

FILED
U.S. DISTRICT COURT

2010 AUG 26 P 4: 53

DISTRICT OF UTAH

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

LOANPOINTE, LLC, et al.,

Defendants.

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Case No. 2:10-cv-00225-DAK

BY: _____
DEPUTY CLERK

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND SETTLEMENT
OF CLAIMS AS TO DEFENDANT MARK LOFGREN**

Plaintiff Federal Trade Commission ("FTC") commenced this civil action on March 15, 2010, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and Section 814 of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692l, to obtain preliminary and permanent injunctive and other equitable relief for Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FDCPA, 15 U.S.C. § 1692 *et seq.*, and the FTC's Trade Regulation Rule Concerning Credit Practices ("Credit Practices Rule"), 16 C.F.R. Part 444, in connection with the offering and extension of credit in the form of high-fee, short-term payday loans, and the collection of those loans. The FTC and Defendant Mark Lofgren hereby stipulate to the entry of this Final Order for Permanent Injunction and Settlement of Claims ("Order").

FINDINGS

By stipulation of the parties and being advised of the premises, the Court finds:

1. This is an action by the FTC instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 814 of the FDCPA, 15 U.S.C. § 1692l. The

Complaint seeks both permanent injunctive relief and consumer redress for Defendants' alleged deceptive acts or practices in connection with the offering and extension of credit in the form of high-fee, short-term payday loans, and the collection of those loans.

2. The FTC has the authority under Sections 13(b) and 57b of the FTC Act and Section 814 of the FDCPA to seek the relief it has requested, and the Complaint states a claim upon which relief can be granted against Defendant Mark Lofgren.
3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over Defendant Mark Lofgren. Venue in the District of Utah is proper.
4. The activities of Defendant Mark Lofgren, as alleged in the Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The parties stipulate and agree to entry of this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint to the date of entry of this Order. This settlement does not settle and resolve any matters not alleged in the Complaint. Defendant Mark Lofgren does not admit any of the allegations set forth in the Complaint, other than the jurisdictional facts, merely by stipulating and agreeing to the entry of this Order.
6. Defendant Mark Lofgren waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant Mark Lofgren also waives any claim that he may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each settling party shall bear its own costs and attorneys fees.
7. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

8. Entry of this Order is in the public interest.

DEFINITIONS

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

1. **"Assisting others"** includes, but is not limited to, providing any of the following goods or services to another person: (A) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (B) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material, including but not limited to, the text of any Internet website, email, or other electronic communication; (C) providing names of, or assisting in the generation of, potential customers; (D) performing marketing services of any kind; or (E) acting or serving as an owner, officer, director, manager, or principal of any entity.
2. **"Collection of debts"** means any activity the principal purpose of which is to collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due.
3. **"Credit"** means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
4. **"Debt"** means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, or services that are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
5. **"Defendants"** means all of the individual Defendants and corporate Defendants, individually, collectively, or in any combination. **"Corporate Defendants"** means Eastbrook, LLC and LoanPointe, LLC, also doing business as eCash and GeteCash, and

their successors and assigns. "Individual Defendants" means Joe S. Strom and Mark S. Lofgren.

6. "Person" means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, or any other group or combination acting as an entity.

ORDER

BAN ON THE USE OF WAGE ASSIGNMENT CLAUSES

I. IT IS THEREFORE ORDERED that Defendant Mark Lofgren, whether acting directly or through any other person, is permanently restrained and enjoined from:

- A. Taking or receiving from a consumer an obligation that constitutes or contains an assignment of wages or other earnings; or
- B. Assisting others in taking or receiving from a consumer an obligation that constitutes or contains an assignment of wages or other earnings.

Nothing in this Order shall be read as an exception to this paragraph.

PROHIBITION AGAINST VIOLATING THE CREDIT PRACTICES RULE

II. IT IS FURTHER ORDERED that Defendant Mark Lofgren and his successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the extension of credit to consumers, are permanently restrained and enjoined from violating any provision of the Credit Practices Rule, 16 C.F.R. Part 444 (a copy of which is attached hereto as Attachment A and as it may be hereafter amended).

