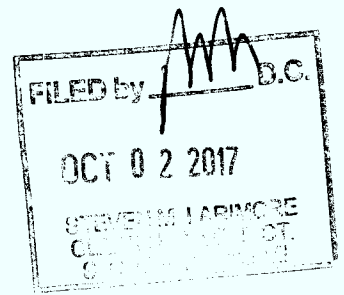


Sealed

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. **17-61937**



<p>FEDERAL TRADE COMMISSION,</p> <p>Plaintiff,</p> <p>v.</p> <p>STUDENT DEBT DOCTOR LLC, a Florida limited liability company,</p> <p>and</p> <p>GARY BRENT WHITE, JR., individually and as an officer of Defendant Student Debt Doctor LLC,</p> <p>Defendants.</p>
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**CIV - DIMITROULEAS**

[FILED UNDER SEAL]

**CERTIFICATION OF HANS CLAUSEN, COUNSEL FOR THE FEDERAL TRADE COMMISSION, IN SUPPORT OF PLAINTIFF'S MOTIONS FOR AN *EX PARTE* TEMPORARY RESTRAINING ORDER AND TO TEMPORARILY SEAL FILE**

1. I, Hans Clausen, am an attorney for Plaintiff Federal Trade Commission, an independent agency of the United States government. I am an active member in good standing of the State Bar of Georgia. My business address is 225 Peachtree Street N.E., Suite 1500, Atlanta, Georgia, 30303. I have participated in the investigation of the above-captioned matter. I submit this declaration pursuant to Rule 65 of the Federal Rules of Civil Procedure in support of the Federal Trade Commission's motion for an *ex parte* temporary restraining order and other equitable relief, and an order to show cause why a preliminary injunction should not issue ("*Ex Parte* TRO Motion"), and an *ex parte* motion to temporarily seal the file in this case ("*Ex Parte* Motion to Seal").

2. Rule 65(b)(1) of the Federal Rules of Civil Procedure authorizes the Court to issue a temporary restraining order without notice to Defendants or Defendants' attorneys if the facts in an affidavit or verified complaint show that immediate and irreparable injury will result to the movant before the adverse parties can be heard in opposition, and if the Plaintiff's attorney "certifies in writing any efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b)(1)(A)-(B).

3. The underlying purpose of Plaintiff's proposed *ex parte* TRO is to preserve the status quo and to prevent irreparable harm just so long as is necessary to hold a hearing.

4. Plaintiff has not communicated with Defendants or informed Defendants of their investigation into Defendants' business practices. Plaintiff has no information or belief concerning whether Defendants have retained counsel to represent them with respect to Plaintiff's allegations in this matter, although the record reflects that Defendants may be represented by Robby Birnbaum of Greenspoon Marder, P.A., and Christopher P. Meier of the Meier Firm.

5. Plaintiff has not provided notice to Defendants of Plaintiff's *ex parte* TRO Motion or their *ex parte* Motion to Seal, nor should such notice be given because of:

- a. Defendants' egregious misconduct, in the normal course of their business activities, whereby Defendants have misrepresented and misled consumers with claims that they could eliminate or reduce consumers' student loan payments;
- b. Defendants' egregious misconduct, in the normal course of their business activities, whereby Defendants have misrepresented and misled consumers with impossible claims of loan forgiveness, often within five years or less;

- c. Defendants' egregious misconduct, in the normal course of their business activities, whereby Defendants have charged consumers illegal advanced fees;
- d. Defendants' egregious misconduct, in the normal course of their business activities, whereby Defendants have disregarded complaints from consumers from across the United States and Puerto Rico and have improperly denied consumers refunds;
- e. Defendants' egregious misconduct, in the normal course of their business activities, whereby Defendants' provide false information concerning borrowers' income, unemployment status, and family size to loan servicers and the federal Department of Education, in order to qualify consumers for benefits under governmental student-loan repayment and forgiveness programs, for which consumers would otherwise be ineligible; and,
- f. Defendants' wrongfully reaping millions of dollars by deceiving consumers.

