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

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| FEDERAL TRADE COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>MICHAEL RANDO, et al.,<br><br>Defendants. | **Case 3:22-cv-487-TJC-MCR**<br><br>**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO MODIFY ASSET FREEZE TO PERMIT PAYMENT OF ATTORNEYS' FEES** |

Defendants seek to modify the Temporary Restraining Order ("TRO"; Doc. 12) to release $225,000 for their attorneys' fees. (Doc. 51.) However, Defendants have not provided the FTC or this Court with sufficient information to demonstrate that such an amount is either necessary or reasonable. Accordingly, the FTC opposes Defendants' motion.[1]

First, Defendants have not demonstrated disbursement of $225,000 is necessary to pay their attorneys because they have refused to fully disclose their income and assets. *See SEC v. Cherif*, 933 F.2d 403, 416-17 (7th Cir. 1991) (affirming refusal to modify injunction where defendant refused to provide financial information); *SEC v. Bivona*, No. 16-cv-1386, 2016 WL 2996903, *3 (N.D. Cal. May

[1] Nothing contained herein should be construed as an indictment of Defendants' counsel or their performance in this litigation. While counsel for both the FTC and Defendants worked in good faith to resolve this dispute, for the reasons set forth herein, the parties, regrettably, could not reach an agreement.

25, 2016) (declining defendants' request to modify an asset freeze "without a complete picture of their finances"); *FTC v. RCA Credit Servs., LLC*, No. 08-cv-2062, 2008 WL 5428039, *4 (M.D. Fla. Dec. 31, 2008) (refusing to modify injunction without "[c]omplete and proper disclosure and accounting as required by the preliminary injunction order"). Rather than provide the FTC complete and accurate financial disclosures as required by the TRO, Mr. and Mrs. Rando asserted their Fifth Amendment privilege, claiming that providing such information would incriminate them. (Doc. 49.) Defendants' motion provides no additional evidence of Defendants' financial condition. Without a full picture of Defendants' finances, the Court has no way to determine whether Defendants' request is truly necessary to mount a defense in this matter or a brazen effort to preserve their own funds[2] while expending Court-protected moneys meant for consumer victims.[3]

Second, even if Defendants had provided the financial information to show disbursement is necessary, they failed to provide sufficient details about the legal

[2] For example, there is evidence that after this Court entered the TRO, the Randos tried to maintain their lavish lifestyle. Specifically, as the Receiver detailed in her report, on May 12, 2022, just 8 days after being served with the TRO, the Randos attempted to purchase or lease a 2022 Land Rover Range Sport. (Doc. 50 ¶ 198.)

[3] Although Defendants' refusal to disclose their finances place their counsel at risk of not being paid for their services, counsel assumed that risk when they entered their appearance after the Court entered the asset freeze. *See, e.g., FTC v. Trudeau*, 845 F.3d 272, 274 (7th Cir. 2016) ("[L]awyers, particularly, had to understand that their claims to compensation would be junior to those asserted by the FTC on the victims' behalf."); *Am. Metals Exchange Corp.*, 991 F.2d at 79-80; *FTC v. Sharp*, No. CV-S89-870 RDF (RJJ), 1991 WL 214076, at *4 (D. Nev. July 23, 1991) (where an attorney knows about an asset freeze prior to representing a client, the victims "have a stronger claim to the frozen assets" than the attorney). *Cf. IAB Mktg.*, 972 F. Supp.2d at 1315 ("[I]t is axiomatic that an asset freeze, set forth in the interest of preserving illegal proceeds from dissipating before there has been a final disposition on the merits, may have unpleasant consequences for the defendant.").

services rendered by their counsel to determine whether the requested amount is reasonable. In the course of conferring on this issue, Defendants provided the FTC the fee summary attached to their motion. The fee summary tabulates the hours worked, billing rate, and billed amount for each attorney and other professional who rendered service. Unfortunately, the summary does not provide any details on what services each professional provided or how much time each professional spent providing each service. *See Am. C.L. Union of Georgia v. Barnes*, 168 F.3d 423, 429 (11th Cir. 1999) ("[O]ur decisions contemplate a task-by-task examination of the hours billed."). The summary also does not demonstrate "the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation," a necessary prerequisite to determining the reasonableness of the fees sought. *Loranger v. Stierheim*, 10 F.3d 776, 781 (11th Cir. 1994) (quoted source omitted).

