

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

FEDERAL TRADE COMMISSION,

Plaintiffs,

v.

MICHAEL RANDO, et al.,

Defendants.

Case No. 3:22-cv-00487-
TJC-MCR

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S EX PARTE
MOTION FOR TEMPORARY RESTRAINING ORDER AND
INCORPORATED MEMORANDUM OF LAW**

Defendants Michael Rando, Valerie Rando, Prosperity Training Technology LLC (d/b/a "the Credit Game"), Digital Business Scaling LLC, First Coast Matchmakers Inc., First Coast Matchmakers LLC, and Financial Consulting Management Group LLC, et al. ("Defendants"), by and through their undersigned counsel, hereby respond in Opposition to Plaintiff, the Federal Trade Commission's ("FTC") Ex Parte Motion for Temporary Restraining Order (Doc. 5) (the "FTC's Motion"), and the Court's Order to Show Cause Why A Preliminary Injunction Should Not Issue (Doc. 12) (the "TRO") and state as follows:

INTRODUCTION

Michael Rando started the Credit Game to educate consumers about credit. Hundreds of hours of YouTube videos are available online in which Mr. Rando explains, for example, how credit reporting works, how a credit score is calculated,

and how credit cards can help boost a credit score. These videos have garnered millions of views and earned the Credit Game more than half-a-million subscribers. Consumers interested in additional education could purchase a digital course via an online learning platform. Each digital course included hours of additional educational videos in which Mr. Rando talked about consumer and business credit and offered general business advice. Through its entertaining videos, educational courses, and business advice the Credit Game accumulated hundreds of satisfied customers.

In this case, the FTC predictably focusses on disgruntled customers, disgruntled former employees, and small portions of the hundreds of hours of video content available from the Credit Game. Through this evidence, the FTC alleges—essentially—that the Defendants provided unlawful credit repair advice and services; failed to comply with technical regulations governing statutory Credit Repair Organizations; and failed to honor consumers’ cancellation and refund requests.

Nowhere in the hours of video and pages of declarations, however, is there any evidence that Ms. Rando personally provided any credit repair advice or services to any consumers or that she had any actual role in engaging with or marketing to customers of The Credit Game. Instead, to obtain this prospective, indefinite, and oppressive relief against Ms. Rando individually, the FTC relies on her former role in inactive entities, a few formal business titles in the current entities, and her relationship with Mr. Rando. These citations to innocuous, outdated conduct is woefully insufficient to justify a broad preliminary injunction and asset freeze over Ms. Rando individually.

More broadly, the FTC's Motion and supporting materials also fail to demonstrate a sufficient basis for freezing all of the Randos' assets, particularly where, as here, the FTC makes no evidentiary showing of its potential recovery (or the basis for it); or for appointing a receiver to meddle in every aspect of their personal and professional lives. As such, the Court should dissolve the TRO entirely as to Ms. Rando because the FTC cannot meet its burden to prove that it is likely to succeed in its claims against her or that the equities favor an injunction. The Court should also modify the injunction and asset freeze as to the Defendants by either lifting it entirely or limiting it to the amount of funds the FTC is able to prove are at stake here, in light of its limited jurisdiction under *AMG Capital Management LLC v. FTC*, 141 S. Ct. 1341 (2021).

ARGUMENT

The Court should dissolve the *ex parte* TRO as it pertains to Ms. Rando because it was obtained without any evidence that Ms. Rando was personally engaged in the ongoing violations alleged by the FTC. Moreover, the Court should dissolve the asset freeze in whole or in part because: (1) the FTC has not met its burden of showing that the plenary asset freeze is proportionate to the FTC's potential recovery if successful at trial; (2) there is no evidence of a risk of asset dissipation; and (3) the asset freeze is unnecessary to preserve the possibility of future relief. It is well established that the FTC "bears the burden of justifying continued injunctive relief"—a burden that it cannot meet here. *SG Cowen Securities Corp. v. Messih*, No. 00CIV.3228(HB), 2000 WL 633434, at *1 (S.D.N.Y. May 17, 2000), *aff'd*, 224 F.3d 79 (2d Cir. 2000) ("On this

motion to dissolve a temporary restraining order . . . the party that obtained the order, bears the burden of justifying continued injunctive relief.”); *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 442–43, 94 S. Ct. 1113, 1126, 39 L. Ed. 2d 435 (1974) (“Rule 65(b) does not place upon the party against whom a temporary restraining order has issued the burden of coming forward and presenting its case against a preliminary injunction.”). Because the FTC has failed to make any showing as to Ms. Rando or to justify a plenary asset freeze that, in effect, cripples the Randos and their family—and unnecessarily puts the Defendants out of business—the Court should dissolve or modify the TRO.

