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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

LOANPOINTE, LLC, EASTBROOK, LLC,
also d/b/a Ecash and GeteCash,
JOE S. STROM, BENJAMIN J.
LONSDALE, JAMES C. ENDICOTT, and
MARK S. LOFGREN,

Defendants.

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Case No. 2:10 CV 00225 DAK

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC”), for its complaint alleges:

1. The FTC brings this action under 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. § 1692*l*, to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in violation of the FDCPA, 15 U.S.C. § 1692 *et seq.*, and in violation of 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.

JURISDICTION AND VENUE

2. 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), 57b, and 1692*l*.

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC

also enforces the FDCPA, 15 U.S.C. § 1692 *et seq.*, which prohibits abusive, deceptive, and unfair collection practices. The FTC also enforces the Credit Practices Rule, 16 C.F.R. Part 444, which prohibits unfair and deceptive credit practices.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, the FDCPA, and the Credit Practices Rule, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, and 1692l(a).

THE DEFENDANTS

6. Defendant LoanPointe, LLC is a Utah limited liability company with its principal place of business at 11529 North Bull River Circle, Highland, Utah. LoanPointe transacts or has transacted business in this District and throughout the United States.

7. Defendant Eastbrook, LLC, also doing business as Ecash and GeteCash, is a Utah limited liability company with its principal place of business at 696 North 1890 West, Provo, Utah. Eastbrook transacts or has transacted business in this District and throughout the United States.

8. Defendant Joe S. Strom is a manager, officer, or principal of Eastbrook and LoanPointe. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Strom resides in this District and, in connection

with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

9. Defendant Benjamin J. Lonsdale is a manager, officer, or principal of Eastbrook. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Lonsdale resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

10. Defendant James C. Endicott is a manager, officer, or principal of LoanPointe. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Endicott resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

11. Defendant Mark S. Lofgren is a manager, officer, or principal of LoanPointe. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Lofgren resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

12. Defendants LoanPointe and Eastbrook have operated as a common enterprise while engaging in the unlawful acts and practices alleged below. Defendants have conducted the business practices described below through interrelated companies that have common ownership, officers, managers, business functions, employees, and office locations, and have commingled funds. Because the corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Individual Defendants Strom, Lonsdale, Endicott, and Lofgren have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the corporate Defendants that constitute the common enterprise.

COMMERCE

13. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

BACKGROUND ON FEDERAL AGENCY DEBT COLLECTION

14. The federal government is the owner of many types of debts. In 1996, Congress enacted the Debt Collection Improvement Act of 1996 (“DCIA”), P.L. 104-134 § 31001, to allow federal agencies to collect their debts more effectively by eliminating the need for federal agencies to obtain a state court order before garnishing an employees’ wages. Federal agencies therefore are permitted to contact employers directly and demand that they garnish the wages of debtors who owe money to the federal government. The Department of the Treasury’s Financial Management Service is responsible for implementing the DCIA.

15. Federal agencies seeking to garnish wages pursuant to the DCIA send a package of documents to the employer that includes: (1) a document entitled “Letter to Employer & Important Notice to Employer,” (2) a document entitled “Wage Garnishment Order (SF-329B),” (3) a document entitled “Wage Garnishment Worksheet (SF-329C),” and (4) a document entitled “Employer Certification (SF-329D).” The “Letter to Employer” states: “One of your employees has been identified as owing a delinquent nontax debt to the United States. The Debt Collection Improvement Act of 1996 (DCIA) permits Federal agencies to garnish the pay of individuals who owe such debt without first obtaining a court order. Enclosed is a Wage Garnishment Order directing you to withhold a portion of the employee’s pay each period and to forward those amounts to us. We have previously notified the employee that this action was going to take place and have provided the employee with the opportunity to dispute the debt.”

DEFENDANTS’ BUSINESS ACTIVITIES

16. Since at least September 2008, doing business as Ecash and GeteCash and through Internet websites such as www.getecash.com, Defendants have offered consumers payday loans of \$1,000 or less. A payday loan is the common name used for a short-term, high-fee, unsecured loan, often made to consumers to provide needed funds in anticipation of an upcoming paycheck. Doing business as LoanPointe, Defendants collect on those payday loans.

Unfair and Deceptive Credit Practices

17. Consumers who are interested in obtaining a payday loan from Defendants are required to complete an online application via one of Defendants’ Internet websites. The online application requires consumers to check a box, identified as an electronic signature, indicating

that they accept the terms of the payday loan. One of the terms of the payday loan is a wage assignment clause that reads: “NOTICE: I agree to have my wages garnished to pay any delinquent amount on this loan.” (emphasis in original).

18. The Credit Practices Rule prohibits the use of wage assignment clauses, unless the clause is: (a) by its terms revocable at the will of the debtor; (b) a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or (c) applicable only to wages or other earnings already earned at the time of the assignment. Defendants’ wage assignment clause meets none of these requirements.

19. In Defendants’ standard online payday loan application, the wage assignment clause is written in very small print and located near the bottom of the third of four pages of small print disclosures. Because of the small size of the print and the location of the clause, many consumers are likely to be unaware of the existence of the wage assignment clause.

Collection Practices

20. If a consumer does not pay back the payday loan on time, Defendants engage in collection efforts to collect the debt.

21. To collect a consumer’s debt, Defendants, in numerous instances, attempt to garnish the consumer’s wages. Using the name LoanPointe, Defendants fax to the consumer’s employer a wage garnishment packet. A typical garnishment packet sent by Defendants includes the following documents: (1) a document entitled “Letter to Employer & Important Notice to Employer,” (2) a document entitled “Wage Garnishment,” (3) a document entitled “Wage

Garnishment Worksheet,” and (4) a document entitled “Employer Certification.” The documents sent by Defendants are very similar, in both form and substance, to the documents sent by federal agencies when seeking to garnish wages for nontax debts owed to the United States. In addition to the garnishment forms, Defendants also typically send to the consumer’s employer a copy of the consumer’s loan application. In numerous instances, Defendants contact employees and coworkers at the consumer’s place of business in an attempt to garnish the consumer’s wages and/or pressure the consumer to pay off the debt.

22. A typical “Letter to Employer” garnishment letter sent by Defendants states:

One of your employees has been identified as owing a delinquent debt to GeteCash. The Debt Collection Improvement Act of 1996 (DCIA) permits agencies to garnish the pay of individuals who owe such debt without first obtaining a court order. Enclosed is a Wage Garnishment Assignment directing you to withhold a portion of the employee’s pay each pay period and to forward those amounts to GeteCash. We have previously notified the employee that this action was going to take place and have provided the employee with the opportunity to dispute the debt.

23. In numerous instances, Defendants do not contact consumers before sending a garnishment packet to the consumers’ employers. In addition, in numerous instances, Defendants do not have the prior consent of consumers to contact the consumers’ employers about the consumers’ alleged debt. Further, in numerous instances, Defendants do not provide consumers an opportunity to dispute their alleged debt with Defendants before sending a garnishment packet to the consumers’ employers.

VIOLATION OF SECTION 5 OF THE FTC ACT

24. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

25. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT I

26. In numerous instances, in connection with the collection of payday loans from consumers, Defendants have represented to the consumers’ employers, directly or indirectly, expressly or by implication, that Defendants are authorized under the Debt Collection Improvement Act of 1996 to garnish the pay of consumers who owe debts to Defendants, without first obtaining a court order.

27. In truth and in fact, Defendants are not authorized under the Debt Collection Improvement Act of 1996 to garnish the pay of consumers who owe debts to Defendants without first obtaining a court order. The Debt Collection Improvement Act grants that authority only to federal government entities.

28. Therefore, Defendants’ representation as set forth in Paragraph 26 of this Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

29. In numerous instances, in connection with the collection of payday loans from consumers, Defendants have represented to consumers' employers, directly or indirectly, expressly or by implication, that, before sending a garnishment request to the employers, Defendants have notified the consumers of their intent to garnish and have provided the consumers with the opportunity to dispute the debt that is the subject of the garnishment.

30. In truth and in fact, in numerous instances, before sending a garnishment request to consumers' employers, Defendants have not notified the consumers of their intent to garnish or provided consumers with the opportunity to dispute the debt that is the subject of the garnishment.

31. Therefore, Defendants' representation as set forth in Paragraph 29 of this Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

32. In numerous instances, in connection with the collection of payday loans from consumers, Defendants have communicated with consumers' employers and co-workers without consumers' knowledge or consent, disclosing the existence and, sometimes, the amount of consumers' purported debt to employers and co-workers.

33. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

34. Therefore, Defendants' practices as described in Paragraph 32 above constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

35. In 1977, Congress passed the FDCPA, 15 U.S.C. § 1692 *et seq.*, which became effective on March 20, 1978, and has been in force ever since that date. Section 814 of the FDCPA, 15 U.S.C. § 1692l, provides that a violation of the FDCPA shall be deemed an unfair or deceptive act or practice in violation of the FTC Act.

36. Defendants are "debt collector[s]," as that term is defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

COUNT IV

37. In numerous instances, in connection with the collection of debts, Defendants have used false, deceptive, or misleading representations or means, in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, including, but not limited to falsely representing to consumers' employers, directly or indirectly, expressly or by implication, that Defendants are authorized under the Debt Collection Improvement Act of 1996 to garnish the pay of consumers who owe debts to Defendants, without first obtaining a court order.

38. Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in Paragraph 37 also constitute deceptive acts or practices in violation of the FTC Act.

COUNT V

39. In numerous instances, in connection with the collection of debts, Defendants have used false, deceptive, or misleading representations or means, in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, including, but not limited to falsely representing, directly or indirectly, expressly or by implication, that before sending a garnishment request to consumers' employers, Defendants have notified consumers of that action and have provided consumers with the opportunity to dispute the debt that is the subject of the garnishment.

40. Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in Paragraph 39 also constitute deceptive acts or practices in violation of the FTC Act.

COUNT VI

41. In numerous instances, in connection with the collection of debts, Defendants have communicated 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, in violation of Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b).

42. Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in Paragraph 41 also constitute deceptive acts or practices in violation of the FTC Act.

VIOLATIONS OF THE CREDIT PRACTICES RULE

43. The Credit Practices Rule promulgated by the FTC under Section 18 of the FTC Act, 15 U.S.C. § 57a, became effective on March 1, 1985, and has remained in full force and effect since that date .

44. Defendants are “lender[s]” as that term is defined in the Credit Practices Rule, 16 C.F.R. § 444.1(a).

45. The Credit Practices Rule prohibits lenders, in connection with the extension of credit to consumers, from taking or receiving from a consumer an obligation that constitutes or contains an assignment of wages or other earnings unless: (i) the assignment by its terms is revocable at the will of the debtor, or (ii) the assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or (iii) the assignment applies only to wages or other earnings already earned at the time of the assignment. 16 C.F.R. § 444.2(a)(3).

46. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Credit Practices Rule constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT VII

47. In numerous instances, in connection with the extension of credit to consumers, Defendants have taken or received from consumers an obligation that constitutes or contains an assignment of wages or other earnings where the assignment: (i) by its terms is not revocable at

the will of the debtor, (ii) is not a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, and (iii) does not apply only to wages or other earnings already earned at the time of the assignment, in violation of Section 444.2(a)(3) of the Credit Practices Rule, 16 C.F.R. § 444.2(a)(3).

48. Under 16 C.F.R. § 444.2(a), the acts and practices alleged in Paragraph 47 also constitute unfair acts or practices in violation of the FTC Act.

CONSUMER INJURY

49. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act, the FDCPA, and the Credit Practices Rule. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

50. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

51. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the Credit Practices Rule, including the rescission or reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, preliminary injunctions;

B. Enter a permanent injunction to prevent future violations of the FTC Act, the FDCPA, and the Credit Practices Rule by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, the FDCPA, and the Credit Practices Rule, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: March 15, 2010

Respectfully submitted,

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