

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

FEDERAL TRADE COMMISSION,)	SACV 99-1266 AHS(EEEx)
)	
Plaintiff,)	
)	
v.)	ORDER ASSESSING CIVIL
)	CONTEMPT SANCTIONS AGAINST
DATA MEDICAL CAPITAL, INC.,)	CONTEMPT DEFENDANTS
et al.,)	
)	
Defendants.)	
_____)	

I.

PROCEDURAL HISTORY

On January 15, 2010, the Court issued its Order Adjudicating Contempt Defendants in Contempt of Court and Finding of Fact and Conclusions of Law in Support Thereof,¹ which found Contempt Defendants Bryan D'Antonio, The Rodis Law Group, Inc. ("RLG"), America's Law Group ("ALG"), and The Financial Group ("TFG") dba Tax Relief ASAP (collectively, "Contempt Defendants")

¹ Hereafter, "Court's FOF" designates the Court's "Findings of Fact" section of the order, and "Court's COL" designates the "Conclusions of Law" section.

1 in contempt of the Stipulated Final Judgment entered by this
2 Court on July 13, 2001.² On January 29, 2010, Mr. D'Antonio
3 filed supplemental opposition to the Federal Trade Commission's
4 ("FTC") request for sanctions. The FTC filed a reply to Mr.
5 D'Antonio's supplemental opposition on February 19, 2010. The
6 matter came on for hearing on March 1, 2010, at the conclusion of
7 which the Court took the matter under submission.

8 II.

9 DISCUSSION

10 Courts have authority to assess compensatory sanctions
11 for violation of their orders. United States v. United Mine
12 Workers of Am., 330 U.S. 258, 303-04 (1947). Consumer loss is a
13 common measure for compensatory sanctions in civil contempt
14 proceedings. FTC v. Trudeau, 579 F.3d 754, 771 (7th Cir. 2009);
15 see also FTC v. Stefanchik, 559 F.3d 924, 931-32 (9th Cir. 2009)
16 (stating that "courts have often awarded the full amount lost by
17 consumers rather than limiting damages to a defendant's
18 profits"); FTC v. Figgie Int'l, 994 F.2d 595, 606 (9th Cir. 1993)
19 (stating that the "fraud in the selling, not the value of the
20 thing sold, is what entitles consumers . . . to full refunds").
21 The FTC bears the initial burden of establishing a baseline
22 figure through a reasonable approximation of consumer loss.
23 Trudeau, 579 F.3d at 773. This figure may include costs
24 associated with locating and reimbursing defrauded purchasers.
25 Id. at 774. It may also include reasonable attorneys' fees,

26
27 ² Because the parties are familiar with the procedural
28 history, facts, and parties' positions, they are not restated
here except as necessary to explain the Court's decision.

1 costs, and expenses. See Whittaker Corp. v. Execuair Corp., 953
2 F.2d 510, 517 (9th Cir. 1992) (affirming district court's order
3 to pay contempt sanctions, including \$600,000 in attorneys' fees,
4 costs, and expenses). Once the baseline figure is established,
5 the burden shifts to defendant to show that the figure is
6 inaccurate or that defendant is entitled to an offset. Trudeau,
7 579 F.3d at 773.

8 Here, consumers paid \$12,116,252 to Contempt Defendants
9 and were refunded \$1,483,469. (Court's FOF ¶ 106.) These
10 amounts have been cited or relied on by various parties, and, in
11 any event, stand uncontroverted. (Court's COL ¶ 59.) The FTC
12 seeks initial compensatory contempt sanctions in the amount of
13 \$11,406,681, which includes \$10,632,783 in consumer loss and
14 \$773,899.62 in costs incurred by the Receivership Estate
15 (\$445,005.94 for operating expenses of the Receivership entities
16 and \$328,893.68 for fees and expenses of the Receivership and the
17 Receiver's attorneys).³ Thus, the baseline figure is
18 \$11,406,681.⁴

21 ³ In the FTC's Supplemental Reply to Bryan D'Antonio, it
22 seeks initial compensatory contempt sanctions of \$11,272,012.
23 (See Doc. No. 328.) Because of the Court's order approving fees
24 and expenses for the Receivership and the Receiver's attorneys on
25 March 8, 2010 (see Doc. No. 333), the Court has added \$134,669 to
26 this figure.

27 ⁴ The FTC suggests leaving the record open to augment the
28 sanctions judgment with future costs associated with locating and
reimbursing defrauded consumers, plus other costs incurred by the
Receivership Estate when they are known. The Court has included
Receivership costs, fees, and expenses disclosed to all parties
before issuance of this order. However, the Court declines to
entertain future requests to add costs associated with locating
defrauded consumers, or any other Receivership fees, costs, and
expenses, in the contempt sanctions judgment.

1 **A. Bryan D'Antonio**

2 Defendant D'Antonio urges that sanctions be denied, or
3 alternatively that they be assessed at no more than \$2 million.
4 Mr. D'Antonio argues that \$2 million is appropriate for the
5 following reasons: (1) the consumer-loss baseline figure
6 improperly includes \$3,369,521 from TFG because TFG had its own
7 separate consumer base and there are no findings that payments to
8 TFG related to loan-modifications; (2) the figure improperly
9 includes \$920,409 in net payments to ALG because ALG did not have
10 a fair opportunity to satisfy its clients before the Receiver
11 took over; (3) the figure improperly includes \$1,691,600 in funds
12 to RLG during the last three months of RLG's operation because
13 RLG was deprived of the opportunity to satisfy its customers; and
14 (4) the figure improperly includes \$2,651,253 because Mr.
15 D'Antonio cannot afford his household expenses, let alone a
16 multi-million dollar judgment, and a judgment higher than
17 \$2 million would amount to a financial death sentence.

