

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FEDERAL TRADE COMMISSION
and STATE OF GEORGIA,

Plaintiffs,

v.

LAPTOP & DESKTOP REPAIR, LLC,
a Nevada limited liability company, also
d/b/a cashforiphones.com,
cashforlaptops.com, ecyclebest.com,
smartphonetraders.com, sell-your-
cell.com; and VADIM OLEGOVICH
KRUCHININ, also a/k/a Vadim
Kruchin, David Kruchin, David Vadim
Kruchin, Dave Kruch, as the owner and
an officer of Defendant Laptop &
Desktop Repair, LLC,

Defendants.

Case No. 1:16-CV-3591-AT

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION
FOR ARREST WARRANT, INCARCERATION, AND SEIZURE OF THE
PASSPORTS OF DEFENDANT VADIM OLEGOVICH KRUCHININ, TO
COERCE COMPLIANCE WITH THE COURT'S PRIOR ORDERS**

In its prior *Order of Civil Contempt Against Defendants* (the "Contempt Order") [Doc. 27], this Court held Defendants Laptop and Desktop Repair, LLC ("LDR"), and David Olegovich Kruchinin a/k/a David Kruchin ("Kruchinin") (collectively, "Defendants") in civil contempt for their violations of the Temporary

Restraining Order (“TRO”) [Doc. 9] and the stipulated Preliminary Injunction (“PI”) [Doc. 14], but granted them seven days to correct their violations before coercive sanctions would issue. Despite this opportunity, Defendants continue to ignore the Court’s prior orders and remain in violation of them. Defendants have not complied with the asset freeze, repatriation, and cooperation provisions of the TRO, the PI, and the Contempt Order—nor have they contacted counsel for Plaintiffs, or the Receiver, about complying with them. Under the circumstances, coercive sanctions are required to induce Defendants’ compliance with this Court’s orders and to preserve assets of the Receivership estate.

FACTUAL AND PROCEDURAL BACKGROUND

On September 26, 2016, the Plaintiffs jointly filed, under seal, their Complaint [Doc. 1], alleging that Defendants violated Section 5 of the FTC Act, 15 U.S.C. § 45, and the Georgia Fair Business Practices Act (“FBPA”), O.C.G.A. §§ 10-1-390 through 10-1-408, by deceptively purchasing used electronic devices from consumers over the Internet for far less than the payments they promised. In their Complaint, Plaintiffs requested the Court, *inter alia*, to permanently enjoin Defendants from future violations of the FTC Act and the FBPA and to award such relief as necessary to redress consumers’ injury.

On September 26, 2016, the Court conducted a hearing on Plaintiff's *ex parte* Motion for a Temporary Restraining Order ("TRO") and for other equitable relief, entered the TRO, and appointed Hays Financial Consulting and S. Gregory Hays as Receiver over Defendant LDR [Doc. 9]. Defendants were served with a Summons, the Complaint, and the TRO on September 29, 2016. ([Docs. 19 and 20]). On October 5, 2016, the Court entered a stipulated Preliminary Injunction ("PI") [Doc. 14]. Both the TRO and PI imposed an asset freeze (Docs. 9 and 14 at § IV), mandated that Defendants repatriate assets (§ VIII), and required Defendants to cooperate with the Receiver by, among other things, providing log-ins and passwords to computers as needed for discharging the Receiver's responsibilities (§ XIII).¹

On November 17, 2016, after a hearing on Plaintiff's *Motion to Show Cause* [Doc. 22], at which Defendants did not appear, the Court entered the Contempt Order, finding, by clear and convincing evidence, that:

1. Defendants withdrew \$22,000 from LDR's PayPal account on September 29, 2016; made two separate, impermissible transfers to Happy Smiles, LLC; and have refused to return the money. These actions violate the TRO's and PI's asset freeze.

¹ The relevant provisions of both the TRO and PI are quoted in the Court's Contempt Order [Doc. 27] on pages 3-6.