I. The FTC is Not Substantially Likely to Prevail on the Merits of its Claims against Ms. Rando.

In determining whether to issue an injunction, this Court must determine the likelihood that the FTC will succeed on the merits and balance the equities between the parties. *FTC v. USA Beverages, Inc.*, No. 05-61682 CIV, 2005 WL 5654219, at *5 (S.D. Fla. Dec. 6, 2005), report and recommendation adopted, No. 05-61682, 2005 WL 5643834 (S.D. Fla. Dec. 9, 2005) (citing *FTC v. University Health, Inc.*, 938 F.2d 1206, 1217 (11th Cir. 1991)) (“The Eleventh Circuit evaluates two factors in determining whether to grant injunctive relief under Section 13(b): (1) the likelihood the FTC will ultimately succeed on the merits, and (2) a balance of the equities.”). To show a likelihood of ultimate success, the FTC must raise “questions going to the merits so serious, substantial, difficult and doubtful as to make them fair ground for thorough investigation, study, deliberation and determination by the FTC in the first

instance and ultimately by the Court of Appeals.” *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1218 (11th Cir. 1991). The FTC has failed to meet that burden as to Ms. Rando.

A. The FTC Has No Evidence that Ms. Rando Participated in the Alleged Scheme.

The FTC’s papers are bereft of any specific allegation that Ms. Rando engaged in alleged deceptive marketing or business practices or that any alleged conduct in which she was involved is ongoing.¹ Instead, the FTC relies on sweeping assertions that attempt to link Ms. Rando to alleged conduct involving her husband, Mr. Rando, without evidentiary justification. For example, the FTC claims that “[s]ince at least 2019, Defendants Michael and Valerie Rando have used the Corporate Defendants to operate an illegal credit repair scheme, initially marketed as ‘Wholesale Tradelines’ ” yet the footnote to this allegation cites to completely unrelated cases involving purported “Credit repair schemes,” “Other deceptive schemes in this District,” and “Other deceptive schemes nationwide.” *See* FTC’s Motion at 3, n. 1.

FTC then claims—without reference to *any* evidence—that “they” have also marketed a related money-making opportunity offering consumers the chance to run a carbon copy of their credit repair scheme. FTC’s Motion at 3. These—and the many other wholly conclusory allegations against Ms. Rando—are not “entitled to the assumption of truth” in assessing the FTC’s burden of proof in connection with the

¹ The record evidence against Ms. Rando concerning Wholesale Tradelines and First Coast Financial Matchmakers pertains, at most, to innocuous and outdated conduct. The FTC posits no evidence that these exhibits relate to current or ongoing conduct by Ms. Rando. *See, e.g.*, PX3, PX4, PX5, PX36, PX81, PX82, and PX86.

application of the TRO to Ms. Rando. *See e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009) (explaining that allegations that “are mere conclusions, are not entitled to the assumption of truth”).

To obtain monetary and injunctive relief against Ms. Rando individually, the FTC must prove she directly participated in the alleged scheme or exercised control over the allegedly deceptive practices. *See FTC v. Gem Merch. Corp.*, 87 F.3d 466 (11th Cir. 1996) (FTC must demonstrate individual liability of each defendant in addition to establishing liability from the corporation). Yet, despite its reliance on reams of data and YouTube videos depicting Mr. Rando, the FTC has no evidence showing active involvement by Ms. Rando in The Credit Game; or that she developed or oversaw the development or execution of corporate policy for any of the Defendant Businesses. *See FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247 (S.D. Fla. 2007) (“The degree of participation in the business is probative of knowledge.”). Likewise, the FTC has not and cannot prove Ms. Rando had knowledge of any alleged “material misrepresentations” made by the Defendant Entities or Mr. Rando, *id.* at 1266 (“A representation is material if it is of a kind usually relied upon by a reasonably prudent person.”), or that she committed any overt acts that allegedly furthered the alleged scheme.

