. R. Civ. P. 64(b)) are inapplicable in the context of enforcing equitable "orders of disgorgement" in cases involving statutory violations. *See, e.g., SEC v. Huffman*, 996 F.2d 800, 802-03 (5th Cir. 1993) ("disgorgement orders in the context of a securities violation" are not "debts" that are subject to conventional collection mechanisms under the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001 *et seq.*); *Pierce v. Vision Investments, Inc.*

required[.]" Br. at 25. They attempt to buttress this assertion by mischaracterizing the district court's ruling in the Coercive Contempt Compliance Order [D.E. 587] as having "purged all contempt." *Id.* at 26. Not so. The contempt defendants violated *two* orders: first, they violated the Stipulated Injunction; and later, they violated the Disgorgement Order. In the Coercive Contempt Compliance Order, the district court addressed only the second of these contempt rulings, and found that the contempt defendants had purged only their potential liability for coercive contempt sanctions by turning over $92,761.00 in specified assets within 10 days of the entry of the Coercive Contempt Order [D.E. 563], thus averting the threat of incarceration. The district court never ruled that they purged their obligation under the original contempt ruling to pay the remaining balance of the compensatory sanction for their violations of the Stipulated Injunction. To the contrary, the district court explicitly confirmed the contempt defendants' continuing obligation to make the full payment adopted in the Disgorgement Order, by ruling, "it is further… ORDERED AND ADJUDGED that the FTC may apply to convert to a money judgment any unpaid balances of the disgorgement amount." Coercive Contempt Order at 5.

The contempt defendants misleadingly attempt to conflate the *compensatory* civil contempt sanction imposed in 2010 with the *coercive* civil contempt sanction imposed in 2011. But the two remedies are fundamentally different:

> Civil contempt divides into two general classes: coercive and compensatory. Both classes benefit the injured litigant, but in different ways. Coercive civil contempt is intended to make the recalcitrant party comply. Compensatory civil contempt reimburses the injured party for the losses and expenses incurred because of his adversary's non-compliance.

Norman Bridge Drug Co. v. Banner, 529 F.2d 822, 827 (5th Cir. 1976). "A party held only in civil contempt by way of compensation to his adversary will be absolved of liability [only] if the court order was invalid or erroneous," *id.* at 828; and where the order was "validly entered," the injured parties "were entitled to the benefit of the order . . . . [and the] compensatory fine cannot be reversed." *Id.*

Thus, the contempt defendants are not entitled to an opportunity to "purge" the monetary obligation at issue here. Where "civil contemnor[s] [are] required to pay a specific sum, not as a sanction to assure further compliance, but as compensation to or offset of damages of the adversary because of a past dereliction[,]" the only way they can "purge themselves of contempt [is by] pay[ing] the damages caused by their violations of the decree." *Clark v. Boynton*, 362 F.2d 992, 998 (5th Cir. 1966) (quoting *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193-94 (1947)). *See also Int'l Union, United Mine Workers of*

Am. v. Bagwell, 512 U.S. 821, 829 (1994) ("contemnor [must be] afforded an opportunity to purge" *only* "where [the] fine is not compensatory" but is intended to "coerce[] the defendant into compliance with the court's order").

The contempt defendants further assert that the district court's entry of the Money Judgment Order effectively "deprives [them] of their legal right to assert their ability to pay defense." Br. at 7-8; *see also id.* at 31-34. But they have no such defense to a *compensatory*