Although the FTC asked for task-specific information in the course of the parties meet-and-confer on this issue, Defendants declined to provide such information on the grounds of attorney-client privilege. While asserting the privilege is certainly understandable, by doing so, Defendants have deprived the Court of information necessary to determine the reasonableness of the amount requested. *See, e.g., Everhart v. Bd. of Educ. of Prince George's Cty.*, 2016 WL 7131469, at *4 (D. Md. Dec. 5, 2016) (finding it "virtually impossible . . . to determine reasonableness of time spent" where attorney "frequently lumps several different types of tasks together in one billing entry"); *SEC v. Private Equity Mgmt. Grp.*, No. 09-cv-2901, 2009 WL

2058247, *3 (C.D. Cal. July 9, 2009) (denying request to unfreeze assets when defendant provided only "generalized statements about the complexity of the case"); *SEC v. Dobbins*, No. CIV.3:04-CV-0605-H, 2004 WL 957715, at *2 (N.D. Tex. Apr. 14, 2004) (denying request to unfreeze assets in part because movant "ha[d] not shown any basis for the reasonableness of the amount").

Ensuring the reasonableness of the requested disbursement is not a trivial matter, especially for consumer victims whose redress will come from these frozen funds. Currently, the Court-ordered asset freeze has only secured approximately $1.38 million in liquid assets. (Doc. 50 ¶ 211.) The remainder of the known frozen assets primarily consists of illiquid investments purportedly held by protective trusts (Doc. 50 ¶¶ 173-178, 183, 186) and approximately $650,000 in merchant processing reserve accounts, both of which the FTC will seek to liquidate but neither of which are readily accessible (and may never be). The liquid assets will likely diminish rapidly with Defendants' requested personal living expenses of $50,000 per month and defense attorney fee requests, leaving little available for redress to consumer victims whose losses currently exceed $14 million, and are likely to increase once sales numbers for Defendants' prior iteration of the credit repair scheme, Wholesale Tradelines, become known. (Doc. 50 ¶¶ 164-166.)

For this reason, when "frozen assets are less than the amount needed to compensate consumers for their losses, a district court can properly refuse to unfreeze assets." *FTC v. IAB Mktg. Assocs., LP*, 972 F. Supp. 2d 1307, 1313 (S.D. Fla. 2013) (citing *FTC v. RCA Credit Servs., LLC*, 2008 WL 5428039, at *4 (M.D. Fla. Dec.

31, 2008)). *Cf. SEC v. Quinn*, 997 F.2d 287, 289 (7th Cir. 1993) ("Parties to litigation usually may spend their resources as they please to retain counsel. 'Their' resources is a vital qualifier. Just as a bank robber cannot use the loot to wage the best defense money can buy, so a swindler in securities markets cannot use the victims' assets to hire counsel who will help him retain the gleanings of crime.") (internal citations omitted). In exercising that discretion, courts have waited until the case has concluded to determine the disbursement of defendants' attorneys' fees. *See, e.g., FTC v. Trudeau*, 845 F.3d 272, 274-75 (7th Cir. 2016) (affirming refusal to award attorneys' fees ahead of victim compensation); *FTC v. Direct Benefits Grp.*, LLC, No. 6:11–cv–1186, 2012 WL 3715204, at *5 (M.D. Fla. Aug. 9, 2012) (denying motion for attorney's fees on basis that "it would not be appropriate to unfreeze the Defendants' assets based upon their speculation and belief about how this litigation will ultimately end. This is particularly the case in light of the Court's finding that there is good cause to believe the FTC will prevail on the merits."); *FTC v. Next-Gen, Inc.,* No. 4:18-CV-00128, 2018 WL 5310415, at *1 (W.D. Mo. Oct. 16, 2018) (defendants' attorneys may renew their fee requests at the conclusion of the case).

Should the Court be inclined to grant Defendants' motion, the FTC submits that an *in camera* review of a sufficiently detailed billing invoice for Defendants' legal fees would be appropriate along with information concerning the prevailing market rate. The FTC also agrees with Defendants' proposal that any disbursement come from the non-receivership liquid assets in the account ending in -1169 located at Fifth Third's Bank. (Doc. 51 at 4.)

Dated: June 16, 2022

Respectfully submitted,

*/s/ Hong Park*

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2022, I served a true and correct copy of the foregoing via CM/ECF to those listed on the CM/ECF system.

*/s/ Hong Park*
Hong Park