

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION, and
PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN, Attorney General of
the State of New York,

Plaintiffs,

v.

KELLY S. BRACE et al.,

Defendants, and

JOELLE J. LECLAIRE,

Relief Defendant.

Case No. 15-CV-00875-A

**STIPULATED PRELIMINARY
INJUNCTION WITH AN ASSET
FREEZE AND OTHER
EQUITABLE RELIEF**

Plaintiffs Federal Trade Commission and The People of the State of New York filed a complaint on October 5, 2015 seeking a permanent injunction and other equitable relief, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), Section 814(a) of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692j(a), N.Y. Executive Law § 63(12), and N.Y. General Business Law Articles 22-A, § 349, and 29-H, § 602, and a motion for a temporary restraining order and preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure. Following a hearing on October 6, 2015, this Court issued a temporary restraining order against the Defendants granting injunctive relief including an asset freeze, immediate access, and limited expedited discovery. (Dkt. No. 12; hereinafter the “TRO.”) By agreement of the Plaintiffs and Defendants Kelly S. Brace, Braclaire Management, LLC; Credit Clear Solutions, LLC; Solidus Group, LLC; and Solidus Solutions, LLC (hereinafter “Defendants”), the Court extended the TRO until October 28, 2015.

FINDINGS OF FACT

By stipulation of the parties, the Court finds as follows:

- A. Plaintiffs and Defendants have stipulated and agreed to the entry of this preliminary injunction without any admission of wrongdoing or violation of law;
- B. This Court has jurisdiction over the subject matter of this case, there is good cause to believe it will have jurisdiction over all the parties hereto, and venue in this district is proper;
- C. Defendants waive all rights to seek judicial review or otherwise contest the validity of their Stipulation hereto or to this Order;
- D. Plaintiffs assert there is good cause to believe that Defendants have engaged and are likely to continue to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FDCPA, 15 U.S.C. §§ 1692 – 1692p, New York Executive Law § 63(12), and New York General Business Law §§ 349 and 601, and that Plaintiffs are therefore likely to prevail on the merits of this action;
- E. Plaintiffs assert there is good cause to believe that consumers will suffer immediate and continuing harm from Defendants' ongoing violations of Section 5(a) of the FTC Act, the FDCPA, New York Executive Law, and New York General Business Law, unless Defendants are restrained and enjoined by Order of this Court;
- F. Plaintiffs assert there is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution and/or disgorgement of ill-gotten gains will occur from the transfer, dissipation, or concealment by Defendants of their assets or business records unless Defendants are immediately restrained and enjoined by Order of this Court;
- G. The entry of this Order is in the public interest; and

- H. No security is required of any agency of the United States for issuance of a preliminary injunction or TRO, Fed. R. Civ. P. 65(c).

DEFINITIONS

- A. “**Assets**” means any legal or equitable interest in, right to, or claim to, any real or personal property, including, without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.
- B. “**Corporate Defendants**” means Defendants Braclaire Management, LLC; Credit Clear Solutions, LLC; Solidus Group, LLC; Solidus Solutions, LLC, and their successors, assigns, affiliates, or subsidiaries, and each of them by whatever names each might be known.
- C. “**Debt**” means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.
- D. “**Debt collection activities**” means any collection or attempt at collection, directly or indirectly, a debt owed or due, or asserted to be owed or due, to another person, or to any Defendants if the debt arose out of a transaction to which none of the Defendants were a party.
- E. “**Defendants**” means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination, and each of them by whatever names each might be known.

F. **“Document”** and **“Electronically Stored Information”** are synonymous in meaning and equal in scope to the usage of the terms in Rule 34(a) of the Federal Rules of Civil

Procedure, and include but are not limited to:

- i. The original or a true copy of any written, typed, printed, electronically stored, transcribed, taped, recorded, filmed, punched, or graphic matter or other data compilations of any kind, including, but not limited to, letters, email or other correspondence, messages, memoranda, interoffice communications, notes, reports, summaries, manuals, magnetic tapes or discs, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and
- ii. Any electronically stored information stored on any server, or any type of mobile device, flash drives, personal digital assistants, desktop personal computer and workstations, laptops, notebooks, and other portable computers, or other electronic storage media, whether assigned to individuals or in pools of computers available for shared use, or personally owned but used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility, or stored, hosted, or otherwise maintained offsite by a third-party; and computers and related offline storage used by Defendants or Defendants’ participating associates, which may include persons who are not employees of the company or who do not work on company premises.

