IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Federal Trade Commission, Plaintiff, v. Sitesearch Corporation, dba LeapLab, a Nevada corporation; et al., Defendants.	No. CV-14-02750-PHX-NVW **ORDER**

Plaintiff, Federal Trade Commission ("FTC" or "Commission"), filed its Complaint for Permanent Injunction and Other Equitable Relief ("Complaint"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The FTC and Defendant LeapLab, LLC have stipulated to entry of this Final Order for Permanent Injunction and Settlement of Claims ("Order") to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED:

Findings

1. This is an action by the FTC instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The Complaint charges that Defendant participated in unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the disclosure of consumers' Sensitive Personal Information. The Complaint seeks both permanent injunctive relief and equitable monetary relief for

Defendant's unfair acts or practices as alleged therein.

2. The FTC has the authority under Section 13(b) of the FTC Act to seek the relief it has requested, and the Complaint states a claim upon which relief can be granted against Defendant.

3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over Defendant. Venue in the District of Arizona is proper.

4. The activities of Defendant, 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. Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant admits the facts necessary to establish jurisdiction.

6. Defendant waives all rights to appeal or otherwise challenge or contest the validity of this Order. Defendant also waives any claim that it 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. The FTC and Defendant each 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 purpose of this Order, the following definitions apply:

1. **"Defendant"** means LeapLab, LLC, and its successors and assigns.

2. **"Financial Product or Service"** means any product, service, plan, or program represented, expressly or by implication, to:

   A. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, a loan or other extension of credit;

   B. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, credit, debit, or stored value cards;

C. improve, repair, or arrange to improve or repair, any consumer's credit record, credit history, or credit rating; or

D. provide advice or assistance to improve any consumer's credit record, credit history, or credit rating.

3. **"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.

4. **"Sensitive Personal Information"** means any of the following about a consumer: (a) Social Security number; (b) financial institution account number; (c) credit or debit card information; or (d) any other information by which a consumer's financial account can be accessed, or by which a consumer might be charged for goods or services, including through third parties such as telecommunications carriers.

ORDER

I. Prohibition on the Disclosure of Sensitive Personal Information

IT IS THEREFORE ORDERED that Defendant is hereby permanently restrained and enjoined from, or assisting others engaged in, selling, transferring, or otherwise disclosing a consumer's Sensitive Personal Information to any Person, except as otherwise provided in Sections IV or IX of this Order; *provided, however,* that this Section I shall not prohibit the Defendant from transferring or otherwise disclosing a consumer's Sensitive Personal Information to the extent necessary to process payment for any product or service sold by the Defendant directly to that consumer and for which the Defendant has the consumer's express, informed consent for that sale.

II. Prohibited Misrepresentations Relating to Financial Products or Services

IT IS FURTHER ORDERED that Defendant and its officers, agents, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or selling of any

Financial Product or Service, are hereby permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

A. The likelihood that any Person will obtain a loan or other extension of credit; and

B. The terms or rates that are available for any loan or other extension of credit.

III. Prohibited Misrepresentations Relating to All Products or Services

IT IS FURTHER ORDERED that Defendant and its officers, agents, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or selling of any product or service, are hereby permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

A. That a consumer has authorized or otherwise consented to the purchase of a product or service;

B. The likelihood of any particular outcome or result from a product or service;

C. The nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be provided to the consumer; and

D. Any other fact material to consumers concerning any product or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

IV. Consumer Information

IT IS FURTHER ORDERED that Defendant and its officers, agents, employees, and attorneys, and those Persons or entities in active concert or participation with any of them who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly:

A. Failing to provide sufficient consumer information to enable the FTC to administer efficiently consumer redress. If a representative of the FTC requests in writing any information related to redress, Defendant must provide it, in the form prescribed by the FTC, within 14 days.

B. Disclosing, using, or benefitting from consumer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a consumer'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 marketing or offering of payday loans or other extensions of credit.

C. Failing to destroy such consumer information in all forms in Defendant's possession, custody, or control within thirty (30) days after entry of this order.

Provided, however, that consumer 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. Monetary Judgment

IT IS FURTHER ORDERED that:

A. Judgment in the amount of four million, one hundred twenty four thousand, seven hundred ten dollars ($4,124,710) is entered in favor of the FTC against Defendant as equitable monetary relief. The Judgment is suspended subject to the Subsections below.

B. The Commission's agreement to the suspension of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely, the Financial Statement of Defendant LeapLab, LLC signed by John Ayers, manager, on October 1, 2015, including the attachments;

C. The suspension of the judgment will be lifted if, upon motion by the Commission, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

D. If the suspension of the judgment is lifted as to Defendant, the judgment becomes immediately due as to Defendant in the amount specified in Subsection V.A. above (which the parties stipulate to only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

E. All money paid to the FTC pursuant to this Order may be deposited into a fund administered by the FTC or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress funds. If a representative of the FTC decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the FTC may apply any remaining money for such other equitable relief (including consumer information remedies) as the FTC determines to be reasonably related to the practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the United States Treasury as equitable disgorgement. Defendant has no right to challenge any actions the FTC or its representatives may take pursuant to this Subsection.

F. Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

G. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the FTC, in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

H. 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 this Order will have collateral estoppel effect for such purposes.

I. Defendant acknowledges that its Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendant previously submitted to the FTC, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

VI. Order Acknowledgments

IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this Order:

A. Within 7 days of entry of this Order, Defendant must submit to the FTC an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section entitled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendant delivered a copy of this Order, Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VII. Compliance Reporting

IT IS FURTHER ORDERED that Defendant make timely submissions of the following to the FTC:

A. One year after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury. In that report, Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the FTC may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other defendant; (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the FTC;

B. For 20 years following entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a) any designated point of contact; or (b) the structure of Defendant or any entity that Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Defendant must submit to the FTC notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against Defendant within 14 days of its filing.

D. Any submission to the FTC required by this Order to be sworn to under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:_____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by an FTC representative in writing, all submissions to the FTC pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Sitesearch, et al.*

VIII. Recordkeeping

IT IS FURTHER ORDERED that Defendant must create certain records for 20 years after entry of the Order and retain each such record for 5 years. Specifically, Defendant must create and maintain the following records:

A. Proof of consumers' express, informed consent to have their Sensitive Personal Information transferred or disclosed, which includes the consumer's name, and, if collected, phone number, and address; the manner, time, place, and method of the authorization; and sufficient data to readily show the complete consumer experience, including an audio recording of the entirety of any telemarketing transaction;

B. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

C. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

D. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the FTC; and

F. A copy of each unique advertisement or other marketing material.

IX. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's compliance with this Order, including the financial representations upon which the judgment was suspended:

A. Within 14 days of receipt of a written request from a representative of the FTC, Defendant must: submit additional compliance reports or other requested information, which must be sworn to under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The FTC is also authorized to obtain discovery, without further leave of Court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the FTC is authorized to communicate directly with Defendant. Defendant must permit representatives of the FTC to interview any employee or other person affiliated with Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The FTC may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any individual or entity affiliated with Defendant, without the necessity of identification or prior notice. Nothing in this Order limits 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.

X. Retention of Jurisdiction

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

IT IS SO ORDERED.

Dated this 5th day of February, 2016.

Neil V. Wake
United States District Judge