

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 ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT**

Plaintiffs, the Federal Trade Commission (“FTC” or “Commission”) and The People of the State of New York, filed their Complaint for a permanent injunction and other equitable relief in this matter, 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. § 1692(a), New York Executive Law § 63(12), and New York General Business Article 22-A, § 349 and Article 29-H, § 602. Plaintiffs’ Complaint also sought an order of disgorgement against Relief Defendant Joelle J. Leclaire for unjust enrichment. Plaintiffs and Relief Defendant stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive and abusive debt-collection practices, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the FDCPA, 15 U.S.C. §§ 1692-1692p, and New York General Business Law Article 22-A.
3. The Complaint also charges that Relief Defendant has received assets from the Defendants, that Relief Defendant has no legitimate claim to those assets, that such assets are subject to a constructive trust, and that Relief Defendant will be unjustly enriched if she is not required to disgorge the assets or the value of thereof.
4. Relief Defendant waives any claim that she may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear her own costs and attorney fees.
5. Relief Defendant waives all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

- A. **“Defendants”** means the Individual Defendant and the Corporate Defendants, individually, collectively, or in any combination.
1. **“Corporate Defendants”** means Bracaire Management, LLC d/b/a Clear Credit Services, Clear Credit Solutions, Delaware Asset Management, Westwood Asset Management, Huntington Asset Management,

Washington Recovery Services, and Delaware Solutions; Credit Clear Solutions, LLC; Solidus Group, LLC; Solidus Solutions, LLC; and their successors and assigns.

2. "Individual Defendant" means Kelly S. Brace.

B. "Relief Defendant" means Joelle J. Leclaire.

ORDER

I. MONETARY JUDGMENT AND PARTIAL SUSPENSION

IT IS ORDERED that:

A. Judgment in the amount of Four Hundred, Eighteen Thousand Dollars (\$418,000) is entered in favor of the Plaintiffs against the Relief Defendant as equitable monetary relief.

B. Relief Defendant is ordered to pay to the Commission Forty-Four Thousand, Seven Hundred Dollars (\$44,700). Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission. Upon such payment, the remainder of the judgment is suspended, subject to the Subsections below.

C. The Plaintiffs' agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Relief Defendant's sworn financial statements and related documents (collectively, "financial statements") submitted to the Plaintiffs, namely:

1. the Financial Statement of Relief Defendant signed on June 2, 2016, including the attachments; and

2. a December 31, 2015, statement from TIAA-CREF Individual and Institutional Services, LLC, for retirement accounts held for Relief Defendant's benefit, which Relief Defendant's counsel submitted to the Commission on February 22, 2016.

D. The suspension of the judgment will be lifted as to the Relief Defendant if, upon motion by the Plaintiffs, the Court finds that Relief 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 statements identified above.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due as to the Relief Defendant in the amount specified in Subsection A. above, less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

F. Relief 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 Plaintiffs, including in a proceeding to enforce their rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

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

I. All money paid to the Plaintiffs pursuant to this Order may be deposited into a fund administered by the Plaintiffs or their designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If representatives of the Plaintiffs decide that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Plaintiffs may apply any remaining money for such other equitable relief (including consumer information remedies) as they determine to be reasonably related to Defendants' practices alleged in the Complaint. The Plaintiffs shall retain authority and sole discretion over the division among Plaintiffs of any funds not used for equitable relief. Any money paid to the Plaintiffs not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Relief Defendant has no right to challenge any actions the Plaintiffs or their representatives may take pursuant to this Subsection.

II. COOPERATION

IT IS FURTHER ORDERED that Relief Defendant must fully cooperate with representatives of Plaintiffs in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Relief Defendant must provide truthful and complete information, evidence, and testimony. Relief Defendant must appear for interviews, discovery, hearings, trials, and any other proceedings that a Plaintiffs' representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Plaintiff representative may designate, without the service of a subpoena.

III. ORDER ACKNOWLEDGMENT

IT IS FURTHER ORDERED that:

A. Relief Defendant, within 7 days of entry of this Order, must submit to the Commission and the New York Office of the Attorney General an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission 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. Brace, X160009.

IV. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Relief Defendant's compliance with this Order, including the financial statements upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Plaintiffs, Relief Defendant must: submit compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Plaintiffs are 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 Plaintiffs are authorized to communicate directly with Relief Defendant. Relief Defendant must permit representatives of the Plaintiffs to

interview any employee or other person affiliated with Relief Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Plaintiffs may use all other lawful means, including posing, through their representatives as consumers, suppliers, or other individuals or entities, to Relief Defendant or any individual or entity affiliated with Relief Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Plaintiffs' lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-I.

D. Upon written request from a representative of the Plaintiffs, any consumer reporting agency must furnish consumer reports concerning Relief Defendant, pursuant to Section 604{1} of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a){1}.

V. 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.

SO ORDERED this 13 day of July, 2016


UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFFS:

FEDERAL TRADE COMMISSION



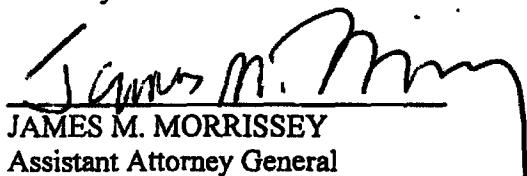
Date: 7-8-16

MATTHEW J. WILSHIRE
MICHAEL WHITE
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Mailstop CC-10232
Washington, D.C. 20580
202-326-2976 (Wilshire), (202) 326-3196 (White)
mwilshire@ftc.gov, mwhite1@ftc.gov

Attorneys for Plaintiff Federal Trade Commission

PEOPLE OF THE STATE OF NEW YORK

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York



JAMES M. MORRISSEY
Assistant Attorney General
350 Main Street, Suite 300A
Buffalo, NY 14202
(716) 853-8471 (o); (716) 853-8414 (f)
james.morrissey@ag.ny.gov

Date: 7-8-16

Attorney for Plaintiff State of New York

FOR RELIEF DEFENDANT:

Gerald T. Walsh
GERALD T. WALSH, ESQ
DAVID E. GUTOWSKI, ESQ.
Zdarsky, Sawicki & Agostinelli, LLP
404 Cathedral Place
298 Main Street
Buffalo, New York 14202
phone: 716-855-3200
fax: 716-855-3101
gtwalsh@zsa.cc
dgutowski@zsa.cc
Attorneys for Relief Defendant Joelle J. Leclaire

Date:

6/16/16

RELIEF DEFENDANT:

J. Leclaire
JOELLE J. LECLAIRE

Date:

6/16/16