PROHIBITED COLLECTION PRACTICES

III. IT IS FURTHER ORDERED that Defendant Mark Lofgren and his successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the collection of a debt from any consumer, are hereby permanently restrained and enjoined from:

- A. Misrepresenting, or assisting others who are misrepresenting, expressly or by implication:**
- 1. That any person is authorized to garnish the pay of a consumer without first obtaining a court order authorizing such garnishment;**
 - 2. That, before any person sends a garnishment request to a consumer's employer, such person has notified the consumer of their intent to garnish and has provided the consumer with the opportunity to dispute the debt that is the subject of the garnishment; or**
 - 3. Any material fact to collect or attempt to collect a debt;**
- B. Contacting, or assisting others in contacting, directly or indirectly, a consumer's employer unless the communication is in connection with seeking garnishment of the consumer's wages pursuant to a valid court order authorizing such garnishment, or the communication is for the purpose of acquiring information about the consumer's location pursuant to Part III C of this order; or**

- C. **Contacting, or assisting others in contacting, directly or indirectly, any person other than a consumer for the purpose of acquiring information about the consumer's location unless the contacting party:**
1. **identifies himself or herself, states that he or she is confirming or correcting location information concerning the consumer, and, only if expressly requested, identifies his or her employer;**
 2. **does not state that such consumer owes any debt;**
 3. **does not communicate with any such person more than once unless requested to do so by such person or unless he or she reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;**
 4. **does not communicate by post card;**
 5. **does not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that he or she is in the debt collection business or that the communication relates to the collection of a debt; and**
 6. **after he or she knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from him or her.**
- D. **Disclosing, or assisting others in disclosing, directly or indirectly, the existence of a consumer's debt or purported debt to any person other than the consumer, the consumer's**

attorney, a consumer reporting agency if permitted by law, the creditor, the creditor's attorney, or his or her attorney, unless he or she has the prior express consent of the consumer given directly to him or her, the express permission of a court of competent jurisdiction, or he or she can show that such disclosure is reasonably necessary to effectuate a post judgment judicial remedy, provided that for purposes of this subpart "consumer" shall include "the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator."

PROHIBITION AGAINST VIOLATING THE FAIR DEBT COLLECTION PRACTICES ACT

IV. IT IS FURTHER ORDERED that Defendant Mark Lofgren and his successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the collection of a debt from a consumer, are permanently restrained and enjoined from violating any provision of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692f (a copy of which is attached hereto as Attachment B and as it may be hereafter amended), including, but not limited to:

A. Violating Section 807 of the FDCPA, 15 U.S.C. § 1692e, by using any false, deceptive, or misleading representation or means in connection with the collection of any debt, including but not limited to falsely representing to consumers' employers, directly or indirectly, expressly or by implication, that: (1) any person is authorized under the Debt Collection Improvement Act of 1996 to garnish the pay of consumers who owe debts to any person, without first obtaining a court order; or (2) before sending a garnishment

request to consumers' employers, any person has notified consumers of that action and have provided consumers with the opportunity to dispute the debt that is the subject of the garnishment; or

- B. Violating Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b), by communicating with third parties for purposes other than acquiring location information about a consumer, without having obtained directly the prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a post judgment judicial remedy.

PROHIBITIONS ON USE OF CUSTOMER INFORMATION

V. **IT IS FURTHER ORDERED** that Defendant Mark Lofgren and his successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, 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 that any Defendant obtained prior to entry of this Order in connection with the advertising, marketing, promotion, offering for sale or sale of any payday loan, 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.

MONETARY RELIEF

VI. IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered against Defendant Mark Lofgren in the amount of THIRTY EIGHT THOUSAND ONE HUNDRED THIRTY THREE DOLLARS (\$38,133); *provided, however,* that this judgment shall be suspended as long as the Court makes no finding, as provided in Section VII of this Order, that Defendant Mark Lofgren materially misrepresented or omitted the nature, existence, or value of any asset.
- B. Any funds received by the FTC pursuant to this Section shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress funds. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for such other equitable relief, including but not limited to consumer information remedies, as the FTC determines to be reasonably related to the practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the U.S. Treasury as equitable disgorgement. Defendants shall have no right to challenge the FTC's choice of remedies or the manner of distribution.

