

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FEDERAL TRADE COMMISSION, and
UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiffs,

v.

NUDGE, LLC, a Utah limited liability
company, *et al.*,

Defendants.

**STIPULATED PRELIMINARY
INJUNCTION**

Case No. 2:19-cv-00867

Chief Judge Robert J. Shelby

Magistrate Judge Evelyn J. Furse

This matter comes before the Court upon the stipulation of all parties, including Plaintiffs, the Federal Trade Commission (“FTC”) and the Utah Division of Consumer Protection (“Division”), and Defendants Nudge, LLC, Response Marketing Group, LLC, BuyPD, LLC, Brandon Lewis, Ryan Poelman, Phillip Smith, Shawn Finnegan, and Clint Sanderson.

WHEREAS, on November 5, 2019, Plaintiffs filed their Complaint for Permanent Injunction and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, the Utah Consumer Sales Practices Act (“UCSPA”), Utah Code § 13-11-1 *et seq.*, the Utah Business Opportunity Disclosure Act (“BODA”), Utah Code § 13-15-1 *et seq.*, and the Utah Telephone Fraud Prevention Act (“TFPA”), Utah Code § 13-26-1 *et seq.*, and moved, pursuant to Fed. R. Civ. P.

65(b), for a temporary restraining order, asset freeze, other equitable relief, and an order to show cause why a preliminary injunction should not issue against Defendants;

WHEREAS, Defendants contest the allegations and claims made by Plaintiffs, but are willing to stipulate to this Proposed Preliminary Injunction to promote the efficient administration of this matter.

WHEREAS, Plaintiffs and Defendants stipulate to the entry of this Stipulated Preliminary Injunction.

THEREFORE, IT IS STIPULATED AND ORDERED as follows:

FINDINGS OF FACT

The Court, having considered the Complaint, the Plaintiffs' Motion on Notice for a Temporary Restraining Order, declarations, exhibits, and the memorandum of points and authorities filed in support thereof, and being otherwise advised, finds that:

A. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe that it will have jurisdiction over all parties hereto and that venue in this district is proper.

B. Plaintiffs allege that Defendants have marketed and sold real estate investment related products and services in this District and throughout the United States.

C. Plaintiffs allege that Defendants have engaged in and are likely to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing Sales Rule ("TSR"), which the FTC adopted pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, the UCSPA, Utah Code § 13-11-1 *et seq.*, the BODA, Utah Code § 13-15-1 *et seq.*, and the TFPA, Utah Code § 13-26-1 *et seq.* Defendants deny these allegations.

D. This Court has authority to issue this Order pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b); Federal Rule of Civil Procedure 65; the All Writs Act, 28 U.S.C. § 1651; and Utah Code §§ 13-11-17(1)(b); 13-11-2(4); 13-15-3(1); and 13-2-5(3). Defendants consent to the entry of this Stipulated Preliminary Injunction, but Defendants reserve all rights to contest or challenge the authority of the Plaintiffs to seek and this Court to award any further relief sought by the Plaintiffs.

E. No security is required of any agency of the United States for issuance of a temporary restraining order. Fed. R. Civ. P. 65(c).

DEFINITIONS

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

A. “**Asset**” means any legal or equitable interest in, right to, or claim to, any property, wherever located and by whomever held.

B. “**Charging**” means any attempt to collect money or other consideration from any person, including, but not limited to, causing any financial account information to be submitted for payment against a person’s credit card, debit card, bank account, or other account.

C. “**Corporate Defendants**” means Nudge, LLC, Response Marketing Group, LLC, and BuyPD, LLC, and each of their subsidiaries, affiliates, successors, and assigns.

D. “**Defendants**” means Corporate Defendants and Individual Defendants, individually, collectively, or in any combination.

E. “**Document**” is synonymous in meaning and equal in scope to the usage of “document” and “electronically stored information” in Federal Rule of Civil Procedure 34(a), Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, sound and video recordings, images, Internet sites, web pages, websites, electronic correspondence,

including e-mail and instant messages, contracts, accounting data, advertisements, FTP Logs, Server Access Logs, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, customer or sales databases and any other electronically stored information, including Documents located on remote servers or cloud computing systems, and other data or data compilations from which information can be obtained directly or, if necessary, after translation into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

F. **“Electronic Data Host”** means any person or entity in the business of storing, hosting, or otherwise maintaining electronically stored information. This includes, but is not limited to, any entity hosting a website or server, and any entity providing “cloud based” electronic storage.

G. **“Individual Defendants”** means Brandon Lewis, Ryan Poelman, Phillip Smith, Shawn Finnegan, and Clint Sanderson, individually, collectively, or in any combination.

ORDER

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendants are preliminarily restrained and enjoined from:

A. Advertising, marketing, promoting, offering for sale, or selling any real estate investment related seminars, events, coaching programs, software, or advanced training packages;

B. Charging any person or entity for the purchase of Defendants’ real estate investment related seminars, events, coaching programs, software, or advanced training packages

unless that person or entity agreed to purchase that product or service on or before November 7, 2019;

C. Enforcing any claim, right, or interest under any loan agreement made by Defendants in connection with the purchase of any real estate properties offered for sale at Defendants' Buying Summit and Investor Expo events; and

D. Making any statement, or attempting to enforce any purported agreement, to prevent any persons from communicating with Plaintiffs or any other law enforcement agency.

