

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICHAEL RANDO, *et al.*,

Defendants.

Case No. 3:22-cv-487-TJC-MCR

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO
MODIFY THE TEMPORARY
RESTRAINING ORDER AND
ASSET FREEZE TO SET A
BUDGET FOR DEFENDANTS'
LIVING EXPENSES [94]**

Defendants have already received \$86,000 for living expenses – more than the \$55,531 median *annual* income for Jacksonville, Florida¹ – in the past four months from funds reserved for redressing their consumer victims. (Docs. 35, 62, 80). Yet, Defendants brazenly approach the Court once again, claiming the need for additional disbursements to pay their living expenses. Their motion, however, fails to provide any factual support for why additional disbursements are necessary or reasonable, and accordingly, fails to provide the Court any basis for granting their request. *See FTC v. IAB Mktg. Assocs., LP*, 972 F. Supp. 2d 1307, 1314 (S.D. Fla. 2013) (rejecting requested disbursement as unnecessary and unreasonable); *SEC v. Forte*, 598 F. Supp. 2d 689, 694 (E.D. Pa. 2009) (same).

Defendants have had over four months since the start of this case to obtain gainful employment and generate their own income. Indeed, the Jacksonville area

¹ See <https://www.census.gov/quickfacts/jacksonvillecityflorida>.

has a low unemployment rate showing that there are plenty of job opportunities for Defendants to pursue.² Their motion, however, is silent on whether they sought jobs, or simply waited, expecting their living expenses to be paid from funds reserved for consumers they victimized. *See IAB Mktg.*, 972 F. Supp. 2d at 1314 (rejecting defendants' request for disbursement in part because defendants failed to explain their lack of employment). Although Defendants, through counsel, communicated to the FTC that they recently started as employees for a training and coaching service for business owners, their motion fails to explain why income from their new venture would not cover at least a portion of their living expenses. 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 pay their 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 funds from asset freeze). Without such information, it is impossible for the Court to determine whether Defendants have exhausted all reasonably obtainable funds to pay their living expenses and that the requested disbursement are "necessary" as Defendants claim.

In addition, nothing in Defendants' motion addresses whether their claimed living expenses are reasonable. *See Forte*, 598 F. Supp. 2d at 694 (collecting cases and explaining that a release from an asset freeze is not appropriate for items that are not

² Jacksonville appears to have plenty of job opportunities, with the most recent unemployment rate at a low 2.8%.
See https://www.bls.gov/eag/eag.fl_jacksonville_msa.htm.

actual “necessities”). Facially, they are not. Even without the current request, Defendants have already received disbursements that would annualize to approximately \$258,000. Moreover, with respect to the current request, Defendants’ motion does not even specify the amount requested, much less identify, quantify, or document the claimed expenses to provide the Court a basis for determining that Defendants’ facially unreasonable expenses are in fact reasonable.

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.”). Accordingly, for the foregoing reasons and as more fully explained in the FTC’s opposition to Defendants’ previous motion for living expenses (Doc. 79), the FTC requests the Court deny Defendants’ motion.

Dated: September 20, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 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