- G. **“Electronic Data Host”** means any person or entity in the business of storing, hosting, or otherwise maintaining electronically stored information.
- H. **“Financial Institution”** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.
- I. **“Individual Defendant”** means Kelly S. Brace.
- J. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, association, cooperative, or any other group or combination acting as an entity.
- K. The terms **“and”** and **“or”** shall be construed conjunctively or disjunctively as necessary to make the applicable phrase or sentence inclusive rather than exclusive.

ORDER

BAN ON DEBT COLLECTION ACTIVITIES

- I. **IT IS THEREFORE ORDERED** that the Defendants, whether acting directly or through any other person, are restrained and enjoined from:
 - A. Engaging in debt collection activities;
 - B. Assisting others engaged in debt collection activities; and
 - C. Advertising, marketing, promoting, offering for sale, or selling, or assisting others engaged in the advertising, marketing, promoting, offering for sale, or selling, of any portfolio of consumer or commercial debt or any program that gathers, organizes, or stores consumer information relating to a debt or debt collection activities.

PROHIBITED MISREPRESENTATIONS

II. IT IS FURTHER ORDERED that the Defendants and their 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 by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact.

ASSET FREEZE

III. IT IS FURTHER ORDERED that:

- A. Defendants are hereby restrained and enjoined from directly or indirectly:
1. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any assets, or any interest therein, wherever located, including outside the United States, that are: (1) owned or controlled, directly or indirectly, by any Defendants, in whole or in part, or held, in whole or in part, for the benefit of any Defendants; (2) in the actual or constructive possession of any Defendants; (3) owned by, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any Defendants; or (4) held by, for, or under the name of any Defendants at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, payment processing company,

precious metal dealer, or other financial institution or depository of any kind;

2. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendants, or subject to access by any Defendants;
 3. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Defendants, provided, however, that the Individual Defendant may incur charges on a debit or checking card associated with a bank account that does not hold assets subject to this Section;
 4. Obtaining a personal or secured loan;
 5. Cashing any checks from consumers, clients, or customers of any Defendant; and
 6. Incurring liens or encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Defendants.
- B. The assets affected by Section III shall include: (1) all assets of Defendants as of the time this Order is entered; and (2) for assets obtained after the time this Order is entered, those assets that are obtained from any debt-collection, debt brokering, or debt sale activities engaged in by the Defendants that predate the entry of this Order. This Section does not prohibit the repatriation of foreign Assets, as specifically required in Section VIII (Repatriation of Foreign Assets) of this Order.

**RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS AND
OTHER THIRD PARTIES**

IV. IT IS FURTHER ORDERED that any financial or brokerage institution or depository, escrow agent, title company, commodity trading company, trust, entity, electronic data host, or person that holds, controls, or maintains custody of any account or asset owned or controlled, directly or indirectly, by any Defendants, or has held, controlled, or maintained any account or asset of, or on behalf of, any Defendants, upon service with a copy of this Order, shall:

- A. Hold and retain within its control and prohibit Defendants from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, gifting, or otherwise disposing of any accounts, assets, funds, or other property that are owned by, held in the name of, for the benefit of, or otherwise controlled by, directly or indirectly, any Defendants, in whole or in part, except as directed by further order of the Court;
- B. Provide Plaintiffs and Plaintiffs' agents expedited access to electronically stored information stored, hosted, or otherwise maintained on behalf of any Defendants for forensic imaging;
- C. Deny any Defendants access to any safe deposit box titled in the name of any Defendants, individually or jointly, or subject to access by any Defendants, whether directly or indirectly;
- D. Provide counsel for Plaintiffs, within three (3) business days after being served with a copy of this Order, a certified statement setting forth:
 1. the identification number of each such account or asset titled (1) in the name, individually or jointly, of any Defendants; (2) held on behalf of, or for the benefit of, any Defendants; (3) owned or controlled by any