2. Defendants also provided the Receiver with a false log-in and password for LDR's PayPal account. Defendants also failed to cooperate with the Receiver by failing to provide other passwords necessary for accessing LDR's and Kruchinin's computers. These actions violate the TRO's and PI's cooperation provisions.

3. Defendant Kruchinin paid APMEX, Inc., on October 4, 2016, \$27,486.76 from his personal account at Umpqua Bank, for 32 gold bars, in plain violation of the TRO's and PI's asset freeze.

4. On October 5, 2016, Defendant Kruchinin transferred \$103,369.66 from his personal, online brokerage account at OptionsXPress Holdings, Inc. into his account at Umpqua Bank, also in plain violation of the TRO's and PI's asset freeze.

5. On October 5, 2016, Kruchinin withdrew \$11,259.00 from his personal account at Umpqua Bank—including a check to himself, for \$8,800, and another to his apparent girlfriend, for \$1,600. These actions also violated the TRO's and PI's asset freeze.

6. On October 6, 2016, Defendant Kruchinin transferred another \$74,029.45 to AMPEX, Inc., to purchase 55 more gold bars, in violation of the TRO's and PI's asset freeze.

7. From September 29, 2016 through October 5, 2016, Defendant Kruchinin made eight separate trades through an online foreign exchange market, Gain Capital Group, LLC, debiting approximately \$9,133.97 from this exchange account in violation of the TRO's and PI's asset freeze.

8. Defendant Kruchinin has failed to repatriate at least \$44,853.05 held in overseas financial institutions, in violation of Section VIII of the TRO and PI, and despite Plaintiffs' repeated requests to do so.

The record also reflects that Kruchinin has attempted to retrieve his United States Passport for international travel.

(Doc. 27 at 9-11) (record citations omitted). The Court also held that clear and convincing evidence demonstrated:

the TRO (Doc. 9) and PI (Doc. 14) are valid and lawful orders properly entered by the Court[;] ... that the Defendants had actual notice of the TRO and PI[;]... [that] [t]he relevant portions of the TRO and PI ... are clear, definite, and unambiguous[;] ... [and that] the evidence clearly and convincingly demonstrates that Defendants were able to comply with the TRO and PI and voluntarily chose to violate both.

(*Id.* at 9). Accordingly, the Court ordered as follows:

A. Defendants are in contempt for their above-referenced violations of the TRO and PI, until such time as they remit to the Receiver all funds that were transferred or concealed in violation of the TRO and PI, repatriate Defendants' monies located overseas, provide an accurate and complete accounting of their assets, and fully cooperate with the Receiver as ordered;

B. Defendants shall provide a full accounting of all monies removed from accounts covered by the asset freeze, including: (a) the location of the money, or (b) if spent in an arm's length transaction, when it was spent, for whose benefit it was spent, what was purchased, from whom it was purchased, and copies of any invoices or records concerning the expenditure;

C. Defendants shall turn over all funds and assets that they concealed or transferred in violation of the asset freeze to the Receiver, and the Receiver may access and take possession of the contents of any safety deposit box held in the name of the Defendants;

D. Defendants shall confer and agree with counsel for Plaintiffs to appear on specific dates, at specified locations and times, for depositions in order to provide sworn statements concerning the existence and location of their assets;

E. Defendants shall provide all computer log-ins and passwords as requested by, and as needed for, the Receiver to fulfill its duties under the TRO and PI;

F. Plaintiff FTC shall serve this Order upon the Defendants by U.S. Mail at their last known addresses and by e-mail to all known email addresses within three (3) business days of the date of this

Order and file a Certificate of Service with this Court evidencing such service. The Receiver shall post this Order on its public website as soon as is practicable after the entry of this Order;

G. Defendants' compliance with this Order is required no later than **seven (7) days** after Plaintiffs' service of this Order upon Defendants;