Nowhere does the FTC allege, let alone provide any evidence, that Ms. Rando was personally and recently involved in, or had control over, the planning, design, or daily operations of The Credit Game; that she was involved in developing or distributing marketing materials for the business; or that she developed, approved, or

had knowledge of the contracts consumers allegedly entered with Prosperity Training. Likewise, there is no evidence that Ms. Rando was involved in “rebranding . . . to evade law enforcement scrutiny . . . triggered when [the Defendants] [allegedly] purchased credit piggybacking data from the defendants in FTC v. Boost My Score LLC . . .,” as the FTC claims. FTC’s Motion at 34.

B. *The FTC’s Allegations against Ms. Rando Concern Innocuous Conduct.*

In the absence of evidence that Ms. Rando has engaged in the purported “singular scheme” it alleges, FTC’s Motion at 34, the FTC rests its case against her on innocuous assertions that, in the past she was the “registered agent” of “Prosperity Training” (until July 17, 2020), *id.*; a telephone number for “Elite Deletions” is registered in her name, *id.* at 35-36; and she has been listed on corporate documents as the “manager” of the First Coast Matchmakers LLC and “president” of an allegedly related entity, First Coast Matchmakers Inc. *Id.* at 33.

Evidence submitted in the FTC’s Supplementary filing, (Doc. 28) establishes only Ms. Rando’s official role or title in Prosperity Training, not her personal participation in any of the alleged violations. The FTC cites, for example, to an undated organizational chart listing her as the “marketing director” [PX140], to photographs of poster paper located in a “storage room” with what appear to be handwritten list of “goals” or “targets,” some of which list “Val” beside them [PX141] and [PX 93 at ¶ 18], an automated email sent to an email account used by Ms. Rando, [PX128], and to a photograph taken by an FTC investigator of documents he claims

are from Valerie Rando's office "based on documents located in the office." [PX95]; *see also* [PX 93 at ¶ 9].

This evidence does not satisfy the FTC's burden as a matter of law. *See FTC v. Vylah Tec LLC*, 328 F. Supp. 3d 1326 (M.D. Fla. 2018) (FTC could not prove liability based on allegations that an individual was an authorized signer on merchant processing accounts and signed name to documents in company's beginning months). Indeed, in this District, "[a]uthority is established by proof that the individual *participated in corporate activities by performing the duties of a corporate officer*" not solely being listed as such. *FTC v. Glob. Mktg. Grp., Inc.*, 594 F. Supp. 2d 1281, 1289 (M.D. Fla. 2008) (emphasis added).²

Moreover, the FTC's broad allegations, even if taken as true, fail to justify the extraordinary harm to Ms. Rando caused by the TRO and asset freeze. *See, e.g., FTC v. Mktg. Response Grp., Inc.*, No. 96-111-CIV-T-17A, 1996 WL 420865, at *2 (M.D. Fla. June 24, 1996) (quoting *FTC v. University Health, Inc.*, 938 F.2d 1206, 1218 (11th Cir.1991) ("The FTC must raise questions going to the merits so serious, substantial, difficult and doubtful as to make them fair ground for thorough investigation, study, deliberation and determination.")). Likewise, they fail to show that Ms. Rando is engaged in any conduct that is ongoing or apt to continue. *FTC v. Mktg. Response Grp.*,

² The balance of the evidence on which the FTC relies undermines its efforts to maintain a TRO and asset freeze against Ms. Rando. The YouTube videos discussing credit feature Mr. Rando, not Ms. Rando. Likewise, the FTC attaches to its motion declarations from alleged consumers and the transcript of a controlled call conducted by an FTC investigator. None of these documents reference Ms. Rando. At bottom, the FTC's case against Ms. Rando is built on guilt by association. That is insufficient to justify the extraordinary remedy of a receiver and plenary asset freeze against an individual.

Inc., No. 96-111-CIV-T-17A, 1996 WL 420865, at *2 (“Generally, a preliminary injunction . . . will only issue if the wrongs are ongoing, or are apt to continue. An injunction is only authorized where a party is violating, or is about to violate, the law.” (citation omitted)). For these reasons the Court should dissolve the TRO and deny the FTC’s Motion as to Ms. Rando.