- C. Defendant Mark Lofgren relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant Mark Lofgren shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.
- D. Defendant Mark Lofgren agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the FTC to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendant Mark Lofgren further stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action by the FTC pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such purposes.
- E. The judgment entered pursuant to this Section is equitable monetary relief; solely remedial in nature, and not a fine, penalty, punitive assessment, or forfeiture.
- F. Upon request, Defendant Mark Lofgren is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC his tax identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.
- G. Pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning Defendant Mark Lofgren to the FTC, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

RIGHT TO REOPEN

VII. IT IS FURTHER ORDERED that, the FTC's agreement to, and the Court's approval of, this Order is expressly premised on the truthfulness, accuracy and completeness of

Defendant Mark Lofgren's financial statement previously submitted to the FTC. If, upon motion by the FTC, the Court finds that such financial statement contains any material misrepresentation or omission, the suspended judgment entered in Section VI of this Order shall become immediately due and payable, less any amounts turned over to the FTC pursuant to Section VI of this Order; *provided, however*, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order. For purposes of this Section, Defendant Mark Lofgren waives any right to contest any of the allegations in the Complaint.

COOPERATION WITH FTC

VIII. IT IS FURTHER ORDERED that Defendant Mark Lofgren shall, in connection with this action or any subsequent investigation or litigation related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint as it may be amended, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant Mark Lofgren shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint as it may be amended, without the service of a subpoena, *provided, however*, that Defendant Mark Lofgren shall be entitled to receive any witness fees and expenses allowable pursuant to Federal Rule of Civil Procedure 45.

COMPLIANCE MONITORING

IX. IT IS FURTHER ORDERED that, for the purpose of (i) monitoring and investigating compliance with any provision of this Order, and (ii) investigating the accuracy of Defendant Mark Lofgren's financial statements upon which the FTC's agreement to this Order is expressly premised:

- A. Within ten (10) days of receipt of written notice from a representative of the FTC, Defendant Mark Lofgren 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 his possession or direct or indirect control to inspect the business operation;
- B. In addition, the FTC 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 Defendant Mark Lofgren, his employees, or any other entity managed or controlled in whole or in part by him, without the necessity of identification or prior notice; and
- C. Defendant Mark Lofgren shall permit representatives of the FTC 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 FTC'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)).

COMPLIANCE REPORTING

X. 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, Defendant Mark Lofgren shall notify the FTC of the following:

- 1.** Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
- 2.** 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 he 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 his duties and responsibilities in connection with the business or employment;
- 3.** Any changes in his name or use of any aliases or fictitious names within ten (10) days of the date of such change;
- 4.** 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 FTC 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, Defendant Mark Lofgren 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. His then-current residence address, mailing addresses, and telephone numbers;
 2. His then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that he is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment;
 3. A copy of each 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. Defendant Mark Lofgren shall notify the FTC of the filing of a bankruptcy petition by him within fifteen (15) days of filing.

- D. For the purposes of this Order, Defendant Mark Lofgren shall, unless otherwise directed by the FTC's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications to the FTC that are required by this Order to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
RE: *FTC v. Mark Lofgren, LLC* (X100032).

Provided that, in lieu of overnight courier, Defendant Mark Lofgren 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 FTC at DEbrief@ftc.gov.

- E. For purposes of the compliance reporting and monitoring required by this Order, the FTC is authorized to communicate directly with Defendant Mark Lofgren.

RECORDKEEPING

XI. IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendant Mark Lofgren, 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, phone 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."

DISTRIBUTION OF ORDER

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

- A. Individual Defendant as control person: For any business that Defendant Mark Lofgren 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 the 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 Defendant Mark Lofgren. 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. Individual Defendant as employee or non-control person: For any business where Defendant Mark Lofgren 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. Defendant Mark Lofgren must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

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

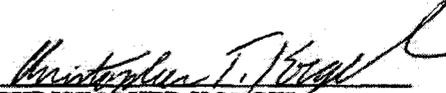
RETENTION OF JURISDICTION

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

ENTRY OF THIS JUDGMENT

XV. IT IS FURTHER ORDERED that there is no just reason for delay of entry of this judgment, and that, pursuant to Fed. R. Civ. P. 54(b), the Clerk shall enter this Order immediately.

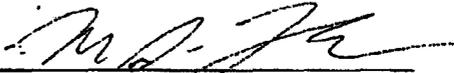
SO STIPULATED:



CHRISTOPHER KOEGEL
STEPHANIE ROSENTHAL
GREGORY A. ASHE
Federal Trade Commission

CARLIE CHRISTENSEN (Utah Bar No. 633)
Acting United States Attorney
JEANNETTE SWENT (Utah Bar No. 6043)
Assistant United States Attorney

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION



MARK S. LOEGREN
Defendant *pro se*

IT IS SO ORDERED, this 23rd day of August, 2010.



DALE A. KIMBALL
UNITED STATES DISTRICT JUDGE