H. If either Defendant does not fully comply with this Order within seven days from Plaintiff FTC's service of this Order, and upon notice to the Court by Plaintiff FTC of such failure, (a) the Court Clerk shall issue an arrest warrant for Defendant Kruchinin; (b) the United States Marshals Service shall detain and arrest Defendant Kruchinin; (c) all federal, state, and local law enforcement agencies and officers, and INTERPOL and other foreign law enforcement agencies, shall detain and arrest Defendant Kruchinin; (d) the arresting entity shall seize all passports and travel documents issued to, and in the possession of, Defendant Kruchinin; (e) the United States Department of State shall cancel any passport and travel document issued to Defendant Kruchinin; and (f) Defendant Kruchinin shall be detained until such time that he fully complies with Items A, C-E and substantially complies with Item B immediately above in this Order, or as otherwise directed by this Court, and;

I. In the event that Defendant Kruchinin is arrested or detained, the arresting entity shall notify Plaintiff FTC of such arrest, and Plaintiff FTC shall file a Notice of Arrest with the Court as soon as is practicable.

(*Id.* at 11-13) (emphasis in original).

The Receiver posted the Contempt Order on its public website on November 18, 2016. (Scott Decl., Ex. A hereto, ¶5). Plaintiff FTC filed the *Certificate of Service* of the Contempt Order upon Defendants, as required under paragraph (F), quoted above, on November 18, 2016 [Doc. 29]. Under paragraph (G), Defendants then had until November 28, 2016 to comply with the Contempt Order (by

rectifying their violations of the TRO and PI) or potentially face the sanctions listed therein. On November 30, 2016, Plaintiff FTC filed its *Notice of Defendants' Failure to Comply with the Contempt Order*, as mandated by paragraph (H) above [Doc. 31].

On December 1, 2016, the Receiver exercised its right to access and take possession of any safety deposit box held in the name of the Defendants [Doc. 27 at p. 12 § (C)], and paid to have a safety deposit box held in the name of David Kruchin at Nevada State Bank drilled open. (Scott Decl., Ex. A hereto, ¶7). On his financial disclosures, signed October 9, 2016, and provided to Plaintiffs on October 13, 2016, Defendant Kruchinin listed this safety deposit box, stating that it contained approximately \$90,000 in jewelry, coins, and collectibles [Doc 22-1, p. 4 at fn. 4]. However, after signing his financial disclosures, on October 11, 2016, Defendant Kruchinin accessed the safety deposit box, and the Receiver discovered upon opening the box on December 1, 2016, that the box was empty. (Scott Decl., Ex. A hereto, ¶7). Shortly thereafter, on December 7, 2016, the Plaintiffs jointly filed the present Motion for coercive sanctions.

Moreover, notably, neither Defendant responded to the Complaint. The Clerk of Court entered a default against both Defendants on November 15, 2016.

ARGUMENT AND CITATION TO AUTHORITY

A. Defendants Have Not Complied With the TRO, PI, or Contempt Order.

To establish Defendants' liability for civil contempt, as opposed to the need for a show cause order, Plaintiffs must show clear and convincing evidence that a valid court order exists, that the order was clear and unambiguous, and that the violator could have complied with the order. *FTC v. Leshin*, 618 F.3d 1221, 1212 (11th Cir. 2010); *Riccard v. Prudential Ins. Co. of America*, 307 F.3d 1277, 1280 (11th Cir. 2002); *Commodity Futures Trading v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1528 (11th Cir. 1992). "[I]n civil contempt proceedings the question is not one of intent but whether the alleged contemnors have complied with the court's order." *Leshin*, 618 F.3d at 1232-33.

The Court has already held both Defendants in contempt for violations of the TRO and PI.² (Doc. 27 at 11, ¶A). The Court ordered Defendants to rectify their violations of the TRO and PI, pursuant to the provisions of the Contempt Order quoted above, within seven days of service. (*Id.* at 13, ¶G). The Contempt Order

² The prior Contempt Order need not be reconsidered. *See United States v. Rylander*, 460 U.S. 752, 756-57 (1983) (“[A] contempt proceeding does not open to reconsideration the legal or factual basis of the [prior sanctions] order alleged to have been disobeyed and thus become a retrial of the original controversy”) (quoting *Maggio v. Zeitz*, 333 U.S. 56, 69 (1948)).

