

UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

FILED IN OPEN COURT  
1/6/17  
TIMOTHY M. O'BRIEN, CLERK  
BY Sweet  
DEPUTY CLERK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JOEL JEROME TUCKER, individually and as an  
officer of SQ Capital, LLC, JT Holdings, Inc., and  
HPD LLC,

SQ CAPITAL, LLC, a corporation,  
JT HOLDINGS, INC., a corporation,

and

HPD LLC, a corporation,

Defendants.

CASE NO. 2:16-CV-02816-JAR-  
JPO

**PRELIMINARY INJUNCTION**

Plaintiff Federal Trade Commission ("FTC") has filed a complaint seeking a permanent injunction and other equitable relief, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act") and a motion for a temporary restraining order and preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure. (Dk. Nos, 3 and 4). Following a hearing on December 22, 2016, this Court issued a temporary restraining order against Defendants and ordered Defendants to appear on January 6, 2017, at 9:00 am to show cause, if there be, why this Court should not enter a preliminary injunction pending final ruling on the complaint. (Dkt. No. 18; hereinafter the "TRO.")

On January 6, 2017, defendant Joel Tucker appeared *pro se* and did not oppose entry of a preliminary injunction. No attorney has entered an appearance for Defendants SQ Capital, LLC, JT Holdings, Inc., and HPD LLC. Defendant Joel Tucker stated that he is seeking an attorney to represent these entities.

## FINDINGS OF FACT

This Court, having considered the Complaint, exhibits, declarations, Plaintiff's memorandum in support of a temporary restraining order, and other submissions grants a preliminary injunction pending a final judgment or superseding order and finds that:

1. 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;
2. 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, and that Plaintiff is therefore likely to prevail on the merits of this action;
3. 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, unless Defendants are restrained and enjoined by Order of this Court;
4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief in the form of 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;
5. Weighing the equities and considering Plaintiff's likelihood of ultimate success, a preliminary injunction, expedited discovery and other equitable relief is in the public interest; and
6. No security is required of any agency of the United States for issuance of a TRO, Fed. R. Civ. P. 65(c).

## DEFINITIONS

- A. "**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.

- B. **“Debt Portfolio”** means spreadsheets, databases, tables, lists or any other compilation of information describing debts or purported debts owed by individuals to a business.
- C. **“Defendants”** means Joel Tucker and Defendants SQ Capital, LLC, JT Holdings, Inc., and HPD LLC, and their successors, assigns, affiliates, or subsidiaries, individually, collectively, or in any combination, and each of them by whatever names each might be known.
- D. **“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.

- E. **“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.
- F. **“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.
- G. **“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.
- H. 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**

### **I. PROHIBITION ON COUNTERFEIT DEBT SALES**

**IT IS ORDERED** that Defendants, their 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 restrained and enjoined from:

- A. Marketing, distributing, or selling Debt Portfolios that list loans that the lenders have not, in fact, made to the consumers identified in such portfolios, or Debts

that Defendants have not purchased, or otherwise obtained, any rights to collect;  
and

- B. Otherwise providing others with the means and instrumentalities to misrepresent, or to assist others in misrepresenting, directly or indirectly, expressly or by implication, that consumers owe unpaid debts or that a debt collector has obtained the right to collect a debt from a consumer.

## II. PRESERVATION OF RECORDS AND TANGIBLE THINGS

**IT IS FURTHER ORDERED** that Defendants, their 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 temporarily restrained and enjoined from destroying, secreting, erasing, mutilating, defacing, concealing, altering, transferring, or otherwise disposing of, in any manner, any Documents or Electronically Stored Information that relate to the business practices of Defendants or of any entity directly or indirectly under the control of Defendants.

These Documents or Electronically Stored Information include but are not limited to: contracts; agreements; Debt Portfolios; consumer files; consumer lists; consumer addresses and telephone numbers; correspondence, including emails; documents evidencing or referring to Defendants' marketing, distribution, sale or acquisition of Debt Portfolios; data; computer tapes, disks, or other computerized records; books; written or printed records; handwritten notes; telephone logs; 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 Debt Portfolios marketed, distributed, sold or acquired by any Defendant or any other entity directly or indirectly under the control of a Defendant.

**III. PRESERVATION OF RECORDS BY ELECTRONIC DATA HOSTS, FINANCIAL INSTITUTIONS, AND OTHER THIRD PARTIES**

**IT IS FURTHER ORDERED** that any Electronic Data Host, financial or brokerage institution or depository, escrow agent, title company, commodity trading company, trust, entity, or other Person that holds, controls, or maintains custody of any account, asset, Debt Portfolio, electronic communications (including but not limited to emails and recordings of telephone conversations), Documents or Electronically Stored Information, owned or controlled, directly or indirectly, by any Defendant, or has held, controlled, or maintained any account, asset, Debt Portfolio, electronic communications, Documents or Electronically Stored Information of, or on behalf of, any Defendants, upon service with a copy of this Order, shall:

- A. Hold, preserve, and retain within its control Documents or Electronically Stored Information, and records concerning accounts, assets, information or communications that are or were owned by, held in the name of, for the benefit of, or otherwise controlled, directly or indirectly, in whole or in part, by the Defendants; and
- B. Provide counsel for Plaintiff, within three <sup>50</sup>~~(3)~~ business days after being served with a request, copies of (1) all Documents or Electronically Stored Information used to establish any financial account or arrangement to store documents, information or communications, including but not limited to originals or copies of account applications, signature cards, and depository agreements; and (2) account statements, wire transfers, debit and credit slips or instruments, and other records

of transfers to and from any financial account or slips, provided that such institution or custodian may charge a reasonable fee.

