

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**WAGNER RAMOS BORGES, individually
and d/b/a JOB SAFETY USA, SPARKLE
INDUSTRIAL, SPARKLE MAINTENANCE,
STAR MAINTENANCE, AIM JANITORIAL
& FLOORING, and UNITED
MAINTENANCE,**

Defendant.

Case No: 8:09-CV-1634-PJM

**FINAL ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT
AGAINST WAGNER RAMOS
BORGES**

On June 22, 2009, plaintiff, the Federal Trade Commission (“FTC” or “Commission”), pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a); § 53(b), filed its complaint for injunctive and other equitable relief [D.E. 1], charging Wagner Ramos Borges with engaging in deceptive acts and practices in violation of Section 5 of the FTC Act. The FTC applied *ex parte* for a temporary restraining order (“TRO”) and for an order to show cause why a preliminary injunction should not be granted [D.E. 4], pursuant to Rule 65(b) of the Federal Rules of Civil Procedure. That same day, the Court granted the FTC’s application and entered a TRO against Borges [D.E. 6]. Subsequently, the Court held a preliminary injunction hearing, at which Borges did not appear, and entered a preliminary injunction against him [D.E. 15]. The Commission later served Borges with the summonses and complaint [D.E. 20]. To date, however, Borges has not responded.

On October 30, the Commission filed a request for Clerk's entry of default against Borges for want of answer or other defense [D.E. 22]. On December 17, the Clerk of the Court entered the default [D.E. 24]. The Commission has now filed a motion requesting that the Court enter a default judgment and permanent injunction against Borges, pursuant to Federal Rule of Civil Procedure 55(b)(2). Having considered the motion and supporting memoranda and exhibits, it is **ORDERED AND ADJUDGED** that the FTC's motion is granted as follows:

IT IS THEREFORE ORDERED as follows:

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b);
2. Venue is proper in this District under 28 U.S.C. §§ 1391(d) and 15 U.S.C. § 53(b);
3. The activities alleged in the complaint are in or affecting "commerce" as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
4. The facts that the FTC has stated in its complaint, if true, would state a claim upon which relief may be granted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b);
5. Borges has been properly served with the summonses and complaint, as required by Federal Rule of Civil Procedure 4;
6. Borges has made false or misleading statements in connection with the advertising, marketing, promotion, or offering of employment services in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

7. Borges's total profit, from January 2008 to February 2009, from the conduct alleged in the FTC's complaint amounts to \$414,900 (four hundred nineteen thousand, nine hundred dollars). This amount is readily ascertainable from records that the FTC obtained from a payment processor that Borges used during his scheme;
8. The Commission is entitled to equitable monetary relief against Borges, personally, in the amount of \$414,900, which is the amount of consumer injury caused by Borges's scheme;
9. Borges is likely to continue to engage in the activities alleged in the FTC's complaint unless he is permanently enjoined from such acts and practices; and
10. Entry of this Order is in the public interest.

ORDER

DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

1. "**Asset**" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, reserve funds, and cash, wherever located.
2. "**Assisting others**" means providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving

or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any promotional material; (3) providing names of, or assisting in the generation of, potential customers; (4) performing promotional or marketing services of any kind; or (5) processing credit and debit card payments.

3. **“Borges”** means Wagner Ramos Borges, individually and doing business as Job Safety USA, Sparkle Industrial, Sparkle Maintenance, Star Maintenance, Aim Janitorial & Flooring, or United Maintenance.
4. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, Internet sites, webpages, websites, electronic correspondence, including e-mail and instant messages, photographs, audio and video recordings, contracts, accounting data, advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, and other data compilations from which information can be obtained and translated. A draft or non-identical copy is a separate document within the meaning of the term.
5. **“Employment goods or services”** means any item, product, good, or service represented to assist consumers in obtaining employment, including, but not limited to, certification, preparation, or other training for any employment opportunity.

6. “**Plaintiff**” or “**Commission**” or “**FTC**” means the Federal Trade Commission.
7. The words “**and**” and “**or**” shall be understood to have both conjunctive and disjunctive meanings.

CONDUCT PROHIBITION

I.

BAN ON FUTURE EMPLOYMENT GOODS OR SERVICES ACTIVITIES

IT IS THEREFORE ORDERED that Borges is permanently restrained and enjoined from advertising, marketing, promoting, or offering employment goods or services, or assisting others engaging in advertising, marketing, promoting, or offering employment goods or services, whether directly or indirectly, or through any entity, corporation, subsidiary, division, or other device, and whether acting as an owner, trustee, officer, director, consultant, advisor, employee, employer, independent contractor, or otherwise. Nothing in this Order shall be read as an exception to this Section.

II.

PROHIBITION AGAINST VIOLATION OF SECTION 5(a) OF THE FTC ACT

IT IS THEREFORE ORDERED that, in connection with the advertising, marketing, promotion, or offering of any goods or services, Borges, and his agents, servants, employees, and attorneys, and persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from misrepresenting, directly or by implication, to any potential purchaser of any goods or services, any material fact, including, but not limited to:

- A. The total cost to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;
- B. Any material restrictions, limitations, or conditions to purchase, receive, or use the goods or services;
- C. Any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the goods or services;
- D. The income, profits, or sales volume likely to be achieved from the goods or services; and
- E. Providing substantial assistance to any third-party to make any material misrepresentation, including, but not limited to, those misrepresentations prohibited by this Section.