Defendants; or (4) otherwise subject to access by any Defendants, directly or indirectly;

2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted;
3. the identification of any safe deposit box that is either titled in the name of any Defendants, or is otherwise subject to access by any Defendants; and
4. if an account, safe deposit box, or other asset has been closed or removed, the date closed or removed, the balance on such date, and the name of the person or entity to whom such account or asset was remitted; and,

E. Provide counsel for Plaintiffs, within three (3) business days after being served with a request, copies of all documents pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; provided that such institution or custodian may charge a reasonable fee.

F. *Provided*, that a financial institution does not have to provide the information required in sub-sections C and D if (1) the financial institution has complied with

the similar provision set forth in the TRO; and (2) the information provided has not changed.

PRESERVATION OF DOCUMENTS HELD BY THIRD PARTIES

V. IT IS FURTHER ORDERED that Defendants, their Representatives, and any other person or entity who receives actual notice of this Order, whether acting directly or indirectly, are hereby restrained and enjoined from destroying, concealing, altering, transferring, or otherwise disposing of, in any manner, documents that relate to: (1) Defendants' business practices, assets, telephone account records, and email account records; (2) any webpage or website operated, in whole or in part, on any Defendants' behalf; and (3) any electronic communications sent or received by the Defendants, including but not limited to emails, recordings of telephone conversations, and voicemail recordings.

FINANCIAL STATEMENTS AND ACCOUNTING

VI. IT IS FURTHER ORDERED that each Defendant, within three (3) business days of service of this Order, shall prepare and deliver to counsel for Plaintiffs:

- A. For the Individual Defendant, a completed financial statement accurate as of the date of service of this Order upon him (unless otherwise agreed upon with Plaintiffs' counsel) on the form of **Attachment A** to the TRO captioned, "Financial Statement of Individual Defendant."
- B. For the Corporate Defendants, a completed financial statement accurate as of the date of service of this Order upon such Defendants (unless otherwise agreed upon with Plaintiffs' counsel) in the form of **Attachment B** to the TRO captioned, "Financial Statement of Corporate Defendant."

- C. For each Defendant, a completed statement, verified under oath, of all payments, transfers or assignments of funds, assets, or property worth \$2,500 or more since January 1, 2012. Such statement shall include: (a) the amount transferred or assigned; (b) the name of each transferee or assignee; (c) the date of the transfer or assignment; and (d) the type and amount of consideration paid the Defendant. Each statement shall specify the name and address of each financial institution and brokerage firm at which the Defendant has accounts or safe deposit boxes. Said statements shall include assets held in foreign as well as domestic accounts.

In addition, the Individual Defendant must report, within 3 days, to Plaintiffs' counsel, any change prior to the expiration of this Order in his title or role in any business activity, including any business for which he performs services whether as an employee or otherwise and any entity in which he Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

CONSUMER CREDIT REPORTS

VII. IT IS FURTHER ORDERED that Plaintiffs may obtain credit reports concerning any Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from which such reports are requested shall provide them to Plaintiffs.

REPATRIATION OF FOREIGN ASSETS

VIII. IT IS FURTHER ORDERED that, within five (5) business days following the service of this Order, each Defendant shall:

- A. Provide counsel for Plaintiffs with a full accounting of all assets, accounts, funds, and documents outside of the territory of the United States that are held: (1) by

them; (2) for their benefit; (3) in trust by or for them, individually or jointly; or (4) under their direct or indirect control, individually or jointly;

- B. Transfer to the territory of the United States all assets, accounts, funds, and documents in foreign countries held: (1) by them; (2) for their benefit; (3) in trust by or for them, individually or jointly; or (4) under their direct or indirect control, individually or jointly;
- C. Hold and retain all repatriated assets, accounts, funds, and documents, and prevent any transfer, disposition, or dissipation whatsoever of any such assets, accounts, funds, or documents; and
- D. Provide Plaintiffs access to all records of accounts or assets of the Defendants held by financial institutions located outside the territorial United States.

