

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION
(proposed)

No: _____

FEDERAL TRADE COMMISSION

Plaintiff,

No: 18-cv-3309-PJM

v.

ECOLOGICAL FOX, LLC et al.

Defendants.

**FEDERAL TRADE COMMISSION’S MOTION, AND MEMORANDUM IN SUPPORT,
SEEKING LEAVE TO IMMEDIATELY AMEND COMPLAINT TO ADD MICHAEL
SANTOS AND NEWPORT LAND GROUP LLC AS DEFENDANTS AND FOR
PRELIMINARY INJUNCTION AGAINST MICHAEL SANTOS**

The Federal Trade Commission (“FTC”) hereby moves to amend the Complaint to add two new defendants, Michael Santos and Newport Land Group LLC, pursuant to Rule 15(a)(1)(B), which permits the FTC to amend its pleading once as a matter of course within 21 days of the first responsive pleading.¹ As a result of Santos’s conduct alleged in the Amended Complaint, and proven in the FTC’s voluminous submissions, the FTC also hereby moves for a preliminary injunction against Santos, on the same terms and remaining briefing schedule as the rest of the currently named defendants. Santos, a prison friend of Andris Pukke’s, became the “Director of Business Communications” for and investor in the Sanctuary Belize Enterprise (“SBE”), who also used his purported notoriety as a prison reform consultant to advertise the Sanctuary Belize development. As detailed below, Santos directly made claims to consumers, including at least three of the core claims in the Amended Complaint: (1) no debt renders

¹ The rule reads: “A party may amend its pleading once as a matter of course within: [] (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.”

Sanctuary Belize less risky or riskless; (2) the Sanctuary Belize lots are appreciating; and (3) Sanctuary Belize is going to have numerous amenities, including the world class, 250-slip marina.

The Court's immediate granting of this combined motion does not need to interfere with the current filing schedules and the upcoming preliminary injunction hearing because the FTC has not substantially changed any of its allegations against any of the current defendants. Furthermore, the FTC hereby stipulates that Atlantic International Bank Ltd.'s ("AIB") motion to dismiss, filed on December 14, 2018, can move forward as to the Amended Complaint because the FTC has in no way modified its allegations against ("AIB").² As to Santos, the FTC is serving him with this motion and all related pleadings through his counsel. Given that oppositions to the preliminary injunction are currently due on January 11, 2019, Michael Santos will have two weeks to respond to this motion, which is the same time parties generally have to respond to motions under Local Rule 105.2.

I. THE FTC CAN AMEND AS A MATTER OF COURSE, AND OTHERWISE AMENDMENT IS STILL APPROPRIATE.

Under Rule 15(a)(1)(B), the FTC may file the Amended Complaint as a matter of course.³ Because the first responsive pleading was AIB's motion to dismiss, filed on December 14, 2018, the FTC is well within the 21-day deadline for this Amended Complaint. *Fawzy v. Wauquiez Boats SNC*, 873 F.3d 451, 455 (4th Cir. 2017) (holding that plaintiff had right to file an amended complaint within the 21-day period without leave of court and the amended complaint immediately superseded the prior pleading); *Galustian v. Peter*, 591 F.3d 724, 730 (4th Cir. 2010) ("The plaintiff's right to amend once is absolute."); *Martensen v. Chi. Stock*

² Similarly, the Amended Complaint does not affect Andris Pukke's motion to transfer pursuant to 28 U.S.C. § 1404, because that is not a Rule 12 motion. *See* Fed. R. Civ. P. 12(b) (listing only a motion for improper venue as Rule 12 motion); *CoStar Realty Info. Inc. v. Meissner*, 604 F. Supp. 2d 757, 770 (D. Md. 2009) (stating that a 1404 motion is distinct from a 12(b)(3) venue motion, and placing the burden on the moving party to prove the transfer is appropriate by a preponderance of the evidence).

³ The FTC submits this motion, rather than merely filing the Amended Complaint, upon instructions from the Court.

Exch., 882 F.3d 744, 745 (7th Cir. 2018) (error for a court to reject an amended complaint within the 21-day filing period). Separately, courts typically grant plaintiffs wide latitude to file amended complaints, particularly where, as here, no party can complain of delay, prejudice, or bad faith because the Amended Complaint is being submitted prior to any answers and does not materially change the allegations against any of the current defendants. Fed. R. Civ. P. 15(a)(2) (“The court should freely give leave when justice so requires.”); *Glaustian*, 591 F.3d at 729 (“It is this Circuit’s policy to liberally allow amendment in keeping with the spirit of Federal Rule of Civil Procedure 15(a).”); *Edwards v. City of Goldsboro*, 178 F.3d 231, 242-43 (4th Cir. 1999) (“The law is well settled ‘that leave to amend a pleading should be denied *only when* the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile.’”) (quoting *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986)). Even proposed defendant Santos has notice of this case.