Even if their ability to pay were relevant, the contempt defendants are wrong in contending that they have already demonstrated their inability to pay. Br. at 25. To the contrary, the district court specifically determined that the contempt defendants *failed* to satisfy their burden of demonstrating that that they were unable to comply with the Disgorgement Order. *See* Report and Recommendation [D.E. 557] at 40; Coercive Contempt Order at 2 (confirming magistrate judge's findings). The district court's decision in the Coercive Contempt Order to apply a coercive sanction only to compel the contempt defendants to turn over $92,761.00 (substantially less than the total amount they owed) was an exercise of its discretion to deal with a portion of defendants' liability – to be satisfied from specifically identified assets – while leaving the remainder of the liability to be dealt with later. Other courts have taken similarly measured steps in like circumstances. *See, e.g., CFTC v. Wellington Precious Metals, Inc.*, 950 F.2d 1525 (11th Cir. 1992) (affirming district court civil contempt order maintaining defendant's conditional incarceration unless he paid $144,155.35 – just five percent of the total $2.8 million due under the earlier dal*-.00,k 2I tht to be

Moreover, even if the contempt defendants had demonstrated an inability to pay in 2011, during the period of time when the FTC moved for, and the court granted, the Coercive Contempt Order, that would not permanently free them from their continuing obligation to pay the compensatory sanction. "[T]the law is clear that this [inability to pay] defense is to be measured at the time of the contempt proceedings." *Piambino v. Bestline Products*, 645 F. Supp. at 1215 (citing *United States v. Rylander*, 460 U.S. 752, 757 (1983)). If the contempt defendants subsequently obtain the ability to comply with the original judgment, there is nothing to preclude the Commission from seeking to enforce it. *Id.* at 1217; *cf. SEC v. Yun*, 208 F. Supp. 2d 1279, 1284 (M.D. Fla. 2002) ("it is clear from Yun's zealous efforts to exhaust her assets… that, while Yun has a present financial inability to pay the judgment against her, that inability might not last long").[6]

Indeed, it would have been unfair if the court had excused the contempt defendants from their obligation to pay consumer redress on the basis of their

[6] Contempt defendants colorfully argue that "everything Defendants had the ability to pay, as determined by the Court, has already been paid. A money judgment would just be kicking a dead horse, punishing the Defendants for decades to come, based on future income, particularly since the Court already knows Defendants have been rendered insolvent by virtue of the original settlement and subsequent disgorgement in this case." Br. at 21-22. But as discussed above, the sanction in this case is intended not to punish the contempt defendants, but to compensate their victims. The contempt defendants are obviously capable and intelligent people, and nothing in the court's orders precludes them from making an honest living.

inability to pay at a particular point in time. "If complainant [here, the Commission, on consumers' behalf] makes a showing that respondent has disobeyed a decree in complainant's favor and that damages have resulted to complainant thereby, complainant is *entitled as of right* to an order in civil contempt imposing a compensatory fine. . . . An order imposing a compensatory fine in a civil contempt proceeding is thus somewhat analogous to a tort judgment for damages caused by wrongful conduct." *Parker v. United States*, 153 F.2d 66, 70 (1st Cir. 1946) (emphasis added) (citing *Union Tool Co. v. Wilson*, 259 U.S. 107, 112 (1922)); *accord*, *McComb v. Jacksonville Paper Co.*, 336 U.S. at 191. To the extent an injured party seeks "remedial, as distinguished from punitive action, the District Court [would] not [be] justified in purging the [defendant] of contempt arising from" defendant's violations of an injunction. *Union Tool Co.*, 259 U.S. at 114.

Thus, in a recent case closely analogous to this one, involving civil contempt sanctions for violating a consent decree with the FTC, the Seventh Circuit held that the district court did not err in imposing remedial civil contempt sanctions, measured by consumer loss, "to compensate the complainant for losses sustained," without any consideration of the contempt defendant's ability to pay. *See FTC v.*

Trudeau, 662 F.3d 947, 950 (7th Cir. 2011), *pet. for cert. pending* (quoting *United States v. United Mine Workers of Am.*, 330 U.S. at 303-04.