C. *The Balance of the Equities Weighs in Favor of Ms. Rando.*

The FTC has not, and cannot, demonstrate that there is any public hardship resulting from the conduct of Ms. Rando. As demonstrated above, the FTC cannot prove that it will succeed on the merits against Ms. Rando or that subjecting her to oversight from a receiver, intrusions into her personal and family life, and an asset freeze is justified. Moreover, the appointment of a receiver is an “extraordinary remedy.” *3376 Lake Shore, LLC v. Lamb’s Yacht Ctr., Inc.*, No. 3:14-CV-632-J-34PDB, 2014 WL 12621231, at *2 (M.D. Fla. Dec. 8, 2014) (noting the appointment of a receiver is “an extraordinary equitable remedy,” and available “only when there is no remedy at law or the remedy is inadequate”); *Outsource Servs. Mgmt., LLC v. Lake Austin Properties I, Ltd.*, No. 609CV1928ORL35DAB, 2010 WL 11470905, at *1 (M.D. Fla. Aug. 17, 2010) (“[The] Court considers the appointment of a receiver to be a drastic and extraordinary remedy.”).

At most, the Court should enter a modified injunction and asset freeze that carves out Ms. Rando completely and releases any financial assets held by her that did not derive from the schemes alleged by the FTC. *See FTC v. Inbound Call Experts, LLC*, No. 14-81395-CIV, 2014 WL 8105107, at *4 (S.D. Fla. Dec. 23, 2014) (entering a

“limited” preliminary injunction against the defendants after “carefully reviewing the pleadings, declarations, evidence, and testimony of witnesses”).

II. The TRO’s Asset Freeze is Overbroad and Unjustified.

The plenary asset freeze imposed by the *ex parte* TRO is unmerited and the FTC has not met its burden to prove that the asset freeze is necessary or proportionate to the potential recovery to which the FTC may be entitled if it succeeds at trial in this case. “A party seeking an asset freeze must show a likelihood of dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not granted.” *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009) (holding that a likelihood of dissipation is necessary to support an asset freeze instead of only a possibility of dissipation). To obtain such relief here, the FTC must demonstrate that the requested asset freeze is “necessary.” See *FTC v. Home Assure, LLC*, No. 8;09-CV-547-T-23TBM, 2009 WL 1043956, at *2 (M.D. Fla. Apr. 16, 2009); *FTC v. John Beck Amazing Profits, LLC*, No. 2:09-CV-4719-FMC-FFM, 2009 WL 7844076, at *15 (C.D. Cal. Nov. 17, 2009) (dissolving asset freeze when there was no evidence defendants “have ever previously attempted to intentionally dissipate, hide or otherwise shelter corporate or personal assets from an effort to collect a debt or judgment”). The FTC has not and cannot meet this burden.

First, there is no evidence of any likelihood of asset flight. Second, there are other means available to mitigate any risk of dissipation without also destroying the Randos’ personal lives and careers and harming innocent third parties, including their children. And third, the FTC has not established the amount of assets subject to a

potential judgment to “redress injury . . . resulting from [any] rule violation or the [alleged] unfair or deceptive act or practice” alleged in this case. *See* 18 U.S.C. § 57b(b). Simply put, the FTC has made no showing that the plenary asset freeze imposed by the *ex parte* TRO bears any semblance to the FTC’s potential recovery on the merits.³

For these reasons, the Court should dissolve the asset freeze or, at minimum, limit the asset freeze to only the amount of the assets the FTC proves (with evidence) it is likely to recover if successful at trial and in accordance with equitable principles that recognize that the Defendant Entities have many satisfied customers who would not seek refunds.⁴ *See generally* *FTC v. Bishop*, 425 Fed. App’x 796, 798 (11th Cir. 2011) (finding that, even in the pre-AMG context, a district court abused its discretion by “imposing too broad an asset freeze without making any reasonable approximation of [the] potential damages”; remanding for the district court to “determine whether the asset freeze correspond[ed] with a reasonable approximation of [the damages], in accordance with equitable principles”).⁵ Anything more is overbroad, unjustified, and violates due process.

³ But even if the FTC could make this showing, the plenary asset freeze would still be overbroad, as, under the current TRO, the government has frozen as much as \$6 million in assets.

⁴ Several of these customers sent emails of support for Defendants. Copies of these are attached hereto as Exhibit 1.

⁵ And if the Court finds that the FTC meets that burden, then the Court should permit Mr. Rando and the Defendant Entities an opportunity to provide a security in the amount of the total funds the Court deems potentially subject to the asset freeze. *See* *FTC v. Home Assure, et al.*, 2009 WL 1043956, *3 (M.D. Fla. April 16, 2009) (limiting freeze of certain defendants’ assets to \$3,721,807.84 each and allowing substitution of a surety bond).

