

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICHAEL RANDO, et al.,

Defendants.

Case 3:22-cv-487-TJC-MCR

**PLAINTIFF’S RESPONSE TO RECEIVER’S MOTION FOR ORDER TO
REQUIRE COMPLAINCE**

Plaintiff, the Federal Trade Commission, respectfully submits this response to the Receiver’s Motion for Order to Require Compliance with Temporary Restraining Order (“Receiver’s Motion”). [Dkt. 29]. By refusing to cede control of the contested email accounts, Defendants Michael and Valerie Rando are violating the Court’s May 3, 2022 Temporary Restraining Order (“TRO”) [Dkt. 12].

In addition to the provisions cited in the Receiver’s Motion, the TRO directs the Receiver to “[t]ake *exclusive custody, control, and possession* of all Assets and Documents of, or in the possession, custody, or under the control of, any Receivership Entity.” TRO § XIV.B (emphasis added); *see also* TRO § XIV.C (“[t]ake exclusive custody, control, and possession of all Documents or Assets *associated with credits, debits, or charges* made on behalf of any Receivership Entity”)

(emphasis added). The TRO defines “Documents” as, among other terms, “e-mail” and “electronically stored information, including Documents located on remote servers or cloud computing systems,” TRO Definitions § E, directs Defendants to “provid[e] information to the Receiver that the Receiver deems necessary to exercise the authority and discharge the responsibilities of the Receiver,” TRO § XVII, and, ultimately, directs the Receiver to “[a]ssume *full control* of [the] Receivership Entities,” TRO § XIV.A (emphasis added).

Such control over email accounts used for corporate financial communications and record keeping is crucial for the Receiver to exercise her duties, as demonstrated by the chargebacks described in the Receiver’s Motion. Motion ¶¶ 10-12 (Receiver unaware of chargebacks instituted against Receivership Entity’s financial account because notifications sent to contested email account, mikesingles@gmail.com). Defendants admit using the contested email accounts for business purposes, including “monitor[ing] various business accounts.” Defendants’ Response in Opposition to the Receiver’s Motion to Compel ¶¶ 3-4 (“Defendants’ Response”) [Dkt. 31]. Additionally, during a May 24, 2022 deposition noticed by the Receiver pursuant to Section XXIV of the TRO, Ms. Rando admitted that she used the contested email address, val.10xlife@gamil.com, as her only business email account during 2022 and 2021. (Deposition transcript unavailable due to its recency.)

To avoid their clear violation, Defendants reimagine the TRO provisions requiring them to provide the Receiver with access to the contested email accounts as nothing more than a form of expedited discovery request that can be satisfied by the

production of historic documents. Defendants' Response ¶ 7, at 5 [Dkt. 31] (offering to produce emails and a forensic image). That is incorrect. The Receiver is charged with *ongoing* duties that cannot be accomplished by reviewing productions of past documents or a forensic image, because such productions are static and outdated the moment they are pulled from the account. Any production fails to capture incoming corporate financial communications in real time, especially for accounts that are currently unknown to the Receiver.

Indeed, the FTC has recently discovered another payment processor, Electronic Commerce, LLC, holding over \$400,000 of Receivership Entity assets which Defendants failed to disclose to the Receiver or the FTC. Declaration of Adam Rottner ¶¶ 5-8, attached. Although, it is unknown at this time whether the contested emails were used to access that processing account or for related communications, Defendants' selective disclosure of financial accounts further illustrates the importance of the Receiver having complete and ongoing control over all email accounts Defendants used for business purposes.¹

Finally, the TRO ensures that Defendants are not "immediately and indefinitely" prohibited from accessing the contested email accounts. Defendants' Response at 5-6. The TRO directs the Receiver to provide Defendants, as well as Plaintiff, "reasonable access to all Documents in the possession, custody, or control

¹ The FTC and the Receiver are working with Defendants' counsel to answer follow up questions concerning Defendants' personal and corporate disclosures, which appear to contain inconsistencies.

of the Receivership Entities,” which would include the contested email accounts. TRO § XIV.R. Accordingly, the Defendants would suffer no harm should the Court enforce the TRO’s provision allowing the Receiver to control access to those accounts. To the contrary, allowing the Defendants to evade the TRO’s clear and unambiguous requirements because of their conscious choice to commingle their business and personal affairs would harm the Receivership (and consumers’ potential future recovery) by risking the potential dissipation of assets and documentary evidence – precisely the harm the TRO was designed to avoid.

Respectfully submitted,

Dated: May 25, 2022

/s/ Brian M. Welke

Hong Park

Brian M. Welke

Sana Chaudhry

FEDERAL TRADE COMMISSION

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FEDERAL TRADE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2022 I served a true and correct copy of the foregoing and accompanying filings and attachments via ECF to the following counsel of record:

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**DECLARATION OF ADAM
ROTTNER**

DECLARATION OF ADAM ROTTNER

(Pursuant to 28 U.S.C. § 1746)

I, Adam Rottner, hereby state that I have personal knowledge of the facts set forth below. If called as a witness, I could and would testify as follows:

1. I am a United States citizen and am over eighteen years of age. I am employed by the Federal Trade Commission (“FTC” or “the Commission”) as an Investigator in the Division of Enforcement, Bureau of Consumer Protection. My office address is 600 Pennsylvania Ave., NW, CC-9528, Washington, DC 20580.
2. As an Investigator with the FTC, my duties include investigating possible violations of the laws and regulations the FTC enforces and possible violations of Orders obtained by the Commission.
3. I was assigned to work on the Commission’s investigation into this matter.

DESCRIPTION OF INVESTIGATIVE TOOLS AND SOURCES OF EVIDENCE

4. Unless otherwise stated, all duties, investigative tools and sources of evidence are consistent with those outlined in the April 28, 2022 Declaration of Adam Rottner. [PX36].

DEFENDANTS' FINANCIAL DISCLOSURES

5. In the financial disclosures submitted to the FTC by Defendants' counsel on May 18 and 19, 2022, Defendants submitted a list of financial institutions with whom they use for business operations.
6. On May 23, 2022, an FTC paralegal received an email from the Compliance Department at Electronic Commerce LLC in response to the Asset Freeze provision (Section V) of the Temporary Restraining Order ("TRO").
 - a. The Electronic Commerce LLC email identified an existing account with a \$428,266.57 balance.
7. I reviewed the Defendants' financial disclosures and noticed that the existence of an account with Electronic Commerce LLC was not provided in the Defendants' financial disclosures.
8. I also reviewed an Excel document, submitted to the FTC by Defendants' counsel on May 17, 2022, that contained a list of entities that received a copy of the TRO from the Defendants.

- a. Electronic Commerce LLC was not listed among the entities that received a copy of the TRO from the Defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 25, 2022.



Adam Rottner