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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 19-1333 JVS (KESx) Date July 6, 2020

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Defendants request that the Court defer ruling on the FTC's motion to allow them to conduct further discovery. In support of this request, Defendants offer the declaration of Stephen R. Cochell. Cochell Decl., Dkt. No. 150-11, Ex. H. Cochell declares that the FTC did not produce documents "related to the Company's Customer Relationship Manager (CRM) system, Quickbooks, and the initial sales calls that were recorded between customers and the Corporate Defendants." Id. ¶ 3. The initial sales call recordings were requested in Defendants First Request for Production of Documents and Second Request for Production of Documents. Id. ¶¶ 4, 8.

Defendants received a hard drive from the FTC (which, in turn, received the drive from the Receiver), but Cochell states that this drive does not contain "recordings of initial sales calls." Id. ¶ 13. Accordingly, Defendants request that the Court defer ruling on the summary judgment motion "until such time as the Receiver either produces the initial summary judgment recordings or explains what happened to the recordings." Id. ¶ 15. Defendants argue that "there are thousands of recordings that show that Defendants acted in good faith to comply with the FTC Act," and that the recordings "are material and necessary to resolving this case." Id. ¶ 16.

The FTC declares that it complied with Defendants' discovery requests, including by turning over two hard drives and copies of all electronic data collected by the FTC from Defendants' offices. Declaration of K. Michelle Grajales ("Grajales Decl."), Dkt. No. 163-1 ¶¶ 20-23. The FTC notes that Defendants did not file any discovery motions in this case. Id. ¶ 20. Defendants also visited the Receiver's storage facility and reviewed evidence there. Id. ¶ 25. Defendants could have imaged the servers held by the Receiver, but did not do so. Id., Ex. E.

The Court finds that relief under Fed. R. Civ. P. 56(d) is inappropriate because Defendants were not diligent in seeking these initial sales recordings, if they were indeed not contained on the hard drives Defendants received from the FTC. Further, Defendants only set forth a vague assertion that they n

However, a court may consider "the overall 'net impression' that Defendants' representations make upon consumers." Id. at 1200.

The FTC describes three categories of false or unsubstantiated representations Defendants made to consumers. FTC Mot. at 18-19.

First, the Court finds that there is no genuine dispute of fact that Defendants made false, material representations regarding enrollment in repayment plans**.** Defendants represented that consumers would be enrolled in a repayment plan that would reduce their monthly payments to specific lower amounts or result in their loan balances being forgiven, including after a specific number of years. FTC SUF ¶¶ 154-59. But there are no federal loan forgiveness programs with repayment terms of three or seven years. Id. ¶¶ 179-180.

In addition, Defendants falsely represented on income-driven repayment ("IDR") applications that consumers were unemployed, and thus had no income, when those consumers had told Defendants they were employed and/or had submitted forms of income verification. Id. ¶ 187, 190-91.

Second, Defendants do not genuinely dispute that they made false, material

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> that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt. . .

16 C.F.R. § 310.3(a)(2)(x).

In regards to Count III, the Court has already found that Defendants have not genuinely disputed that they made material misrepresentations to consumers. There are undisputed facts regarding Defendants' misrepresentations to consumers regarding how s already found that Def(As lie)]TJ0.,inely disputdohat t 33ious1 Tc -0.002 Tw 17.502didhat t ege

These bare assertions do not create fact disputes or excuse the failure to comply with the escrow requirements for consumer payments. Therefore, the Court **grants** the FTC's motion for summary judgment on Count II.

3. The Corporate Defendants Formed a Common Enterprise

"Where one or more corporate entities operate in common enterprise, each may be held liable for the deceptive acts and practices of the others." F.T.C. v. John Beck Amazing Profits, LLC, 865 F. Supp. 2d 1052, 1082 (C.D. Cal. 2012) (citing F.T.C. v. Think Achievement Corp., 144 F. Supp. 2d 993, 1011 (N.D. Ind. 2000)). In determining whether a common enterprise exists, courts consider whether there is (1) common control; (2) sharing office space and offices; (3) whether business is done through interrelated companies; and (4) whether funds are commingled. Id.