III.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Borges is personally liable to the Commission for \$414,900 (four hundred nineteen thousand, nine hundred dollars), which is the amount of injury suffered by consumers, and the Commission is awarded a monetary judgment in this amount.
- B. The following financial institutions shall immediately remit the entire amount of assets held in the listed accounts to the Commission:
 - 1. \$1,757.31 with ClickBank/Keynetics (account no. 7927149786);
 - 2. \$10,489.81 with JPMorgan Chase (account nos. 0957-0000606686-9 and 0340-0000166308-9); and

3. \$17,783.11 with PayPal (account name Job Safety/Marinete Stein).
- C. Payment shall be made to the Commission by certified check(s) or other guaranteed funds payable to the Federal Trade Commission, Financial Management Office, or by wire transfer in accordance with directions provided by the Commission. The check(s) or written confirmation of the wire transfer(s) shall be delivered to: Associate Director, Division of Marketing Practices, 600 Pennsylvania Avenue, N.W., Room 286, Washington, D.C. 20580.
 - D. The transfer of the funds identified in Section III.B. shall partially satisfy the judgment against Borges. The Commission may execute on the remaining portion of the judgment pursuant to Federal Rule of Civil Procedure 69.
 - E. All funds paid to the Federal Trade Commission pursuant to the Order shall be deposited into an account administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Borges's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Borges shall have no right to challenge the Commission's choice of remedies under this Section. Borges shall have no right to contest the manner of distribution chosen by the Commission.

- F. Borges relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Borges shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.
- G. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

IV.

ORDER PROVISION REGARDING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Borges, and each of his agents, servants, and employees, and all other persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

- A. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which Borges obtained prior to entry of this Order in connection with the advertising, marketing, promotion, or offering of employment goods or services; and
- B. failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or

destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

V.

LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of Borges's assets set forth in the Preliminary Injunction, entered by this Court on July 10, 2009, shall be lifted to the extent necessary to turn over Borges's assets as required by Section III.B. of this Order, and upon completion of the turn-over, shall be lifted permanently.

VI.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Borges shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in Borges's possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
 2. having its representatives pose as consumers and suppliers to Borges, his employees, or any other entity managed or controlled in whole or in part by Borges, without the necessity of identification or prior notice; and
- C. Borges shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order,
 1. Borges shall notify the Commission of the following:
 - a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

- b. Any changes in his employment status (including self-employment), and any change in his ownership in any business entity within ten (10) days of the date of such change. Such notice shall include the name and address of each business that is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of her duties and responsibilities in connection with the business or employment; and
 - c. Any changes in his name or use of any aliases or fictitious names within ten (10) days of the date of such change;
2. Borges shall notify the Commission of any changes in structure of any business entity that he directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, provided that, with respect to any such change in the business entity about which he learns less than thirty (30) days prior to the date such action is to take place, he shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of five (5) years, Borges shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to:

1. Borges's then-current residence address, mailing addresses, and telephone numbers;
2. Borges's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that Borges is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of Borges's duties and responsibilities in connection with the business or employment;
3. A copy of the acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and
4. Any other changes required to be reported under Subsection A of this Section.

C. Borges shall notify the Commission of the filing of a bankruptcy petition by him within fifteen (15) days of filing.

D. For the purposes of this Order, Borges shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, D.C. 20580
Re: FTC v. Borges et al.
Case No.: 8:09-CV-01634-PJM

Provided that, in lieu of overnight courier, Borges may send such reports or notifications by first-class mail, but only if he contemporaneously sends an electronic version of such report or notification to the Commission at:

DEBrief@ftc.gov.

- E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Borges.

VIII.

RECORDKEEPING

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Borges, for any business for which he is the majority owner or directly or indirectly controls, is hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly or indirectly, such as through a third party,) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

IX.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Borges shall deliver copies of the Order as directed below:

- A. Borges as control person: For any business that Borges controls, directly or indirectly, or in which he has a majority ownership interest, he must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the

Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Borges. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

- B. Borges as employee or non-control person: For any business where Borges is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, he must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- C. Borges must secure a signed and dated statement acknowledging receipt of this Order, within thirty (30) days of delivery, from all persons receiving a copy of this Order pursuant to this Section.

X.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

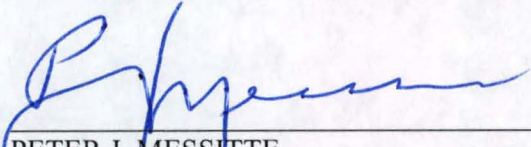
IT IS FURTHER ORDERED that , within five (5) business days of receipt of this Order as entered by the Court, Borges must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XI.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED, this 28 day of JAN, 2010, at 6:00 a.m., Eastern Standard
Time.



PETER J. MESSITTE
Senior United States District Judge