II. THE COURT SHOULD ISSUE AN ORDER REQUIRING MICHAEL SANTOS TO APPEAR AT THE FEBRUARY 11, 2019, HEARING AND SHOW CAUSE WHY HE SHOULD NOT BE BOUND BY THE PRELIMINARY INJUNCTION.

Like the other individual defendants, Michael Santos should be bound by a preliminary injunction preventing him from engaging in conduct like that alleged in the Complaint, requiring him to preserve evidence, requiring him to cooperate with the Receiver, and freezing his assets.⁴ Santos was a key part of the SBE sales operation. Although the FTC was aware that Santos was previously associated with the SBE, his ongoing activity was confirmed during the FTC’s entry onto the defendants’ premises on November 7, 2018. During that entry, the FTC learned that Michael Santos had at least one work station, stored documents on site, and still received mail at that address. Declaration of Aaron Kaufman, ¶¶ 5-7, 9-10. The FTC can also confirm that several of Santos’ 2018 marketing videos for “Buy International,” a member of the SBE, were filmed in the defendants’ conference room. *Id.* ¶ 8. Furthermore, FTC staff witnessed Santos on

⁴ The FTC is not moving against Newport Land Group LLC because, pursuant to Section XVI.W. of the Interim Preliminary Injunction (DE34-1), the Receiver has already deemed Newport Land Group LLC a Receivership Entity and taken control over it and its assets.

the defendants' premises and furthermore saw him flee the premises without ever speaking with the Receiver. *Id.* ¶ 11.

A preliminary injunction is appropriate based on a consideration of “the FTC’s likelihood of success on the merits and . . . weigh[t of] the equities.” *FTC v. AmeriDebt*, 373 F. Supp. 2d 558, 563 (D. Md. 2005) (citing *FTC v. Food Town Stores, Inc.*, 539 F.2d 1339, 1349 (4th Cir. 1976)). The FTC meets its likelihood of success burden because it has a “fair and tenable chance” of prevailing on the merits. *Id.* The requested relief, including the asset freeze, is necessary because of Santos’ deep involvement in a deceptive scheme.

The FTC has already established to the Court’s satisfaction that there must be a preliminary injunction against the Corporate Defendants pending the February 11, 2019, hearing. Additionally, the equities favor this relief, as it does for the other defendants. As the FTC previously explained, the public interest in preventing ongoing conduct and preserving assets outweighs any “private injuries” that defendants like Santos may assert. *Id.* at 564 (citing *Food Town Stores, Inc.*, 539 F.2d at 1346). Therefore, the only new issues raised by this motion are whether the FTC has a “fair and tenable chance” of prevailing against Santos and whether there is otherwise good cause to subject him to the terms of the current preliminary injunction. Both issues are easily resolved.

The FTC will be able to hold Santos individually liable for the Corporate Defendants’ conduct because he “(1) participated directly in the deceptive practices or had authority to control those practices, and (2) had or should have had knowledge of the deceptive practices.” *FTC v. Ross*, 743 F.3d 886, 892 (4th Cir. 2014) (Fourth Circuit’s emphasis). In adopting this standard, the Fourth Circuit stated it was adopting the standard employed by all other Circuits, and cited the Ninth Circuit’s ruling in *FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168 (9th Cir. 1997). Notably, there the Ninth Circuit held that an individual had sufficient knowledge of the illegality of the conduct because she knew that the person in charge of the enterprise was hiding his involvement and had previously been accused of fraud. *Id.* at 1171; *cf.*

United States v. King, 577 Fed. Appx. 701, 704 (9th Cir. 2014) (intentional concealment of identity is relevant to guilty knowledge).

Applying these standards, Santos' liability is easily shown. As Santos himself has explained in a public blog post, he met Pukke while both were incarcerated at Atwater Correctional Facility. PXPP ¶ 91:26. And then, upon his release from prison in 2013, Santos accepted an offer to join Pukke's "team as a full time employee," with a \$100,000 salary and free housing. *Id.*⁵ It is notable that Santos does not give Pukke's full name in this blog post, instead referring to him as "Andi," while also not listing the name of his new employer. *Id.* Also notable, Santos frequently identifies other people as the owners or directors of the SBE, despite this admission that he was going to work for "Andi." PXQQ ¶ 199:211 (identifying Chadwick); PXC ¶ 55:118 (Frank Costanzo as CEO of Newport Land Group and "Director" of Sanctuary Belize). As a result of these conversations with "Andi," Santos began participating in and controlling SBE activities as "Director of Business Development," which involved managing SBE's sales staff. PXQQ ¶ 106:118. More recently, Santos invested more than \$1 million in SBE in June 2018, which granted him the rights to sell at least 25 lots in Sanctuary Belize. PXC ¶ 55:121 (video at approximately minute mark 35:49).⁶ Furthermore, Santos attempted to leverage his notoriety as a prison reform advocate to gain consumers' trust. PXC ¶ 57:135 ("Google my name and you will see why I can be trusted. . .").

