

UNITED STATES DISTRICT COURT (R)-fHoO7o(C) 0.0 (59 -1.15-5.037I)16C



participated in the acts and practices set forth in this Complaint. Defendant Reich resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

COMMON ENTERPRISE

10. 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 have commingled funds. Because these Corporate Defendants have operated as a common enterprise, each of them i

businesses, medical offices, non-profit organizations, and religious organizations (hereinafter, “consumers”).

13. Defendants purport to provide immediate funds in a specific amount in exchange for consumers’ agreement to repay a higher amount from future business receivables (often referred to as a “merchant cash advance”). The repayment amount is remitted over time through daily debits from consumers’ bank accounts. Defendants claim that consumers will repay their

20. Defendants promise consumers a specific amount of financing. For example, the

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Purchase Price. To repay the financing, the agreement stated that Defendants would debit from the consumers' bank account a Specific Daily Amount of \$9,999 each business day until Defendants collected a Total Purchased Amount of \$524,650. In fact, Defendants continued to withdraw the Specific Daily Amount (\$9,999) even after the consumer had repaid the Total Purchased Amount (\$524,650), collecting a total of \$599,940 from the consumer—\$75,290 more than what was agreed to in the consumers' financing agreement. In numerous other instances, Defendants have made four or more daily debits from consumers' accounts after consumers had already repaid the Total Purchase Amount, resulting in withdrawals exceeding the amount consumers agreed to pay.

23. Internal emails indicate that Defendants have funded consumers knowing they will attempt to collect more than the Total Purchased Amount; they dub the practice as "overcollection." Further, in numerous instances when consumers have realized that Defendants were overcollecting, and requested a refund, Defendants have refused to provide the refund. For example, in one instance, a merchant who remitted the Total Purchased Price asked Defendants to stop debiting his account and Defendants decided to "leave it on," referring to the daily debits. In another instance, one Defendant discussed a merchant's request for a refund noting "he emailed me for refund I told him go away," prompting another Defendant to instruct "DONT RESPOND." In yet another instance, Defendants discussed refunds in general noting they do not "refund unless merchants beg and chase us LOL."

Defendants' Unlawful Collections Practices

24. 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 on a purportedly owed judgement. At the same time, Defendants' contracts provide that Defendants will not hold consumers in breach if payments are remitted more slowly than anticipated because business revenues slowed down and that consumers do not owe anything if the business shuts down entirely:

If Future Receipts are remitted more slowly than RCG may have anticipated or projected because Merchant's business has slowed down, or if the full Purchased Amount is never remitted because Merchant's business went bankrupt or otherwise ceased operations in the ordinary course of business, and Merchant has not breached this Agreement, Merchant would not owe anything to RCG and would not be in breach or default under this Agreement.

25. In practice, however, Defendants in many instances file confessions of judgment against consumers for missing payments due to a slowdown in business revenues or due to a business shutdown, a violation of the terms of the financial agreement.

26. In addition, Defendants have also filed confessions of judgment against consumers who were still making required payments but payments temporarily could not be processed due to technical issues outside of the consumers' control. For example, in some instances, consumers' banks unexpectedly and temporarily locked their bank accounts due to fraud or security alerts, thus preventing Defendants from effectuating the daily withdrawals. Despite consumers' attempts to explain and resolve the situation, Defendants held them in default and filed confessions of judgment against them.

27. 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.

28. Because Defendants'

specific daily amount once on each business day, Defendants in many instances make two withdrawals from consumers' accounts on a single day following a bank holiday. 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. In other instances, Defendants withdraw more than the specific amount represented as the Total Purchased Amount, without receiving authorization from consumers. When consumers complain about the unauthorized debits, Defendants in many instances do not refund that 84 Pnc re

36. In numerous instances in connection with the advertising, marketing or offering of business financing, Defendants represent, directly or indirectly, expressly or by implication, that:

- a. Defendants require no personal guaranty from business owners;
- b. Defendants charge no upfront costs;
- c.

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 III
Unfair Collection Threats

42. In numerous instances, Defendants unfairly 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 or to ruin consumers' businesses.

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. Therefore, Defendants' acts or practices as set forth in Paragraph 42 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

45. In numerous instances, Defendants withdraw funds from consumers' bank accounts without the express informed consent of those consumers.

46. 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.

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

VIOLATIONS OF THE GLB ACT

48. Section 521 of the GLB Act, 15 U.S.C. § 6821, became effective on November 12, 1999, and remains in full force and effect. Section 521(a)(2) of the GLB Act, 15 U.S.C. § 6821(a), prohibits any person from “obtain[ing] or attempt[ing] to obtain . . . customer

credentials, and the identity of authorized signers of bank accounts, including by representing, directly or indirectly, expressly or by implication, that Defendants will withdraw from consumers' bank accounts a specified amount to repay Defendants' funding to consumers when in fact Defendants regularly used customer financial information to withdraw more than the specified amount from consumers' bank accounts.

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monies paid, or other relief necessary to redress injury to consumers resulting from Defendants' violations;

C. Award Plaintiff monetary civil penalties from Defendants for every violation of Section 521 of the GLB Act; and

D. 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,

JAMES REILLY DOLAN
Acting General Counsel

Dated: June 10, 2021

/s/ Gregory A.Ashe
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