Defendants offer the same boilerplate, blanket objection to nearly every item of the FTC's evidence: that each fact is "[n]on-specific as to companies," and that "[t]he only relevant companies are Elegant and Trend." They also repeatedly object that RCC "did not conduct student loan debt relief activities." The Court again notes that it gives little weight to boilerplate, blanket objections. Defendants suggest that Trend "entered into a purchase agreement for legacy clients and did not do business with Elegant," but do not offer any evidence of this purchase agreement. Opp'n at 21-22.

It is undisputed that Mazen and Rima Radwan and Dean Robbins owned the Corporate Defendants. FTC SUF ¶ 122, 128. The Radwans and Robbins had signatory control over the corporate funds in all five Corporate Defendants' bank accounts; they also all had corporate credits cards for the various entities. Id. ¶ 29, 57, 83. All three individuals held themselves out as officers of the Corporate Defendants. Id. ¶ 130. In addition, Velazquez was the Director of Operations and had a corporate card. Id. ¶¶ 94. She shared an office with Rima Radwan. Id. ¶ 98. Defendants also do not seriously dispute that the Corporate Defendants shared some employees. See SGD ¶ 131. Heritage and Tribune were located in the same office building. SUF ¶ 129. Elegant, Trend, and Dark Island operated out of the same office building; Trend paid Dark Island's rent. Id. ¶¶ 129-30, 135. Dark Island set up payment processing. Id. ¶¶ 137-39. Finally, the FTC has produced evidence Defendants fail to dispute regarding the commingling of funds. Id. ¶ 132.

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The Court finds that the proposed permanent injunctions and monitoring provisions are appropriate because there is a reasonable likelihood of future violations of the FTC Act and TSR. See CFTC v. CoPetro Mktg Grp., Inc., 680 F.2d 573, 582 n.16 (9th Cir. 1982); see also

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Defendants insist that they engaged in mere document preparation for clients. Mot. at 10. But this argument is not a defense to the TSR. See FTC v. Am. Fin. Benefits Ctr., 324 F. Supp. 3d 1067, 1082 (N.D. Cal. 2018) ("Defendants' characterization of their services as mere document preparation and processing, to the exclusion of any service defined as debt relief under the TSR, is unavailing."). The FTC also notes that one of defendants' Service Agreements states that the company "shall engage each of Client's applicable lenders to initiate and complete either a federal student loan consolidation through DOE, principal reduction, interest rate reduction, deferment, forbearance, and/or a reduced payment option on behalf of the Client." See Dkt. No. 131-2, Ex. A-8. This Court has also previously rejected the argument that similar services involving federal student loans are not covered by the TSR. See Mot. at 10; Consumer Fin. Prot. Bureau v. IrvineWebWorks, Inc., 2016 WL 1056662, at *7 (C.D. Cal. Feb. 5, 2016).

"Even assuming that the TSR rule applied," Defendants argued that they "complied or substantially complied" with the Act because they placed funds "in a trust account and segregated from operating funds." Mot. at 11. The Court has already addressed this argument above; there is no dispute of fact that Defendants' "trust" account system did not comply with the TSR's requirements for placing consumer funds in escrow. See 16 C.F.R. § 310.4(a)(5)(ii). Defendants do not seriously contest this point; they even state that Elegant's lawyer "should have recommended an escrow account under TSR." Reply at 12.

Accordingly, the Court **denies** Defendants' motion for summary judgment as to violations of the TSR.

3. Injunctive Relief Is Appropriate

Defendants also claim they "modified and improved their sales policies and procedures in November 2017," and therefore the FTC is not entitled to injunctive relief to prevent future violations of the FTC Act. Mot. at 2, 11; see FTC v. Evans

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the Ninth Circuit's holding in Owner-Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co. (AZ), bars the Court from granting equitable restitution here. 632 F.3d 1111, 1121 (9th Cir. 2011). In Owner-Operator, the Court found that ancillary remedies including restitution and disgorgement were hb2A9 7ourt p000lary rCo.

its holding, stating that the "sole question presented" was "whether disgorgement, as applied in SEC enforcement actions, is subject to [the five-year statute of limitations]." 137 S. Ct. at 1642 n.3. Indeed, the Ninth Circuit noted that "

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