

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., N.W.
Washington DC 20580,

Plaintiff,

vs.

AUTOMATIC FUNDS TRANSFER
SERVICES, INC.,
151 S. Lander St. Suite C
Seattle, Washington 98134

a corporation;

and

ERIC JOHNSON,
2201 Fairview East No. 8
Seattle, Washington 98102

Individually and as an officer of
Automatic Funds Transfer Services,
Inc.,

Defendants.

Civ. No.

**COMPLAINT FOR PERMANENT
INJUNCTION, MONETARY
RELIEF, AND OTHER RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), by its undersigned attorneys, for its Complaint alleges as follows:

1. Plaintiff brings this action under Sections 5, 13(b), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45, 53(b), 57b, and the

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355.

7. Venue is proper in the United States District Court for the District of Columbia under 28 U.S.C. §§ 1391(b)(2), 1391 (c)(1), 1391(c)(2), 1395(a) and 15 U.S.C. § 53(b). Defendants transact business in this District.

PLAINTIFF

8. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. 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. The FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

DEFENDANTS

9. Defendant Automatic Funds Transfer Services, Inc. is a Washington corporation with its principal place of business at 151 South Lander Street Suite C, Seattle, Washington 98134-1889. AFTS provides payment processing services to

merchants. At all times relevant to this Complaint, AFTS transacts or has transacted business in this District and throughout the United States.

10. Defendant Eric Johnson (“Johnson”) is the President and 100% owner

14. ACH

services will be enrolled in a repayment plan that will reduce their monthly payments to a lower, specific amount or have their loan balances forgiven in whole or in part; (2) m

33. The Court granted summary judgment in favor of the FTC and found that SLG violated the FTC Act and the TSR. _____, 2020 U.S. Dist. Lexis at *22-*29. On July 17, 2020, after granting summary judgment to the FTC, the court entered a final judgment against the SLG defendants, including conduct and monetary relief. _____, No. 8:19-m

however, was fully aware that the merchant on behalf of whom it was processing payments was SLG, not PAN or RubikPay.

41. Between August 2014 and January 2016, AFTS processed for SLG via a nested relationship with PAN. AFTS debited the bank accounts of SLG customers, deposited these funds into AFTS's bank account, and then transferred them to one or more bank accounts held in the name of PAN (instead of directly to SLG). PAN in turn would transfer the funds to SLG.

42. AFTS did not have any formal underwriting policy for SLG and did not receive any underwriting documentation.

43. SLG used an array of frequently-changing companies and dba names,

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46. Between January 2016 and March 2016, AFTS processed debits for SLG through RubikPay. AFTS forwarded the funds it debited from the bank accounts of SLG customers to bank accounts held in the name of RubikPay or, in some instances, to other bank accc

49. Throughout the First Period, AFTS also received numerous consumer complaints stating that, contrary to what SLG had promised consumers,

loans and was in shock when I was told not a penny was made towards my student loans. The Loan Rep said they sent me monthly updates on the loan amount and when she read off my contact information it was incorrect. In fact, the SLS Managers [SLG] had their contact and address information as their own in place of mine. Over the 13 months of payments, I did not receive any benefit or value from this company. ... She advised me that I was conned by a third party processing company that preys on people with student loan debt and they have NO association with my federal loans. The Rep was aware of this scam (and this company) and recommended I quickly call my bank to unauthorize these payment and explain the fraud.”

55. AFTS and Johnson also knew that SLG likely had a practice of collecting and holding consumers’ payments for a year in PAN’s bank accounts, while making no payments to the consumers’ lenders. For example, on December 9, 2015, AFTS’s vice president sent an email to Johnson, in which he described his conversation with another AFTS manager:

We discussed SL[G] and [the manager’s] visit to Ken [Martinez] before Thanksgiving... Re: SL[G], he said that Ken [Martinez] told him that he was holding all the money for debited [] in his trust account. SL[G]’s program is to collect payments for 1 year, make no payments to underlying lenders to get them motivated to renegotiate their loan terms to get payments moving again. With the one-year accumulated payments then used to make those payments (I guess). Maybe this is all stuff you know, but thought I would pass it along....

56. AFTS and Johnson knew that the “trust accounts” referenced in the above quote were merely entries on PAN’s books or records, not actual trust accounts that were owned and controlled by consumers.

“credit” and “debit” ACH batch transactions and flow of funds. That data indicated to Johnson and AFTS that SLG was, in numerous instances, likely failing to make payments to consumers’ student lenders. For example:

- In a February 11, 2016 email Johnson sent to AFTS’s controller,
Johnson wrote: 0Td[(Jo)83.4 0Td[4 (l)0Toiz.4 eeontlP 1

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- In an April 15, 2016 email Johnson sent to Bare, Johnson wrote: “I find it incredulous that you (and SLG) are arguing that SLG is not responsible for reimbursing AFTS (or PAN) for returned debits from which SLG was the beneficiary. You are arguing that SLG can retain the proceeds from alleged fraud, leaving AFTS as the fall guys...”

60.