In these roles, Santos has created and presented to the public numerous videos repeating the misrepresentations at the heart of the FTC's complaint. PXC ¶¶ 53-56. In one such video Santos touted an investment in Sanctuary Belize as "incredibly invincible," because of the SBE's "hundreds of millions of dollars invested" and "debt free" business model. PXC ¶ 54:106

⁵ Notably, in discussing Pukke's prior business ventures, he indicates Pukke was "successful" (stating Pukke has a "Midas touch") even though it was Pukke's business practices that resulted in his prior litigation with the FTC and ultimate incarceration. *Id.*; see also PXQQ ¶ 105:116 at 3 (Pukke's autobiography recounting a conversation with Santos in which Santos states he understands that Pukke's prior business, *AmeriDebt*, was brought down by the FTC).

⁶ Interestingly, the document shown in the video indicates the investment is in a separate development in Costa Rica, but this investment has given Santos the right to sell lots in Sanctuary Belize.

(approximately minute mark 1:30). He closes this video by stating: “I hope that you’ll join me in owning an appreciating asset in an appreciating market.” *Id.* (approximately minute mark 6:00).⁷ He also touts the various amenities, including the 250-slip marina that he and Costanzo characterize as “the foremost, best quality, deep water marina in the western Caribbean, period.” PXC ¶ 55:120; PXC ¶ 55:118. As detailed in the FTC’s TRO Memo, these claims are false. *See* Plaintiff Federal Trade Commission’s Memorandum in Support of Motion for *Ex Parte* Temporary Restraining Order, Asset Freeze, Writs *Ne Exeat*, Appointment of a Temporary Receiver, Immediate Access, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue, pages 17-21 (no-debt falsity), 32-34 (marina falsity), 34-36 (appreciation falsity).

Santos’ “knowledge” is also easily shown. The Court can infer knowledge based solely on his hands-on role in making the relevant misrepresentations. *See FTC v. Affordable Media*, 179 F.3d 1228, 1238 (9th Cir. 1999) (“The extent of an individual’s involvement in a fraudulent scheme alone is sufficient to establish the requisite knowledge for personal restitutionary liability.”). Separately, Santos’ willingness to work for Pukke while assisting Pukke in hiding

⁷ *See also* PXC ¶ 55:118 *id.* (at approximately minute mark 17:00, Costanzo makes a timeline claim, promising the airstrip will be completed in 3-5 years); *id.* (at approximately minute mark 19:40, Santos: “Best in class development with an extraordinary marina, extraordinary airstrip for owners, a beach club, a private island, equestrian estates, organic gardens. Just everything that you could possibly want if you want an eco friendly development in paradise.”); PXC ¶ 55:119 (“Same standard of living as you would have in the United States.”); PXC ¶ 55:120 (claiming to be selling lots in The Reserve (Sanctuary Belize) that “he owns” on “amazing terms,” in front of a board listing amenities such as the marina, beach club, equestrian, restaurants/spa/bars, and custom homes); *id.* (at approximately minute mark 0:36, claims the lots he is offering provide “instant equity” and are “appreciating in value”); *id.* (at approximately minute mark 12:30, touts the “commercial development” that is going to be done, including “hotels,” “restaurants, and bars”); *id.* (at approximately minute mark 26:20, describes a lot as an investment with “tremendous upside and very little downside” and as an “asset” that “appreciates in value” and avoids the “volatility” of the stock market); *id.* (at approximately minute mark 27:00, Santos explains he is selling lots in Laguna Palms, which is shown as a part of Sanctuary Belize); *id.* (at approximately minute mark 32:00, he states that because of development by the developer, the lots will increase in value from \$135,000 to \$250,000 within 5 years, or a “3x return” on your monthly payments); PXC ¶ 57:131 (at approximately minute mark 4:15: “We have seven shops that we’re populating in the Marina Village.”); PXC ¶ 55:110 (the following claims at the following minute marks: world class beach club (1:35), golf course (1:30), award winning developer with a history of success (2:00), lots have appreciated (2:20)).

his involvement in the SBE shows Santos' knowledge. *See Publishing Clearing House, Inc.*, 104 F.3d at 1171; *Ross*, 743 F.3d at 892-93 (adopting individual liability standard in *Publishing Clearing House, Inc.*). The FTC anticipates Santos will assert he did "due diligence," and so cannot have the relevant knowledge. But, even if did, this will not be sufficient to preclude a finding of knowledge, particularly at the preliminary injunction stage. *Affordable Media*, 179 F.3d at 1235-36 (rejecting "due diligence" defense).