also provided that Defendants' failure to timely comply would allow Plaintiffs to seek an order for Defendant Kruchinin's detainment, arrest, incarceration, and seizure of all passports and official travel documents. (*Id.* at 12-13, ¶H)

All conditions precedent to the imposition of the sanctions listed in paragraph (H) of the Contempt Order have been satisfied. The Receiver posted the Contempt Order to its website immediately after its entry, and Plaintiff FTC served Defendants with the Contempt Order on November 18, 2016 and filed the required Certificate of Service [Doc. 29]. Under paragraph (G), Defendants then had until November 28, 2016 to comply (by rectifying their violations of the TRO and PI) or potentially face the sanctions listed therein. On November 30, 2016, Plaintiff FTC filed their *Notice of Defendants' Failure to Comply with the Contempt Order* [Doc. 31], representing to the Court that Defendants continue to violate the Court's prior orders and have not attempted to comply with them.

B. This Court May Grant the Requested Relief.

District courts have broad, inherent authority to enforce their orders through civil contempt, and the Court's authority includes the power to impose sanctions, so long as they are not "so excessive as to be punitive in nature." *See, e.g., Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764-65 (1980); *United States v. City of Miami*, 195 F.3d 1292, 1298 (11th Cir. 1999); *Citronelle-Mobile Gathering, Inc.*

v. Watkins, 943 F.2d 1297, 1304 (11th Cir. 1991). “The district court has wide discretion to fashion an equitable remedy for contempt that is appropriate to the circumstances.” *E.E.O.C. v. Guardian Pools, Inc.*, 828 F.2d 1507, 1515 (11th Cir. 1987) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193 (1949)). “The sanctions may serve to coerce the contemnor to comply with a court order.” *McGregor v. Chierico*, 206 F.3d 1378, 1385 at n.5 (11th Cir. 2000). Available relief includes coercive fines and incarceration. *See Citronelle-Mobile Gathering*, 943 F.2d at 1304. In fashioning relief, the Court should consider “the character and magnitude of the harm threatened by continued contumacy and the probable effectiveness of any suggested sanction in bringing about the result desired.” *EEOC v. Guardian Pools, Inc.*, 828 F.2d 1507, 1515 (11th Cir. 1987) (citing *United States v. United Mine Workers*, 330 U.S. 258, 304, 67 S. Ct. 677, 701 (1947)).

District courts often order the arrest, incarceration, and the suspension of passports where, as here, defendants have violated asset freezes and repatriation requirements, and where no other sanctions are likely to coerce defendants’ compliance. *E.g., Commodity Futures Trading Comm’n v. Cook*, No. 09-3333 (MJD/JJK), 2010 WL 11242630 (D. Minn. Jan. 25, 2010) (“Given the amount of investor money at issue, and Cook’s repeated violations of the Asset Freeze

Orders, the Court finds that the appropriate remedy for the contempt finding in this case is to incarcerate Cook until such time as he purges such contempt”); *Commodity Futures Trading Comm’n v. Emerald Worldwide Holdings*, No. CV038339 AHM, 2005 WL 77048, at *1 (C.D. Cal. Jan. 3, 2005) (“It is evident that additional monetary penalty are [sic] unlikely to be effective in compelling Zhuang to comply with this Court’s orders. It is therefore appropriate that a warrant for Zhuang’s arrest be issued in order to bring him before this Court to answer for his contemptuous conduct”); *S.E.C. v. Reynolds*, No. 3:08-CV-438-B, 2011 WL 903395, at *1, 7 (N.D. Tex. Mar. 16, 2011) (ordering defendant to surrender passport until he cured violation of asset freeze, and defendant’s incarceration if funds not returned by deadline); *SEC Lit. Rel. No. 17534*, 2002 WL 1315521, *SEC v. Brinkler*, No. IP01-0259 C-H/G (S.D. IND.) (2001) (defendant imprisoned for violation of asset freeze, until repayment of funds or a showing of inability to pay); *see also Singh v. Capital Univ. Law & Graduate Ctr. School*, No. 00-3244, 2000 WL 1720616, at *2 (6th Cir. Nov. 7, 2000) (finding that “incarceration has long been established as an appropriate sanction for civil contempt” and holding that “[i]f the relief provided is a sentence of imprisonment, it is remedial if ‘the defendant stands committed unless and until he performs the affirmative act required by the court’s order,’ and is punitive if ‘the sentence is

limited to imprisonment for a definite period”’) (citing *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624 (1988)).