62. In a February 9, 2016 email Johnson sent to Martinez, Johnson stated that PAN's student debt relief clients (which included SLG) were misrepresenting to consumers the "terms and conditions" of their alleged services. Johnson proposed to increase the amount of fees AFTS would charge those clients, stating:

rapidly – sufficient business to possibly pay for the compliance (risk mitigation/elimination) effort....

Defendants' Knowledge of SLG's Violations of the Advance Fee Rule

65. Throughout the First Period, AFTS processed payments to SLG via nested relationships while knowing or consciously avoiding knowing that SLG was charging consumers fees before performing any debt relief ser-8.9 ((ng)]-0.i)8.5 e(s)]TJ(i)03.7,

reaching the SLGroup. The check disbursements that AFTS expected to see have not materialized.

76. After analyzing SLG financial data, Pefley confirmed to Johnson that SLG was unlawfully collecting advance fees. She also confirmed to him that in numerous instances SLG was not making payments towards consumers' student loans.

77. Pefley raised concerns about SLG's unlawful conduct with SLG's principals, and they responded by ultimately terminating her employment in March 2016.

78. Subsequently, Pefley warned Johnson about continuing to do business with SLG's principals, std-4.4.3 (i)8,nutha(:6 ([bo)8.2 (up)-8.3 9748.3 (bs)-)-83wisents t dosct c

81. In September 2017, Johnson approached one of SLG's officers and owners, Mazen ("Mike") Radwan, and sought to resume business with SLG. According to Radwan, Johnson asked him, "Are you still doing what you were doing?" Mazen Radwan answered yes. Johnson responded, "We want you back."

82. During the Second Period, between October 2017 and July 2019, AFTS processed more than \$17.4 million in ACH debits for SLG, this time directly, not through a nested relationship with other processors. After debiting consumers' bank accounts, AFTS forwarded the funds directly to SLG.

83. AFTS debited the bank accounts of two categories of consumers on behalf of SLG during the Second Period: (a) SLG's "legacy customers," which refers to consumers who previously had been signed up by SLG and debited by AFTS during the First Period; and (b) SLG's "new customers," which refers to consumers signed up by SLG and debited by AFTS for the first time on or after October 1, 2017.

84. The majority of debit transactions processed by AFTS during the Second Period were for legacy customers. These legacy accounts were subject to monthly recurring SLG debits.

85. Between October and December 2017, AFTS processed for both SLG's legacy customers and new customers under dba names used by SLG during

97. Shortly after the end of the war, the U.S. Government established the National Science Foundation (NSF) in 1945. The NSF was created to support basic research in the physical, biological, and behavioral sciences. The NSF is one of the largest federal agencies, and it has played a major role in the development of the modern scientific research community in the United States.

process for companies that help consumers with the government programs.

100. Later that day, Johnson sent an email to SLG's principals, informing them that Florida Capital Bank had been receiving a lot of complaints regarding "EDU STUDENT LOAN," and that the callers were stating "that they have been making their student loan payments for a long time and the student loan has not been credited." In his email, Johnson told the SLG principals: "The Student Loan Group (and successor companies) started processing through PAN and RubikPay before we hired [AFTS's compliance officer] ... You have somewhat been 'grandfathered'."

101. AFTS continued to receive consumer complaints that SLG's new dba's were engaging in various deceptive practices. For example, in a consumer complaint dated April 25, 2019, the consumer stated that he had not authorized the debit to his bank account by FDG, and that the third party who had processed the FDG debit had failed to apply the payment as he had instructed. In another complaint regarding FDG, dated June 3, 2019, that was forwarded by a consumer's bank, the complaint listed 7 monthly FDG debits to the consumer's bank account that had not been authorized, and stated that "CREDITS WERE NOT APPLIED TO CLIENT'S LOANS."

102. By spring 2019, Florida Capital Bank increased its pressure on AFTS to cease processing for FDG in light of FDG's high return rates.

103. On May 21, 2019, Johnson wrote an email to one of SLG's principals in which he conveyed Florida Capital Bank's concerns that the consumer complaints indicated that FDG was engaged in student debt relief services, not merely offering "document preparation services". But even then, Johnson did not propose terminating processing for FDG, but merely "re-underwriting" FDG.

Johnson wrote:

In addition, the bank has received calls from your customers, forwarded from their bank. Some of them have reported that their loans were not being paid. AFTS has underwritten your business model as "document prep" which is inconsistent with claims from your customers. We will need to re-underwrite your activities.

104. Even after Florida Capital Bank advised AFTS that it would likely terminate FDG (together with other merchants processed by AFTS that were generating high return rates), and even after the bank made clear that consumers had complained that SLG (and its dba's, FDG and MHF) had failed to apply payments towards consumers' student loans, Defendants still chose not to terminate FDG. Instead, they planned on continuing to process for FDG by simply moving its processing accounts to a different bank.

105. For example, on June 7, 2019, AFTS's controller sent an email to AFTS's compliance officer, in which he discussed moving FDG, and other "crappy" merchants for which AFTS was then processing in a nested relationship with PAN, to another bank: "I think we need to move those to [another bank]."

Yes, we are giving them the crappy clients, but I would like to try to work with Ken [Martinez] to improve the return rates for these clients. This would buy us a few more months to work on these clients.”