As already explained, upon this showing a preliminary injunction is appropriate. As part of its request, the FTC seeks an asset freeze and various reporting requirements for enforcement of the asset freeze and other terms of the order. As the FTC explained in its TRO filings, "[t]he FTC's burden of proof in the asset-freeze context is relatively light." *FTC v. IAB Mktg. Assocs.*, LP, No. 12-61830-Civ, 2013 WL 5278216 (S.D. Fla. 2013), *aff'd*, No. 12-16265, 2014 WL 1245263, at *4 (11th Cir. Mar. 27, 2014). "There does not need to be evidence that assets will likely be dissipated in order to impose an asset freeze." *Id.* Rather, the asset freeze is necessary "[b]ecause of the fraudulent nature of the . . . violations." *SEC v. Manor Nursing*, 458 F.2d 1082, 1106 (2d Cir. 1971); *see also AmeriDebt*, 373 F. Supp. 2d at 562 (noting the Court is empowered to freeze assets "[t]o insure that any final relief is complete and meaningful") (citing *FTC v. Gem Merchandising Corp.*, 87 F.3d 466, 469 (11th Cir. 1996)); *Commodity Futures Trading Comm'n v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187 (4th Cir. 2002) (court is empowered to freeze assets of defendant in equitable law enforcement actions). Santos was a primary actor in a massive deceptive scheme and therefore cannot be trusted to not dissipate or hide his assets. His assets, wherever they may be, and from wherever they may be derived, need to be preserved to ensure the maximum amount possible can be paid to his and the scheme's victims. *Kemp v. Peterson*, 940 F.2d 110, 113-14 (4th Cir. 1991) (noting that assets may be frozen in HUD enforcement action "without respect to whether th[e] monies are traceable to proceeds or profits and income from the [wrongdoing]").

III. THE AMENDED COMPLAINT DOES NOT REQUIRE THE COURT TO MODIFY ANY CURRENT DEADLINES.

The Amended Complaint should have no effect on the current briefing and hearing schedules in this matter. As noted at the outset, the FTC hereby stipulates that AIB's motion to dismiss shall be deemed to apply to the Amended Complaint and the FTC will respond to AIB's motion on January 11, 2019, as set by the Court's current briefing schedules. The Amended Complaint does not change the allegations related to AIB, and does not include any new facts related to AIB's purported personal jurisdiction or extra-territoriality arguments. Furthermore, the Amended Complaint does not materially change any of the allegations against any of the other defendants or otherwise provide any basis to delay the briefing on the pending motion for a preliminary injunction, which is based on evidence the FTC submitted with its initial motion on October 31, 2018.⁸ Indeed, in moving for a preliminary injunction against Santos, as detailed above, the FTC has relied on material that is already before the Court.

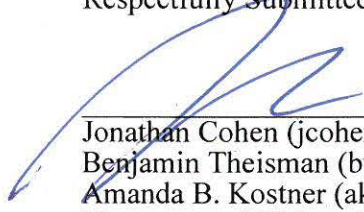
IV. CONCLUSION

The Amended Complaint should be accepted for immediate filing with no changes to any of the current briefing or hearing schedules, and the FTC asks the Court to order Michael Santos to appear at the February 11, 2019, hearing to show cause why a preliminary injunction should not issue against him.

⁸ The FTC, of course, will have the right to submit rebuttal evidence depending on any oppositions from the defendants on January 11.

Dated: December 28, 2018

Respectfully Submitted,



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Certificate of Service

I, Benjamin J. Theisman, hereby certify that on December 28, 2018, I served the foregoing FEDERAL TRADE COMMISSION'S MOTION, AND MEMORANDUM IN SUPPORT, SEEKING LEAVE TO IMMEDIATELY AMEND COMPLAINT TO ADD MICHAEL SANTOS AND NEWPORT LAND GROUP LLC AS DEFENDANTS AND FOR PRELIMINARY INJUNCTION AGAINST MICHAEL SANTOS, and all related documents on the following people and entities by email at the email addresses listed and otherwise by courier to the addresses provided:

David Wiechert, counsel for Rod Kazazi and entities he owns or controls, at dwiechert@aol.com;

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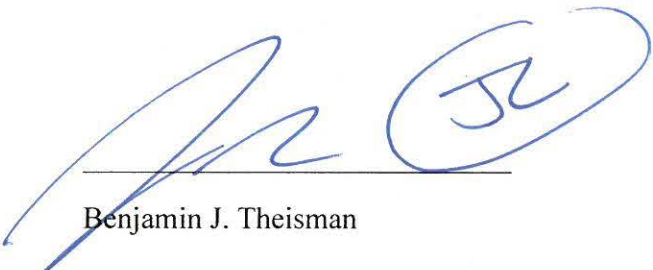
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