REMEDY

Accordingly, the Court should order the following relief as necessary to coerce Defendants’ compliance with the Court’s prior orders:

1. The Clerk of this Court should be directed to issue a warrant for the arrest of Defendant Vadim Olegovich Kruchinin a/k/a David Kruchin;³
2. The United States Marshals Service should be directed to immediately detain and arrest Defendant Vadim Olegovich Kruchinin a/k/a David Vadim Kruchin. All federal, state, and local law enforcement agencies and officers, INTERPOL, and any other foreign law enforcement agencies shall immediately detain and arrest Vadim Olegovich Kruchinin a/k/a David Kruchin. Plaintiffs may provide copies of any passports held by Defendant Kruchinin to any law enforcement agency in order to aid their execution of this Order;
3. The United States Marshals Service should be directed to enter this order and the accompanying arrest warrant against Vadim Olegovich Kruchinin a/k/a David Kruchin in all national, state, regional, local, and foreign databases as

³ Upon information and belief, Kruchinin possesses a United States passport in the name of David Kruchin and also has a Russian passport in the name of Vadim Kruchinin.

would be reasonably useful to effect the immediate arrest and detention of Vadim Olegovich Kruchinin a/k/a David Kruchin;

4. The arresting entity should be directed to seize any and all passports and government-issued travel documents that Vadim Olegovich Kruchinin a/k/a David Kruchin has in his possession or control;

5. The United States Department of State should be directed to immediately cancel any passport and all official travel documents issued to Vadim Olegovich Kruchinin a/k/a David Kruchin, and Plaintiff FTC shall serve a copy of this order on the United States Department of State for such purposes;

6. The arresting entity should be directed to deliver any passport and all travel documents seized from Vadim Olegovich Kruchinin a/k/a David Kruchin to the United States Marshals Service for the Northern District of Georgia. The United States Marshals Service should be directed to notify the Court, counsel for Plaintiffs FTC and the State of Georgia, and deposit said items with the Clerk of this Court;

7. After arresting Defendant Vadim Olegovich Kruchinin a/k/a David Kruchin, the arresting entity should be directed to immediately notify the United States Marshals Service for the Northern District of Georgia, who shall take him

into custody, and the United States Marshals Service shall notify this Court, counsel for Plaintiffs, and the Receiver, and;

8. After the arrest, the United States Marshals Service should be directed to bring Defendant Vadim Olegovich Kruchinin a/k/a David Kruchin before this Court within a reasonable time and during working hours on a regular workday. Defendant Vadim Olegovich Kruchinin a/k/a David Kruchin should remain incarcerated until he complies with all the applicable terms of the TRO, PI, and prior Contempt Order, or until otherwise directed by this Court.

A proposed order is attached for the Court's consideration.

Dated: December 7, 2016

DAVID C. SHONKA,
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/s/ Anna M. Burns

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LOCAL RULE 7.1(D) CERTIFICATION OF COMPLIANCE

Undersigned counsel certifies that this *Memorandum* is printed in Times New Roman 14 point font in compliance with Local Rule 5.1(C).

/s/ Anna M. Burns

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2016, I electronically filed the foregoing *Memorandum* with the Clerk of the Court using *CM/ECF*. I also certify that the foregoing document is being served on all parties and the persons identified below via transmission of Notice of Electronic Filing generated by *CM/ECF*, which will automatically send e-mail notification of such filing to the counsel of record, or by causing it to be sent via First Class Mail.

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