#### **DEFENDANTS' DECEPTIVE CONDUCT**

1. The evidence described in Plaintiff's TRO application, including the accompanying declarations and exhibits, shows that Defendants are engaged in an ongoing scheme to deceive consumers throughout the United States and Puerto Rico with phony student-debt-relief services; specifically:

- a. Defendants entice consumers with false promises of eliminated or significantly reduced monthly loan repayments;
- b. Defendants make impossible claims to consumers of short-term loan forgiveness, often in five years or less;

c. Defendants demand illegal advance fees, typically \$750, and have denied refunds to consumers who have sought to withdraw from their services; and,

d. Defendants have illegally deceived consumers, loan servicers, and the Department of Education about borrowers' eligibility for federal student-debt relief by providing inaccurate information about consumers' income, unemployment status, and family size, to qualify consumers for benefits that they would not otherwise receive.

2. Consumers have lodged numerous complaints against Defendants with the FTC, state authorities, and the Better Business Bureau ("BBB"). The complaints exhibit a pattern of the above-described actions. As a consequence, some consumers fell behind on their loan payments and ended up in greater debt; others never received refunds; while others may be subjected to legal liability for the false information on their relief applications.

3. In addition, as shown in the appended Declarations of Michael S. Liggins and Michelle Mason, filed in support of Plaintiff's *ex parte* TRO Motion, Defendants have wrongfully reaped millions of dollars from consumers.

4. Defendants' business practices demonstrate a complete disregard for the law and violate Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, and the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

5. Based on information and belief, it has been Plaintiff Federal Trade Commission's experience that FTC defendants who have engaged in deceptive schemes and have received notice of the FTC's filing or its intent to file an action, undermine the Court's efforts to preserve the status quo by dissipating and concealing assets. The following cases illustrate a pattern in which similarly situated defendants have upset the status quo and caused

irreparable harm to the FTC's ability to obtain effective final relief, including monetary redress or restitution and disgorgement of ill-gotten funds. For example, in the Eleventh Circuit, the following has occurred since the year 2000:

6. In *FTC v. Hargrave & Associates*, No. 09-0006 (M.D. Fla. 2012), the FTC sought and obtained an *ex parte* TRO with an asset freeze in conjunction with a motion to show cause why the defendants should not be held in contempt. After being personally served with the TRO, one defendant withdrew \$17,800 from a frozen bank account the same day. To avoid being held in contempt of the TRO, the defendant returned all but a few thousand dollars.

7. In *FTC v. Fereidoun "Fred" Khalilian*, No. 10-21788 (S.D. Fla. 2010), the FTC sought and obtained an *ex parte* TRO with an asset freeze. Before the asset freeze could be processed by the banks, one of the defendant's employees withdrew large amounts of money from the company's bank accounts. The defendant eventually returned some, but not all, of the money. Additionally, the defendant attempted to remove assets located in his personal residence. The receiver, however, was monitoring the defendant's residence, and, after observing people taking a number of items from the defendant's residence at night, was able to halt the defendant's activities;

8. In *FTC v. Global Mktg. Group, Inc.*, No. 06-2272 (M.D. Fla. 2006), the court granted the FTC's *ex parte* motion for a TRO with an asset freeze, which the FTC served on banks known to hold accounts of defendants. After being served with the order, one of the defendants successfully withdrew over \$500,000 from accounts previously unknown to the FTC. Most of these funds were wired to offshore bank accounts. This defendant was ultimately held in contempt of court and fled the country after failing to appear at a show cause hearing;

9. In *FTC v. American Entertainment Distribs., Inc.*, No. 04-22431 (S.D. Fla. 2004), the Court entered an asset freeze that froze assets of ten corporate and individual defendants. Within hours of receiving notice of the asset freeze, one of the individual defendants withdrew \$39,500 from his bank. Because the asset freeze had been in place, the FTC was able to compel the individual defendant to return the money;

10. In *FTC v. Access Res. Servs., Inc.*, No. 02-60226 (S.D. Fla. 2002), a defendant who learned about the FTC's action attempted to dissipate \$579,600 by paying off the mortgage on his residence, which was protected by Florida's homestead protection laws, and;

11. In *FTC v. Leisure Time Mktg., Inc. et al.*, Civ. No. 00-1057 (M.D. Fla. 2000), the court entered a TRO against the defendants with immediate access to the business premises. After an individual defendant was served and acknowledged his understanding that he was to preserve all assets and documents, that defendant ordered individuals to remove boxes of documents from one of the business premises. Fortunately, a police officer assisting the FTC in the immediate access saw this activity, and the FTC was able to contact the defendant's counsel and have the documents returned. That individual defendant also attempted to hide certain documents on the business premises in a room where FTC staff was informed that no business records were stored. Because the FTC had immediate access to the business premises, the FTC found these documents.