Provided further, however, that Defendants may fulfill customers for all real estate investment related seminars, events, coaching programs, software, or advanced training packages purchased by any customer prior to November 7, 2019. Nothing in this Section prevents Defendants from charging a consumer for a request to renew a software subscription the consumer purchased before November 7, 2019 if the consumer requests such a renewal in writing.

II. PROHIBITION ON RELEASE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED, that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby preliminarily restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing, the name, address, birth date, telephone number, email address, credit card number, bank account number, Social Security number, or other financial or identifying information of any person that any Defendant obtained in connection with any activity that pertains to the subject matter of this Order; and

B. Benefitting from or using, for the purpose of selling any wealth creation product or service, such as stock or options training or coaching, the name, address, birth date, telephone

number, email address, credit card number, bank account number, Social Security number, or other financial or identifying information of any person that any Defendant obtained in connection with any activity that pertains to the subject matter of this Order.

Nothing in this Section shall prohibit Defendants from charging a consumer for a product or service that the consumer purchased before November 7, 2019, or for a written request made by a consumer to renew a software subscription the consumer purchased before November 7, 2019.

Provided, however, that Defendants may disclose such identifying information to a law enforcement agency, to their attorneys as required for their defense, as required by any law, regulation, or court order, or in any filings, pleadings or discovery in this action in the manner required by the Federal Rules of Civil Procedure and by any protective order in the case.

III. ASSET PRESERVATION FOR DEFENDANTS

IT IS FURTHER ORDERED that Corporate Defendants may not transfer any Assets except in the ordinary course of business and may not transfer Assets to directors, owners, or Individual Defendants Ryan Poelman, Brandon Lewis, Phil Smith, and Shawn Finnegan. Corporate Defendants will not transfer Assets to Individual Defendant Clint Sanderson above his normal salary and compensation. Nothing in this Section shall prohibit the Corporate Defendants from continuing to pay health insurance premiums for the benefit of the Individual Defendants.

It is further Ordered that the Individual Defendants may not transfer any Assets except for ordinary personal expenses and ordinary business expenses.

IV. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who

receive actual notice of this Order, whether acting directly or indirectly, are hereby preliminarily restrained and enjoined from:

A. Destroying, erasing, falsifying, writing over, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, Documents that relate to: (1) the business, business practices, Assets, or business or personal finances of any Defendant; (2) the business practices or finances of entities directly or indirectly under the control of any Defendant; or (3) the business practices or finances of entities directly or indirectly under common control with any other Defendant; and

B. Failing to create and maintain Documents that, in reasonable detail, accurately, fairly, and completely reflect Defendants' incomes, disbursements, transactions, and use of Defendants' Assets.

V. STAY OF ACTIONS

IT IS FURTHER ORDERED that, except by leave of this Court, Defendants, Defendants' officers, agents, employees, attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, and their corporations, subsidiaries, divisions, or affiliates, and all investors, creditors, stockholders, lessors, customers and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of Defendants, and all others acting for or on behalf of such persons, are hereby enjoined from taking action that would interfere with the exclusive jurisdiction of this Court over the Assets or Documents of the Defendants, including, but not limited to:

A. Filing or assisting in the filing of a petition for relief under the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, or of any similar insolvency proceeding on behalf of the Corporate Defendants;

B. Commencing, prosecuting, or continuing a judicial, administrative, or other action or proceeding against the Corporate Defendants, including the issuance or employment of process against the Corporate Defendants, except that such actions may be commenced if necessary to toll any applicable statute of limitations; or

C. Filing or enforcing any lien on any asset of the Corporate Defendants, taking or attempting to take possession, custody, or control of any Asset of the Corporate Defendants; or attempting to foreclose, forfeit, alter, or terminate any interest in any Asset of the Corporate Defendants, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise.

Provided, however, that this Order 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; or (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.

VI. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each current affiliate, telemarketer, marketer, sales entity, successor, assign, member, officer, director, employee, agent, independent contractor, attorney, spouse, subsidiary, division, and representative of any Defendant, and shall, within **ten (10) days** from the date of entry of this Order, provide Plaintiffs with a sworn statement that this provision of the Order has been satisfied. Furthermore, Defendants shall not take any action that would encourage officers, agents, members, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns or other persons or entities in active concert or

participation with them to disregard this Order or believe that they are not bound by its provisions.

VII. DURATION OF THE ORDER

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until entry of a final judgment adjudicating all the claims and all the parties' rights and liabilities unless sooner modified or dissolved.

VIII. RETENTION OF JURISDICTION

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

SO ORDERED, this 18th day of December, 2019, at 1710 hrs.m.



ROBERT J. SHELBY
United States Chief District Judge