

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 OPPOSITION  
TO DEFENDANTS’ MOTION  
TO MODIFY THE  
TEMPORARY RESTRAINING  
ORDER AND ASSET FREEZE  
TO RELEASE FUNDS FOR  
DEFENDANTS’ LIVING  
EXPENSES**

The FTC has no objection to releasing frozen funds *necessary* for Defendants Michael and Valerie Rando’s “*reasonable* personal expenses” as directed by the Court. (Doc. 12 § IV.D) (emphasis added). Defendants, however, have not provided sufficient information for the Court to determine that releasing frozen funds is actually necessary to pay their living expenses or that their claimed expenses are in fact reasonable. Defendants’ motion contains no financial records or other evidence justifying their request for \$25,000 to pay their monthly expenses – an amount dramatically beyond the expenses of the vast majority of people in Jacksonville.<sup>1</sup> (Doc. 76). Defendants’ barebones motion leaves the FTC with no choice but to oppose their extraordinary request, and the Court no choice but to deny it.

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<sup>1</sup> Defendants’ request exceeds the median household income in Jacksonville by a factor of more than five. The median annual household income for Jacksonville is \$55,531 based on the latest census data. *See* <https://www.census.gov/quickfacts/jacksonvillecityflorida>. Defendants’ requested monthly amount of \$25,000 calculates to an annual amount of \$300,000.

Defendants fail to demonstrate the necessity of their requested disbursement because they refuse to fully disclose their income and assets as ordered by the Court. *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, at \*3 (N.D. Cal. May 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, at \*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; PX145 at 31:6-32:9; PX146 at 36:20-37:23). Moreover, Defendants have not described any efforts they have made since the Court's issuance of the TRO to obtain sources of income unconnected to their scheme. For example, they have not detailed any efforts to obtain employment or disclosed any income acquired since the Court's decision on the TRO. *See FTC v. IAB Mktg. Assocs., LP*, 972 F. Supp. 2d 1307, 1314 (S.D. Fla. 2013) (finding defendants' request for disbursement unreasonable in part because defendants failed to explain their lack of employment). On July 28, 2022, Defendants, through counsel, submitted to the FTC a report of new business activity, stating their intent to help start a training and coaching service for business owners. Neither the report nor their current motion explains why the expected income from

their new venture would not cover their claimed \$25,000 living expenses.<sup>2</sup> In addition, their motion fails to identify “any other potential sources of funds” aside from employment income, such as loans from friends or family, to finance Defendants’ personal expenses. *FTC v. Elite IT Partners, Inc.*, No. 2:19-CV-125, 2019 WL 1568400, at \*2 (D. Utah Apr. 5, 2019) (denying motion for release of attorney’s fees from asset freeze). Without a full picture of Defendants’ finances, including efforts to obtain employment and other sources of non-tainted funds, the Court has no way to determine whether Defendants need a disbursement to pay living expenses or whether Defendants are simply attempting to preserve undisclosed resources while expending Court-protected moneys meant for consumer victims.

Moreover, even if Defendants had demonstrated they have no funds apart from the frozen assets to pay their expenses, their motion still must be denied. Specifically, Defendants fail to demonstrate the extraordinary expenses they request are reasonable. They rely on the Court’s previous grant of \$36,000 and \$25,000 disbursements for living expenses to justify their current request for an additional \$25,000. (Doc. 76 ¶ 3, citing Doc. 33 and Doc. 62). However, those previous disbursements were allowed soon after the Court imposed a freeze on Defendants’ assets when, arguably, Defendants could not quickly reduce the expenses associated with their extravagant lifestyle. Nearly three months have passed, and Defendants’ motion provides no information on why such astronomical expenses are still

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<sup>2</sup> Nor do they explain why Defendants’ past consumer victims should foot the bill for their living expenses while they launch a new enterprise.

necessary, if they ever were. *See SEC v. Forte*, 598 F. Supp. 2d 689, 694 (E.D. Pa. 2009) (collecting cases and explaining that a release from an asset freeze is not appropriate for items that are not actual “necessities”).

Ensuring that Defendants’ unjustified requests do not deplete frozen funds is critical for preserving the Court’s ability to redress consumer victims of Defendants’ schemes. (Doc. 12 at 5 (imposing asset freeze to preserve “the Court’s ability to grant effective final relief for consumers – including . . . the refund of money” and finding the FTC is likely to succeed on the merits)). *See CFTC v. Wilkinson*, No. 16-6734, 2016 WL 7014066, \*4 (N.D. Ill. Nov. 30, 2016) (“The purpose of the asset freeze is to ensure that [victims] . . . receive as much of the ill-gotten gains as possible.”). In fact, when “frozen assets are less than the amount needed to compensate consumers for their losses, a district court can properly refuse to unfreeze assets.” *IAB Mktg.*, 972 F. Supp. 2d at 1313 (citing *RCA Credit*, 2008 WL 5428039, at \*4). *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). Here, the funds frozen to date are nowhere near enough to redress the full extent of consumer injury. As explained previously, the Court-ordered asset freeze has only secured approximately \$1.38 million in liquid assets, (Doc. 56 at 4, citing Doc. 50 ¶ 211), and the Court’s recent disbursements of \$36,000

and \$25,000 for Defendants' personal expenses (Docs. 33 & 62) and approximately \$165,000 for their attorneys' fees (Doc. 62) have lowered the balance of those assets further. In contrast, consumer loss appears to exceed \$14 million, and is likely to increase once the FTC and the Receiver ascertain sales numbers for Defendants' prior iteration of the credit repair scheme, Wholesale Tradelines. (Doc. 50 ¶¶ 164-166).

For the foregoing reasons, the FTC requests the Court deny Defendants' unsupported motion to disburse funds preserved for consumer redress to pay their exorbitant personal expenses.

Dated: August 2, 2022

Respectfully submitted,

/s/ Hong Park

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FEDERAL TRADE COMMISSION

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 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