12. Examples from other Circuits include the following:

a. In *FTC v. Asset & Capital Management Group*, No. 8:13-cv-01107-DSF-JC (C.D. Calif. 2013), fully one week after the Court granted, and the FTC served upon all defendants, an *ex parte* TRO that froze defendants' assets and appointed a Receiver, the Receiver identified an additional business site that defendants had failed to disclose. The undisclosed site turned out to

be the defendants' headquarters and contained extensive business records, including corporate and tax records, bank statements, and personnel files for dozens of defendants' entities. The Receiver arrived at the site unannounced, after receiving repeated assurances from defendants that they had disclosed all of their business locations. He found a defendant and his colleague carrying folded bankers boxes from their car to the site, clearly intent on removing materials from the premises. When the Receiver gained entry to the site, he found evidence that desktop computers and records recently had been removed. The FTC subsequently learned that more than 60 servers and extensive records had been taken.

b. In *FTC v. E.M.A. Nationwide, Inc.*, Case No. 1:12-cv-02394 (N.D. Ohio September 28, 2012), the court denied the FTC's motion for an *ex parte* TRO and corporate asset freeze. The Judge required notice to the defendants, which was done on September 28th. By October 4th, the individual defendants had withdrawn more than \$152,000 from a corporate bank account.

c. In *FTC v. Data Med. Capital, Inc.*, No. 99-1266 (C.D. Cal. 2009), the FTC moved for contempt and obtained an *ex parte* TRO and asset freeze against certain defendants. The defendants learned of the FTC's contempt investigation and one of the defendants transferred approximately \$1 million to a personal bank account prior to the FTC's filing. The receiver, who was appointed pursuant to the *ex parte* TRO, traced these assets and returned them to the receivership estate. The receiver's compensation for these tasks, however, reduced the amount available for redress to the defendants' victims.

d. In *FTC v. Transcon. Warranty, Inc.*, No. 09-2927 (N.D. Ill. 2009), the FTC moved for a TRO with notice to the Defendants. The notice was given, and then the Court granted the FTC's motion for a TRO, freezing Defendants' assets and appointing a receiver.

However, when the receiver and counsel for the FTC arrived at the corporate defendant's premises pursuant to the court's order, hundreds of folders with labels indicating that they contained records of defendants' most recent transactions were found empty. In addition, five computers, including that of the corporate defendant's CFO, were allegedly stolen the night before the receiver and counsel for the FTC arrived at the premises, and various third-party trade debtors of the corporate defendant froze payments due to the corporate defendant, which resulted in extensive litigation over these assets and ultimately cost the receivership estate tens of thousands of dollars;

e. On August 9, 2006, in *FTC v. Connelly*, SACV-06-701 DOC (RNBx) (C.D. Cal. 2006), the court issued an *ex parte* TRO with an asset freeze against one defendant, but issued a noticed Order to Show Cause to two other defendants, ordering them to show cause as to why their assets should not be frozen. Having notice that the FTC sought to freeze their assets, the defendants nevertheless withdrew at least \$800,000, some of which was subject to the asset freeze, and most of which was never recovered;

f. In *FTC v. Universal Premium Servs., Inc.*, No. 06-849 (C.D. Cal. 2006), a defendant and his wife withdrew over \$45,000 from their joint personal bank account, which the bank had not yet frozen, hours after he was personally served with an *ex parte* TRO that included an asset freeze. Subsequently, the defendant withdrew over \$4,700 via electronic debit or check, also in violation of the TRO;