NON-INTERFERENCE WITH REPATRIATION

IX. IT IS FURTHER ORDERED that Defendants, and each of their officers, agents, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by Section VIII of this Order, including but not limited to:

- A. Sending any statement, letter, fax, e-mail, or wire transmission, telephoning, or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms

of a foreign trust agreement, until such time that all assets have been fully repatriated pursuant to Section VIII of this Order; and

- B. Notifying any trustee, protector or other agent of any foreign trust, or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time that all assets have been fully repatriated pursuant to Section VIII.

PROHIBITION ON RELEASE OF CONSUMER INFORMATION

X. IT IS FURTHER ORDERED that, except as required by a law enforcement agency, law, regulation or court order, Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from 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 which any Defendant obtained prior to entry of this Order in connection with any debt collection activities, debt brokering, or debt sale service.

STAY OF ACTIONS

XI. IT IS FURTHER ORDERED that:

- A. Except by leave of this Court, Defendants and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, the Corporate Defendants, any of their subsidiaries, affiliates, partnerships, assets, documents, including, but not limited to, the following actions:

1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;
2. Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody, or control of any asset; attempting to foreclose, forfeit, alter, or terminate any interest in any asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise; or
3. Executing, issuing, serving, or causing the execution, issuance, or service of, any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not.

B. This Section does not stay:

1. The commencement or continuation of a criminal action or proceeding;
2. The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;
3. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or
4. The issuance to a Corporate Defendant of a notice of tax deficiency.

PRESERVATION OF RECORDS AND TANGIBLE THINGS

XII. IT IS FURTHER ORDERED that Defendants and their successors, assigns, 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 through any corporation, subsidiary, division, or other device, are hereby restrained and enjoined from destroying, secreting, erasing, mutilating, defacing, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly:

- A. any documents, electronically stored information, or equipment of the Corporate Defendants; or
- B. any documents or electronically stored information that relate to the business practices, or business and personal finances, of Defendants or any entity directly or indirectly under the control of Defendants.

These documents include but are not limited to: contracts; agreements; consumer files; consumer lists; consumer addresses and telephone numbers; correspondence, including emails; documents evidencing or referring to Defendants' services; debt-collection training materials; debt-collection scripts; data; computer tapes, disks, or other computerized records; books; written or printed records; handwritten notes; telephone logs; "verification" or "compliance" recordings or other audio or video recordings; receipt books; invoices; postal receipts; ledgers; personal and business canceled checks and check registers; bank statements; appointment books; copies of federal, state, or local business or personal income or property tax returns; photographs; mobile devices; electronic storage media; accessories; and any other documents, records, or equipment of any kind that relate to the business practices or business of any Defendants or any other entity directly or indirectly under the control of any Defendants.

LIMITED EXPEDITED DISCOVERY

XIII. IT IS FURTHER ORDERED that, until entry of a scheduling order, Plaintiffs are granted leave to conduct certain expedited discovery, and that, commencing with the time and date of this Order, in lieu of the time periods, notice provisions, and other requirements of Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, expedited discovery as to parties and non-parties shall proceed as follows:

- A. Plaintiffs may, upon three (3) calendar days' notice, take the deposition of any person or entity, whether or not a party, in any judicial district, for the purpose of discovering: (1) the assets of any Defendants or their affiliates or subsidiaries; (2) the location of documents and other business records; and (3) compliance with this Order. Depositions may be conducted in person, by telephone, or by other remote electronic means. Deposition transcripts that have not been signed by the witness may be used at the preliminary injunction hearing in this matter.