18 Defendant D'Antonio's contentions are rejected. First,
19 as to the \$3,369,521 in funds attributable to TFG, the Court
20 found that TFG was bound by the permanent injunction because it
21 had actual notice of the injunction, acted in concert with Mr.
22 D'Antonio, and was Mr. D'Antonio's alter ego. (Court's COL
23 ¶¶ 20-29.) TFG violated the permanent injunction by
24 participating directly in a telemarketing campaign. (Court's COL
25 ¶ 46.) Consequently, the consumer funds received by TFG as a
26 result of its campaign are properly included in the contempt
27 sanctions. To the extent that Mr. D'Antonio argues that all of
28 the consumer funds received by TFG should not be included, he

1 fails to carry his burden to establish that the figure is
2 inaccurate or that he is entitled to an offset because a specific
3 amount of the consumer funds received by TFG did not violate the
4 permanent injunction. See Trudeau, 579 F.3d at 773.

5 Second, as to the \$920,409 in net payments to ALG and
6 \$1,691,600 in payments to RLG, defendant D'Antonio is not
7 entitled to an offset because he has not set forth specific
8 evidence that any of the customers were wholly satisfied with
9 services received.⁵ Id. (allowing offset if defendant shows that
10 "some customers were wholly satisfied with their purchase.");
11 cf. Figgie, 994 F.2d at 607 ("While ordinarily the proper measure
12 of restitution is the amount of enrichment received, if the loss
13 suffered by the victim is greater than the unjust benefit
14 received by the defendant, the proper measure of restitution may
15 be to restore the status quo.") (citation omitted). Defendant
16 D'Antonio fails to carry his burden to show why he is entitled to
17 offset because he does not identify customers who were wholly
18 satisfied, and he therefore fails to offset the baseline figure
19 by the amount paid by such customers.

20 As to Mr. D'Antonio's claim that he should not be
21 responsible for \$2,651,253 in sanctions because he cannot afford
22 a higher judgment than \$2 million, his argument fails because he
23 does not offer any authority to support such reduction when
24

25 ⁵ The Court also found that Contempt Defendants continued to
26 engage in telemarketing in violation of the permanent injunction
27 from mid-April 2009 until the Receiver took over on May 28, 2009,
28 and that there is no evidence that the Contempt Defendants had
obtained or could obtain the promised results for their new
clients. (Court's COL ¶ 63.)

1 compensatory sanctions are imposed. The Court does have
2 discretion to limit sanctions in light of defendant D'Antonio's
3 financial circumstances, but the Court declines to grant Mr.
4 D'Antonio's request owing to the severity of his contumacious
5 conduct.

6 **B. The Rodis Law Group**

7 RLG acted in a common enterprise with the other
8 Contempt Defendants and thus "share[s] liability for the unlawful
9 practices of any of the participants without regard to their
10 corporate identities or affiliation."⁶ (Court's COL ¶ 30.)
11 Accordingly, RLG is joint and severally liable for the consumer
12 loss of \$11,406,681. (See COL ¶ 32.)

13 **C. America's Law Group**

14 ALG acted in a common enterprise with the other
15 Contempt Defendants and thus "share[s] liability for the unlawful
16 practices of any of the participants without regard to their
17 corporate identities or affiliation." (Court's COL ¶ 30.)
18 Accordingly, ALG is joint and severally liable for the consumer
19 loss of \$11,406,681. (See COL ¶ 32.)

20 **D. The Financial Group**

21 TFG acted in a common enterprise with the other
22 Contempt Defendants and thus "share[s] liability for the unlawful
23

24 ⁶ At the March 1, 2010 hearing, RLG indicated that it would
25 wind itself down, waive any rights or claims it may have now or
26 in the future to any of its assets in favor of the Receivership,
27 and dissolve. In the event this offer satisfies the FTC's
28 concerns, judgment may not be necessary with respect to RLG.
However, unless RLG and the FTC reach agreement, and the Court
receives notice of such agreement, RLG remains liable for the
sanctions judgment.

1 practices of any of the participants without regard to their
2 corporate identities or affiliation." (Court's COL ¶ 30.)
3 Accordingly, TFG is joint and severally liable for the consumer
4 loss of \$11,406,681. (See COL ¶ 32.)

5 **III.**

6 **CONCLUSION**

7 Accordingly and for the foregoing reasons, the FTC's
8 request for sanctions is granted. The Contempt Defendants are
9 jointly and severally liable in the amount of \$11,406,681.
10 Judgment shall be entered in accordance with this order on March
11 31, 2010.

12 IT IS SO ORDERED.

13 The Clerk shall serve this Order Assessing Civil
14 Contempt Sanctions against Contempt Defendants on all counsel
15 involved with the Order to Show Cause re Contempt.

16 Dated: March 16, 2010.

17
18 ALICEMARIE H. STOTLER
19 ALICEMARIE H. STOTLER
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28