g. In *FTC v. World Traders Ass'n*, No. 05-591 (C.D. Cal. 2005), notwithstanding an *ex parte* TRO, including an asset freeze, the lead defendants appropriated \$90,459 from a frozen bank account within one day of being served with the TRO. Although the contempt resulted in subsequent criminal indictments, the money was never recovered;



h. In *FTC v. Nat'l Consumer Counsel*, No. 04-0474 (C.D. Cal. 2004), the court granted the FTC's *ex parte* application for a TRO with asset freeze and the appointment of a temporary receiver against all but one of the corporate defendants. One of the individual defendants then deleted key electronic files on defendants' shared network server by accessing his account through a computer under the control of the corporate defendant that was not under the receivership;

i. In *FTC v. Unicyber Tech. Inc.*, CV-04-1569 LGB (C.D. Cal. 2004), the FTC obtained an *ex parte* TRO with asset freeze and appointment of a receiver. Shortly after the defendant was served with the TRO, he directed his wife to violate the asset freeze by transferring \$405,000 of corporate funds to her father. With the assistance of the receiver, the FTC was able to recover these funds;

j. In *FTC v. 4049705 Canada Inc.*, No. 04-4694 (N.D. Ill. 2004), Canadian authorities executed a search warrant on the business premises of Canadian defendants who were engaged in telemarketing fraud. Thereafter, the FTC filed a complaint and motion for a TRO with an asset freeze, providing notice to defendants. The FTC subsequently discovered that the defendants had made several substantial money transfers after receiving notice of the FTC's action, but before the asset freeze was imposed;

k. In *FTC v. Assail Inc.*, No. 03-007 (W.D. Tex. 2003), the court issued an *ex parte* TRO, including an asset freeze. The lead defendant nonetheless transferred \$200,000 within hours of being served with the TRO, which, after contempt proceedings and a lengthy appeal, the defendant was required to repay;

l. In *FTC v. QT, Inc.*, No. 03-3578 (N.D. Ill. 2003), defendants, after notice of a TRO with an asset freeze, withdrew and transferred more than \$2 million dollars from banks that had not yet received notice of the asset freeze;

m. In *FTC v. Physicians Healthcare Dev., Inc.*, CV-02-2936 RMT (JWJx) (C.D. Cal. 2002), after the court issued the TRO and served it on all counsel, including defense counsel, Commission staff served it on defendants by facsimile. The next day, when Commission staff went to the defendants' offices to review the business records, staff found that documents had been shredded and that the computer and other business records had been removed from the premises. Witnesses advised Commission staff that, on the day of the hearing, they observed defendants' employees removing computers and other items from the business premises. The removed records were never recovered;

n. In *FTC v. Hanson Publ'ns, Inc.*, Civ. No. 02-2205 (N.D. Ohio 2002), Canadian respondents transferred \$105,000 from a U.S. account to a Canadian account within two days of receiving service of the TRO with asset freeze. This money was later returned as a precondition to the release of attorney's fees;

o. In *FTC v. The Tungsten Group*, No. 2:01-CV-00773 RAJ (E.D. Va. 2001), the FTC obtained an *ex parte* TRO with an asset freeze. One defendant wired money out of a frozen account before the freeze could be imposed by the bank, but later returned it on advice of counsel. Another defendant tried to withdraw cash from a frozen account immediately after being served with the TRO, but he was blocked by the asset freeze;

p. In *FTC v. SkyBiz.com, Inc.*, No. 01-CV-396(K) (N.D. Okla. 2001), within days of the service of the TRO with an asset freeze provision, one of the primary defendants convinced an overseas trustee to withdraw \$1 million from the offshore account of a foreign affiliate.

Because a domestic correspondent bank had been served with the TRO, it refused to transfer the funds. The money in the offshore account was preserved, and ultimately used to help provide \$20 million for consumer redress;

q. In *FTC v. Consumer Repair Servs., Inc.*, CV-00-11218 CM (C.D. Cal. 2000), the FTC obtained an *ex parte* TRO with asset freeze. Although all three individual defendants had been served with the TRO and were aware of the asset freeze, they all violated this order by withdrawing over \$17,000 from accounts that were subject to the TRO, but had not yet been frozen by the banks. None of this money was ever recovered; and

r. In *FTC v. Mediworks, Inc.*, CV-00-01079 CAS (MANx) (C.D. Cal. 2000), the FTC obtained an *ex parte* TRO with asset freeze. Even after being served with the TRO, defendants violated the order by withdrawing \$31,000 from a bank account. The full amount removed by the defendants was not recovered.