Provided that, notwithstanding Federal Rule of Civil Procedure 30(a)(2), this Section shall not preclude any future depositions by Plaintiffs. *Provided further*, that any deposition taken pursuant to this Section shall be in addition to, and not subject to, the presumptive limits on depositions set forth in Federal Rule of Civil Procedure 30(a)(2)(A).

- B. Plaintiffs may serve interrogatories for the purpose of discovering: (1) the assets of Defendants or their affiliates or subsidiaries; (2) the location of documents; and (3) compliance with this Order. Defendants shall respond within five (5) calendar days after Plaintiffs serve such interrogatories. *Provided that*, notwithstanding

Federal Rule of Civil Procedure 33(a)(1), this Subsection shall not preclude any future interrogatories by Plaintiffs.

- C. Plaintiffs may, upon three (3) calendar days' notice to any Defendants and upon five (5) calendar days' notice to non-parties, including through the use of a Rule 45 Subpoena, demand the production of documents from any person or entity, whether or not a Defendant, relating to: (1) the assets of Defendants or their affiliates or subsidiaries; (2) the location of documents; and (3) compliance with this Order. *Provided that* two (2) calendar days' notice shall be deemed sufficient for the production of any such documents that are maintained or stored only as electronic data.
- D. Plaintiffs are granted leave to subpoena documents immediately from any financial institution, account custodian, or other entity or person that holds, controls, or maintains custody of any account or asset of any Defendants, or has held, controlled, or maintained custody of any account or asset of any Defendants concerning the nature, location, status, and extent of Defendants' assets, and compliance with this Order, and the entity or person shall respond to such subpoena within five (5) business days after service.
- E. For purposes of discovery pursuant to this Section, service shall be sufficient if made by personal delivery or overnight courier.
- F. Plaintiffs may seek to prohibit any Defendants who fail to appear for properly noticed depositions or fail to comply with requests for production or inspection from introducing the evidence sought by Plaintiffs at any subsequent hearing.

SERVICE OF THIS ORDER

XIV. IT IS FURTHER ORDERED that copies of this Order may be served personal delivery or overnight courier, or U.S. Express Mail, by agents and employees of Plaintiffs or any state or federal law enforcement agency or by private process server, on Defendants or any other persons or entities that may be subject to any provision of this Order.

DISTRIBUTION OF ORDER BY DEFENDANTS

XV. IT IS FURTHER ORDERED that within three (3) calendar days after service of this Order, Defendants shall provide a copy of this Order to each of their agents, employees, directors, officers, subsidiaries, affiliates, attorneys, independent contractors, representatives, franchisees, and all persons in active concert or participation with Defendants. Within five (5) calendar days following this Order, Defendants shall provide Plaintiffs with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons that Defendants have served with a copy of this Order in compliance with this provision.

CORRESPONDENCE WITH PLAINTIFFS

XVI. IT IS FURTHER ORDERED that, for the purposes of this Order, because mail addressed to the FTC is subject to delay due to heightened security screening, all correspondence and service of pleadings on Plaintiff Federal Trade Commission shall be sent either via electronic transmission to Matthew J. Wilshire at mwilshire@ftc.gov or via Federal Express to: Matthew J. Wilshire, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Drop CC-10232, Washington, DC 20580; and service of pleadings on Plaintiff State of New York shall be sent either via electronic transmission at james.morrissey@ny.ag.gov or via Federal Express to James M. Morrissey, Assistant Attorney General, 350 Main Street, Ste. 300A, Buffalo, NY 14202; Facsimile: (716) 853-8414.

JURISDICTION

XVII. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO STIPULATED:

/s/Matthew J. Wilshire
MATTHEW J. WILSHIRE
MICHAEL WHITE
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600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
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Commission*

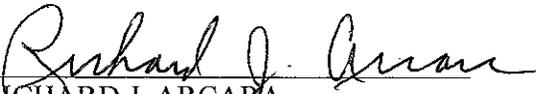
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Delaware Solutions; Clear Credit Solutions, LLC; Solidus
Group, LLC; Solidus Solutions, LLC*

IT IS SO ORDERED, this 28 day of Oct, 2015.


RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE