

**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

**ORDER OF CIVIL CONTEMPT AGAINST DEFENDANTS**

Before the Court is Plaintiffs' Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt [Doc. 22] (the "Motion"). Defendants Laptop and Desktop Repair, LLC ("LDR"), and David Olegovich Kruchinin ("Kruchinin") (collectively, "Defendants") neglected to file responses to

the Motion within the timeframe imposed by L.R. (N.D. Ga.) 7.1(B), and the Court extended the response deadline and ordered Defendants to respond no later than November 14, 2016 [Doc. 25]. To date, neither Defendant has filed any response to the Motion—nor has either Defendant responded to the Complaint. The Clerk of Court entered a default against both Defendants on November 15, 2016. On November 15, 2016, the Court ordered Defendants to appear and show cause why they should not be held in civil contempt [Doc. 26] for violating the Court’s Temporary Restraining Order (“TRO”) [Doc. 9] and the stipulated Preliminary Injunction (“PI”) [Doc. 14]. The Court conducted a hearing on the Motion on November 17, 2016. Upon due consideration, the Court concludes that LDR and Kruchinin violated provisions of the TRO and PI and are in civil contempt.

### **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, in connection with their deceptive business practices and activities related to the purchase of used electronic devices from consumers over the Internet. In their Complaint, Plaintiffs requested the Court,

*inter alia*, to permanently enjoin both Defendants from future violations of the FTC Act and the FBPA and to award such relief as necessary to redress the injury to consumers caused by the Defendants. On September 29, 2016, Defendants were each served with a Summons and the Complaint. ([Docs. 19 and 20]).

On September 26, 2016, the Court conducted a hearing on Plaintiff's *ex parte* Motion for TRO and for other equitable relief, and entered the TRO, which also appointed Hays Financial Consulting and S. Gregory Hays as Receiver over Defendant LDR [Doc. 9]. Defendants were served with the TRO on September 29, 2016.

On October 5, 2016, the Court entered a stipulated Preliminary Injunction ("PI") [Doc. 14]. Both the TRO and PI imposed an asset freeze, which *inter alia* enjoined Defendants from directly or indirectly:

Alienating, transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, consumer lists, or any other assets, or any interest therein, wherever located, including outside the United States, that are: (1) owned or controlled, directly or indirectly, by any Defendant, in whole or in part, or held, in whole or in part for the benefit of any Defendant; (2) in the actual or constructive possession of any Defendant; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or

other entity directly or indirectly owned, managed, or controlled by, or under common control with any Defendant, and any assets held by, for, or under the name of any Defendant at any bank, savings and loan institution, or bank of any Defendant, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind.

(Docs. 9 and 14 at § IV(A)). Both the TRO and the PI also provided that:

[t]he assets affected by this Section shall include: (a) all assets of each Defendant as of the time this Order is entered, and (b) those assets obtained after entry of this Order that are obtained through any business activities that predate the entry of this Order. This Section does not prohibit transfers to the Receiver, as specifically required in Section XIV (Delivery of Receivership Property), nor does it prohibit the repatriation of foreign Assets, as specifically required in Section VIII (Repatriation of Foreign Assets) of this Order.

(*Id.* at § IV(F)).

Both the TRO and PI also mandated Defendants repatriate assets. Each of these orders provided that:

... within five (5) business days following the service of this Order, each Defendant shall:

A. Provide counsel for the Plaintiffs with a full accounting of all assets, accounts, funds, and documents outside of the territory of the United States that are held either: (1) by them; (2) for their benefit; (3) in trust by or for them, individually or jointly; or (4) under their direct or indirect control, individually or jointly;

B. Transfer to the territory of the United States all assets, accounts, funds, and documents in foreign countries held either: (1) by them; (2) for their benefit; (3) in trust by or for them, individually or jointly; or (4) under their direct or indirect control, individually or jointly;

C. Hold and retain all repatriated assets, accounts, funds, and documents, and prevent any transfer, disposition, or dissipation whatsoever of any such assets, accounts, funds, or documents, and;

D. Provide the Plaintiffs access to all records of accounts or assets of the Defendants held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order as Attachment C.

(Docs. 9 and 14 at § VIII).

Finally, both orders required Defendants to cooperate with the Receiver:

**IT IS FURTHER ORDERED** that:

A. Defendants and their officers, agents, directors, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, shall fully cooperate with and assist the Receiver. Defendants' cooperation and assistance shall include, but not be limited to:

1. Providing any information to the Receiver that the Receiver deems necessary to exercising the authority and discharging the responsibilities of the Receiver under this Order, including but not limited to allowing the Receiver to inspect documents and assets and to partition office space;

2. Providing any password and executing any documents required to access any computer or electronic files in any medium, including but not limited to electronically stored information stored, hosted, or otherwise maintained by an electronic data host,...

B. Defendants and their officers, directors, agents, employees, attorneys, and all other persons or entities directly or indirectly, in whole or in part, under their control, and all other persons in active concert or participation with them who receive actual notice of this

Order by personal service or otherwise, are hereby restrained and enjoined from directly or indirectly:

3. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendant, or the Receiver;

...

5. Failing to notify the Receiver of any asset, including accounts, of a Receivership Defendant held in any name other than the name of the Receivership Defendant, or by any person or entity other than the Receivership Defendant, or failing to provide any assistance or information requested by the Receiver in connection with obtaining possession, custody, or control of such assets;

...

7. Doing any act or refraining from any act whatsoever to interfere with the Receiver's taking custody, control, possession, or managing of the assets or documents subject to this Receivership; or to harass or to interfere with the Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendant; or to refuse to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any Order of this Court, ...

(Docs. 9 and 14 at § XIII).

On October 10, 2015, Receiver's First Report was filed. (Doc. 15). In the Report (Doc. 15), the Receiver alleges several violations of the TRO and PI by Defendants, which are echoed by Plaintiffs' in the Motion, including Kruchinin's refusal to provide inventory reports and passwords to computers; a transfer of \$22,000 from LDR's PayPal accounts to an entity known as Happy Smile LLC,

controlled in the name of Kruchinin's apparent girlfriend; and Kruchinin's refusal to disclose the whereabouts of profits. *Id.* In their Motion, Plaintiffs' allege these violations and additional violations of the TRO and PI, which are outlined below.

### STANDARD OF REVIEW

District courts have broad, inherent authority to enforce their orders through civil contempt. *See, e.g., Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764-65 (1980); *FTC v. RCA Credit Servs., LLC*, No. 8:08-cv-2062-T-27MAP, 2011 WL 5924969, at \*1 (M.D. Fla. Oct. 5, 2011); *FTC v. Slimamerica*, No. 97-CIV-06072, 2011 WL 882109, at \*3 (S.D. Fla. March 9, 2011); *SEC v. Solow*, 682 F. Supp.2d 1312, 1324 (S.D. Fla.2010), *aff'd* 396 F. App'x 635 (11th Cir. 2010); *United States v. City of Miami*, 195 F.3d 1292, 1298 (11th Cir. 1999). The Court's authority includes the power to impose sanctions, so long as they are not "so excessive as to be punitive in nature." *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 measure of the court's power in civil contempt proceedings is determined by the requirements of full

remedial relief ... [and] may entail the doing of a variety of acts....” *Id.* “The sanctions may serve to either (1) coerce the contemnor to comply with a court order, or (2) compensate a party for losses suffered as a result of the contemnor’s act.” *McGregor v. Chierico*, 206 F.3d 1378, 1385 at n.5. Available relief includes, but is not limited to, coercive fines and incarceration. *See Citronelle-Mobile Gathering*, 943 F.2d at 1304.

A civil-contempt order requires the movant to show, by clear and convincing evidence, that “the allegedly violated order was valid and lawful; ... the order was clear and unambiguous; and the ... alleged violator had the ability to comply with the order.” *FTC v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010) (citation omitted); *McGregor*, 206 F.3d at 1383. The evidence must also establish clearly and convincingly that the order was violated. *FTC v. Garden of Life, Inc.*, 845 F. Supp.2d 1328, 1331 (S.D. Fla. 2012); *Ameriprise Fin. Servs., Inc. v. Lawton*, No. 2:11-cv-573-FtM-29SPC, 2011 WL 6412424, at \*1 (M.D. Fla. Dec. 21, 2011); *Solow*, 682 F. Supp.2d at 1325; *Slimamerica*, 2011 WL 882109, at \*3; *RCA Credit Servs., LLC*, 2011 WL 5924969, at \*1. “The absence of willfulness is not a defense to a charge of civil contempt. ... [S]ubstantial, diligent, or good faith efforts are not enough; the only issue is compliance. ... [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 (citations omitted).

## **DISCUSSION**

The Court finds that clear and convincing evidence demonstrates that the TRO (Doc. 9) and PI (Doc. 14) are valid and lawful orders properly entered by the Court. The record also is clear and convincing that the Defendants had actual notice of the TRO and PI. The relevant portions of the TRO and PI—quoted above—are clear, definite, and unambiguous. In addition, the evidence clearly and convincingly demonstrates that Defendants were able to comply with the TRO and PI and voluntarily chose to violate both.

The facts and the record before the Court relevant to civil contempt consists of the following:

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. (Doc. 22 at Ex. B). These actions violate the TRO's and PI's asset freeze (Section IV).

2. Defendants also provided the Receiver with a false log-in and password for LDR's PayPal account. (Doc. 22 at Ex. B). Defendants also failed to cooperate with the Receiver by failing to provide other passwords necessary for accessing LDR's and Kruchinin's computers. (*Id.*). These actions violate the TRO's and PI's cooperation provisions (Section XIII).

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. (Doc. 22 at Ex. A).

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. (*Id.*).

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. (*Id.*). 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. (*Id.*).

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. (*Id.*).

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. (*Id.*; Doc. 22 at Ex. C).

The record also reflects that Kruchinin has attempted to retrieve his United States Passport for international travel. (Doc. 22 at Ex. B, ¶5)

## CONCLUSION

Accordingly, IT IS ORDERED THAT:

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, Plaintiffs may move this Court for an Order to (a) 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.

**SO ORDERED** this 17th day of November, 2016.

  
\_\_\_\_\_  
AMY TOTENBERG  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF GEORGIA