13. For the above reasons, there is good cause to believe that immediate and irreparable harm will result to consumers, including the destruction of Defendants' records and the dissipation or concealment of defendants' assets, if Defendants receive advance notice of the FTC's TRO Motion.

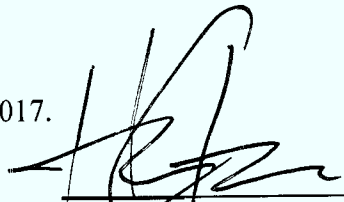
14. Courts in the Eleventh Circuit regularly issue *ex parte* temporary restraining orders in actions brought under Section 5(a) of the FTC Act. See *FTC v. D&S Marketing Solutions, LLC*, 8:16-cv-1435-MSS-UAM (M.D. Fla. June 18, 2016) (marketing and advertising scam); *FTC and State of Florida v. E.M. Systems & Services, LLC, et. al.*, 8:15-cv-01417-SDM-EAJ (M.D. Fla. June 17, 2015) (credit card debt reduction scam); *FTC v. Regency Financial Services, LLC and Ivan Levy*, 1:15-cv-20270-DPG (S.D. Fla. Jan. 28, 2015) (a loan modification scam); *FTC and State of Florida v. 7051620 Canada, Inc.*, 1:14-cv-22132-FAM (S.D. Fla. Jun

12, 2014) (deceptive marketing scam); *FTC v. Pinnacle Mktg.*, No. 1:13-cv-03455 (N.D. Ga. Oct. 21, 2013) (phantom debt collection); *FTC v. Direct Connection Consulting, Inc.*, No. 08-1739 (N.D. Ga. May 14, 2008); *FTC v. Prophet 3H, Inc.*, No. 06-1692 (N.D. Ga. July 18, 2006); *FTC v. Amn. Urological Corp.*, No. 98-2199 (N.D. Ga. Aug. 3, 1998; and *FTC v. MJS Fin. Servs., Inc.*, No. 97-3087 (N.D. Ga. Oct. 9, 1997); *FTC v. VGC Corp.*, No. 1-11-cv-21757 (S.D. Fla. May 17, 2011); *FTC v. U.S. Mortgage Funding, Inc.*, No. 9:11-cv-80155-JIC (S.D. Fla. Feb. 9, 2011); *FTC v. 1st Guaranty Mortgage Corp.*, No. 0.09-61840-Civ-Seitz (S.D. Fla. Nov. 25, 2009); *FTC v. Kirkland Young, LLC*, No. 09-23507-Civ-Gold (S.D. Fla. Nov. 19, 2009); *FTC v. Direct Connection Counseling, Inc.*, No. 08-1739 (N.D. Ga. May 14, 2008); *FTC v. Integrity Marketing Team, Inc.*, No. 07-61152-Civ-Huck (S.D. Fla. Aug. 29, 2007); *FTC v. Fidelity ATM, Inc.*, No. 06-81101-Civ-Hurley (S.D. Fla. Dec. 6, 2006); *FTC v. USA Beverages*, No. 05-61682-Civ-Lenard (S.D. Fla. Nov. 18, 2005); *FTC v. Transnet Wireless Corp.*, No. 05-61559-Civ-Marra (S.D. Fla. Oct. 20, 2005); *FTC v. Sun Ray Trading, Inc.*, No. 05-20402-Civ-Seitz (S.D. Fla. Feb. 24, 2005).

15. For the same reasons, there is good cause to believe that immediate and irreparable harm will result to consumers if either of the Defendants receive premature notice of the filing of this action, as more fully set forth in the Plaintiff's *Ex Parte* Motion for Temporary Restraining Order and Plaintiff's *Ex Parte* Motion to Temporarily Seal File.

I declare under penalty of perjury that the statements in this declaration are true and correct.

Executed in on October 2, 2017.

  
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