106. AFTS’s processing for SLG only came to an end on July 8, 2019, when the FTC sued SLG and obtained a temporary restraining order against the fraudulent scheme.

Defendants Were Aware of the TSR Requirements and Followed TSR Enforcement Actions

107. Throughout the First and Second Periods, AFTS and Johnson closely followed FTC and CFPB enforcement actions brought against student debt relief companies for making misrepresentations and taking advance fees in violation of the TSR, and against payment processors which processed for such companies in violation of the TSR.

108. Johnson routinely sent notices of law enforcement actions to AFTS’s employees, Martinez, SLG’s attorney Bare, and RubikPay. For example, in a January 27, 2016 email to Martinez, Johnson wrote about a CFPB case against payment processor Global Client Solutions, which processed for companies marketing student debt relief services (“DRSP organizations”):

They are a payment processor for DRSP organizations who do telemarketing. They were not immune to complicity for the failures of their clients because they could have or should have known their clients were acting illegally... AFTS and PAN are payment processors for

DRSP organizations. We are not immune because we could have or should have known about the activities of our clients.

109. The CFPB complaint against Global Client Solutions alleged that the company had violated the TSR by providing substantial assistance to merchants whom it knew were violating the TSR.

110. On February 24, 2016, Johnson sent an email to Martinez, notifying Martinez of yet another FTC action brought against a student loan debt relief company (_____), No. 2:16

112. In a March 22, 2018 email to Johnson, AFTS's compliance officer alerted Johnson to another FTC action brought against a student loan debt relief services company called American Financial Benefits Center, in which the FTC alleged, among other claims, that while the merchant pretended that it would charge consumers fees merely for "document preparation" services, the merchant was in fact falsely promising consumers it would lower their monthly student loan payments and make payments to student lenders on behalf of consumers, in violation of the TSR. [Case No. 4:18-cv-806](#), ECF No. 1 (N.D. Cal., Feb. 7, 2018). AFTS' compliance officer forwarded Johnson a link to the FTC complaint in that action, stating that the complaint and pleadings "contain the allegations of the practices that most of our clients are currently participating in, and if the FTC wins, AFTS must no longer service this industry."

113. AFTS's compliance officer also sent an email to Martin [Case No. 4:18-cv-806](#), ECF No. 1 (N.D. Cal., Feb. 7, 2018).

regarding SLG's potentially deceptive and illegal practices, including illegal charging of advance fees, from the North Carolina Attorney General's Office in February 2016, and from the Oregon Department of Justice in October 2016.

115. Johnson was personally involved in overseeing AFTS's responses to both the North Carolina and the Oregon investigative demands.

116. On September 29, 2016, the North Carolina Attorney General filed a complaint against SLG, alleging, among other claims, that it engaged in deceptive practices, illegally collected advance fees, wrongfully retained consumer funds instead of making agreed-upon payments to consumers' student loan servicers, and that, in less than two years, the SLG principals had "collectively siphoned funds well in excess of one million dollars for their personal benefit" from various accounts held by SLG.

Between 2016 and 2019, AFTS Processed for Other Student Loan Services Companies Through a Nested Relationship with PAN

117. Throughout 2016, in addition to its knowledge of SLG's practices described above, AFTS had been concerned about numerous other student loan service merchants that PAN was referring to AFTS for processing.

118. For example, on February 12, 2016, AFTS's controller sent an email to Johnson in which he stated that AFTS knew almost nothing about 21 additional "student loan consolidator" companies referred to it by PAN, and for which AFTS had agreed to provide nested processing services. He wrote:

We have now set up 21 student loan consolidators through Ken [Martinez] Some are defunct and some have not yet begun debits. We need to slow Ken [Martinez] down before he gets himself (and us) S[(r)1(,)Tjown bes (nc)1 et ll8a(4 -1.1s9P85 c)1Ats hp -0.006or (ts c)1un Td[(de(d s)8rT

127. The TSR prohibits sellers and telemarketers from requesting or receiving payment of any fees or consideration for any debt relief service until and unless:

- (A) The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer; and
- (B) The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor . . .

16 C.F.R. § 310.4(a)(5)(i).

128. The TSR prohibits any person from providing substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in acts or practices that violate Sections 310.3(a), (c), or (d), or Section 310.4 of the TSR. 16 C.F.R. §310.3(b).

129. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATION OF THE TELEMARKETING SALES RULE

COUNT I

130. In numerous instances, Defendants provided substantial assistance or support to a seller or telemarketer, that Defendants knew, or consciously avoided knowing, was violating:

A. Section 310.3(a)(4) of the TSR by making false or misleading statements to induce consumers to pay for goods or services;

B. Section 310.3(a)(2)(x) of the TSR, by engaging in misrepresentations regarding material aspects of its student loan debt relief services; or

C. Section 310.4(a)(5)(i) of the TSR, by requesting or receiving payment of a fee or consideration for debt relief services, before: (i) SLG had renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer; and (ii) the customer had made at least one payment pursuant to that sett wa(d)8.7 (by)16.9 (3