Dated: June 1, 2022

**GUNSTER, YOAKLEY &
STEWART, P.A.**

By: /s/ Nathan W. Hill

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of June, 2022 a true and correct copy of the foregoing document was electronically filed with the United States District Court for the Middle District of Florida using the CM/ECF system which will send notification of such filing to all counsel of record.

By: /s/ Nathan W. Hill

EXHIBIT 1

From: Leo Pena

Sent: Wednesday, June 1, 2022 1:23 PM

To: Lafferty Latour LT <ltlafferty@gunster.com>

Subject: Re: The Credit Game

To whom it may concern,

Hi , my name is Leo Pena, the following is to stated that I purchased several educational courses from Mr, Mike Rando at the Credit Game University, I would like to add that I am very happy and satisfied with my purchase .

The information I received on these courses has been very helpful for me and my family.. I would recommend the credit game to anyone that is looking to learn and educate themselves on how to improve their credit score and manage their credit finances responsibly.

Best Regards.

Leo Peña.

From: Bryan Pelaez
Sent: Wednesday, June 1, 2022 12:22 PM
To: Lafferty Latour LT <ltlafferty@gunster.com>
Subject: Re: The Credit Game

What Mike has done for me is provided me with the tools necessary to successfully run a business as a credit repair company. Never once did Mike promise something he did not deliver. Most importantly and I believe this is what we need to focus on is the fact that Mike since coming into my life has helped me become a better version of myself. I'm someone today who cares about my fico score, about paying my bills on time. I paid a lot of money to be with Mike and I would gladly pay it again. Mike does not promise things, especially credit repair in return for purchasing his course. The software mike claims to have access to which generates dispute letters at an incredibly fast rate I have access to that and anyone can through credit repair cloud or disputebee both open to the public. I will testify to any of this.

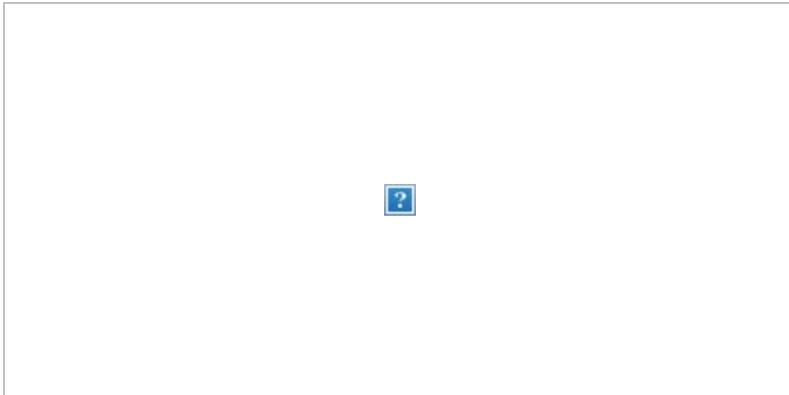
Bryan Steve Pelaez

From: Alizabeth Showers-Lester
Sent: Wednesday, June 1, 2022 12:29 PM
To: Lafferty Latour LT <ltlafferty@gunster.com>

Subject: Re: Credit Game

I purchased several of the Credit Game University Courses over the last year and a half and I can 100% attest to learning a ton of valuable information that helped me and several of my close friends/relatives remove erroneous items on my credit report which increased my personal score by well over 60 points. I am more than satisfied with my purchase of the courses! Mike's passion for helping people understand the laws that govern credit reporting and how to make sure we are empowered consumers is something that he should be championed for! To be very clear he never promised to fix my credit, he only provided the information, resources and tools for me to do the work myself. Anyone who did not see results most likely did not utilize the information given.

Until we speak again...Be Bold*...Be Passionate*...Be Wealthy*!!!



-----Original Message-----

From: Moses Khalil

Sent: Wednesday, June 1, 2022 1:49 PM

To: Lafferty Latour LT <ltlafferty@gunster.com>

Subject: The credit game

To Whom it may concern:

I Moses Khalil Jr. have been a customer of the credit game university since around March of 2022.. I joined Mike and the CGU to help scale my business after the catastrophe of Covid and the lock down. I have gained some insight and picked up a few tips on marketing and general bus development etc- I believe we will be able to double our productivity and enhance our position in our particular industry thanks in part to Mike Rando and the Credit Game University! I Supprt Mike and his effort to help those who may be struggling in their personal, family and business endeavors! Much luck and prosperity to Mike and the credit game family! Sincerely Moses Khalil Jr...

Sent from my iPhone