**IV. ACCOUNTING FOR DEBT PORTFOLIOS AND CHAINS OF TITLE**

**IT IS FURTHER ORDERED** that each Defendant, within three (3) business days of service of this Order, shall provide an accounting of all Debt Portfolios that have been distributed, sold or acquired by Defendants, their subsidiaries, officers, agents, or employees since June 1, 2014, by providing a report to counsel for Plaintiff that clearly sets forth the following details:

- A. The filenames, titles or other descriptions of each Debt Portfolio;
- B. The location(s) where each Debt Portfolio is stored and any username or password required to access any computer or electronic files, including but not limited to information stored, hosted or otherwise maintained by an Electronic Data Host;
- C. Any compensation related to the distribution, sale or acquisition of each Debt Portfolio;
- D. The full names, addresses and telephone numbers of the purchasers of each Debt Portfolio;
- E. The full names, addresses and telephone numbers of the Person(s) that provided all or part of the records in each Debt Portfolio;
- F. The full names, addresses and telephone numbers of the Person(s) that issued or originated debts described in each Debt Portfolio;
- G. The full names, addresses and telephone numbers of any Person(s) that ever held or transferred title to the debts described in each Debt Portfolio;

- H. The full names, addresses and telephone numbers of any Electronic Data Host that was used to store, host, or otherwise maintain each Debt Portfolio; and
- I. The full names, addresses and telephone numbers of any Financial Institution that processed payments related to the sale or acquisition of each Debt Portfolio.

**IT IS FURTHER ORDERED** that, along with this accounting, Defendants shall produce to counsel for Plaintiff copies of all records relating to the chain of title of each Debt Portfolio described in the accounting.

#### **V. LIMITED EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that

- A. Plaintiff is granted leave to conduct expedited discovery on matters relating to (1) the location of Documents or Electronically Stored Information pertaining to Defendants' business; (2) the accuracy of Defendants' accounting, including the existence, chain of title, source and disposition of Debt Portfolios marketed, distributed, sold or acquired by Defendants and financial transactions that may relate to such portfolios; and (3) compliance with this Order;
- B. Commencing with the time and date of this Order, the following requirements shall govern this expedited discovery 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:
  - 1. Plaintiff may, upon three (3) calendar days' notice, take the deposition of any Person, whether or not a party, in any judicial district. Depositions may be conducted in person, by telephone, or by other remote electronic means.
  - 2. Defendants shall respond to any interrogatories served by Plaintiff within five



- (5) calendar days after service.
3. Plaintiff 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, electronically stored information or tangible things from any Person, whether or not a Defendant, including a notice requiring the responding Person to permit inspection, copying, testing or sampling of materials. *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.
  4. For purposes of discovery pursuant to this Section, service shall be sufficient if made by facsimile, e-mail, or overnight courier.
- C. Plaintiff 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 Plaintiff at any subsequent hearing; and
- D. Any deposition taken pursuant to this Section and interrogatories served 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) and 33(a)(1), and notwithstanding Federal Rule of Civil Procedure 30(a)(2), depositions taken during this period of expedited discovery shall not preclude any future depositions of a witness.

#### **VI. SERVICE OF THIS ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by e-mail, facsimile, personal or overnight delivery, or U.S. Express Mail, by agents and employees of

Plaintiff or any state or federal law enforcement agency or by private process server, on Defendants or any other Persons that may be subject to any provision of this Order.

**VII. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that within ~~three (3)~~ <sup>5 business</sup> calendar days after service of this Order, Defendants shall provide a copy of this Order to (1) all officers, directors, employees, and LLC managers and members; and (2) Financial Institutions, Electronic Data Hosts and other Persons that hold accounts or records owned or controlled by the Defendants. Within five (5) calendar days following this Order, Defendants shall provide Plaintiff 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.

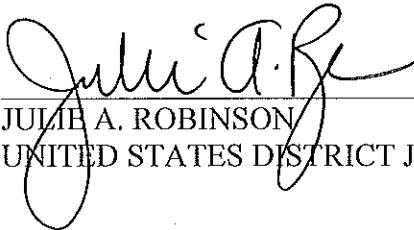
**VIII. CORRESPONDENCE WITH PLAINTIFF**

**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 mtankersley@ftc.gov, kroller@ftc.gov, or via Federal Express to: Michael Tankersley, Katharine Roller, Federal Trade Commission, 600 Pennsylvania Ave., NW, CC-10232, Washington, DC 20580.

**IX. JURISDICTION**

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

**IT IS SO ORDERED**, this 6<sup>th</sup> day of January, 2017 at 9:15 o'clock (a.m.)/p.m.



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JULIE A. ROBINSON  
UNITED STATES DISTRICT JUDGE