II. The Contempt Defendants Are Not Entitled to

the contempt defendants have already "purged" their obligation to satisfy the preexisting monetary contempt sanction affirmed by this Court in *Leshin I*, and that

Rylander, 460 U.S. at 756-57 (same). *Cf. Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180, 1185 (11th Cir. 1991) (ruling, in a different context, that "appellants' liability… has already been fully litigated, and their appeal of the district court decision assessing the amount of restitution appellants must pay has already been decided…. There remains no question of liability based on those… violations: all the issues on this appeal concern the post-judgment enforcement of the [court's] decision.").

Principles of *res judicata*, claim preclusion, and the "law of the case" doctrine preclude the contempt defendants from raising the same arguments that the district court and this Court have already resolved. *See Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981) ("final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action."); *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289, 1290 (11th Cir. 2005) (*per curiam*) ("Under the law-of-the-case doctrine, the resolution of an issue decided at one stage of a case is binding at later stages of the same case."). The contempt defendants cannot be heard to challenge the judgment on grounds that the district court, as well as this Court, explicitly considered and rejected – such as that there was no "actual proof of money

orders of disgorgement or other types of compensatory civil contempt sanctions. Again, this constitutes an improper collateral attack on *Leshin I*, in which this Court affirmed the procedures that the district court employed in requiring the contempt defendants to make the very same consumer redress payment that now has been entered as a money judgment. 618 F.3d at 1238-39. As discussed above, the Money Judgment Order had no effect at all on their substantive liability to pay the consumer redress award.

Similarly, in *Leshin I*, this Court squarely rejected the same contention that the contempt defendants now attempt to resuscitate – that by ordering them "to disgorge all fees collected in violation of the [Stipulated] [I]njunction," the "district court imposed punitive or criminal contempt sanctions [that] violated their constitutional right to due process." *Id.* at 1238. Rather, this Court held that the consumer redress payment obligation adopted in the Disgorgement Order – which, in substance, is one and the same as the money judgment at issue here – is a "valid civil sanction[] for violation of the original terms of the injunction," because "it is remedial in nature," it "attempts to restore the *status quo* before the contempt defendants… violat[ed]… the injunction," and it was "imposed to compensate consumers for the losses they sustained." *Id.* at 1238-39. Accordingly, the Court held, the district court gave the contempt defendants adequate "notice and an

opportunity to be heard," and "did not deprive contempt defendants of due process." The contempt defendants' contrary argument has no more merit now than it had the first time around.

The contempt defendants' assertion that they are entitled to a jury trial to reexamine these issues (Br. at 22, 46-49) verges on the frivolous. The Supreme Court has made it clear that "civil contempt sanctions… may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. Neither a jury trial nor proof beyond a reasonable doubt is required." *Bagwell*, 512 U.S. at 827. *See also Piambino v. Bestline Products*, 645 F. Supp. at 1213 ("A defendant in a civil contempt proceeding of course is not entitled to a jury trial.") (citing *Shillitani v. United States*, 384 U.S. 364, 371 (1966)).

CONCLUSION

For the reasons set forth above, this Court should affirm the district court's Money Judgment Order.

Respectfully submitted,

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September 27, 2012

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in Fed. R. App. 32 (a)(7)(B), in that it contains 7,048 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and 11th Cir. R 32-4, and it was prepared using Microsoft Word in 14-point Times New Roman font (a proportionally spaced typeface).

s/ David L. Sieradzki
DAVID L. SIERADZKI
Attorney for the Federal Trade Commission
Dated: September 27, 2010

CERTIFICATE OF SERVICE

I certify that, on September 27, 2012, a copy of the foregoing brief was served by first-class U.S. mail upon Randall L. Leshin, *pro se* counsel and attorney for the other Appellants (Express Consolidation, Inc.; Randall L. Leshin, P.A.; Charles Ferdon; and Debt Management Counseling Center, Inc.), at 712 E. McNab Rd., Pompano Beach, FL 33060, in addition to service via the CM/ECF system.

s/ David L. Sieradzki
DAVID L. SIERADZKI
Attorney for the Federal Trade Commission
Dated: September 27, 2010