

**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

**[PROPOSED]
ORDER**

Before the Court is Plaintiffs' *Motion for Arrest Warrant, Incarceration, and Seizure of the Passports of Defendant Vadim Olegovich Kruchinin, To Coerce Compliance with the Court's Prior Orders* (the "Motion") [Doc. 32], which follows on the heels of the Court's November 17, 2016 *Order of Civil Contempt*

Against Defendants (the “Contempt Order”) [Doc. 27]. Defendants Laptop and Desktop Repair, LLC (“LDR”), and Vadim Olegovich Kruchinin a/k/a David Kruchin (“Kruchinin”) (collectively, “Defendants”) neglected to file responses to both the Motion and Plaintiffs’ prior *Motion to Show Cause Why Defendants Should Not Be Held in Contempt* (“Motion to Show Cause”) [Doc. 22] for violating the Court’s Temporary Restraining Order (“TRO”) [Doc. 9] and the stipulated Preliminary Injunction (“PI”) [Doc. 14], and neither Defendant appeared for the earlier hearing on Plaintiffs’ *Motion to Show Cause* on November 17, 2016—nor has either Defendant responded to the Complaint. The Clerk of Court entered a default against both Defendants on November 15, 2016.

Upon due consideration, the Court concludes that Defendants have not cured their many violations of the TRO and PI, as outlined in and required by the Contempt Order and, accordingly, pursuant to the provisions below, a warrant for Defendant Kruchinin’s arrest shall issue, and Defendant Kruchinin shall be incarcerated, and his passports and official travel documents shall be seized, until he complies with the Court’s prior orders, or until the Court orders otherwise.

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 that the Court, *inter alia*, permanently enjoin the Defendants from future violations of the FTC Act and the FBPA and award such relief as necessary to redress the injury to consumers. 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 [Docs. 9 and 14 at

§ IV], mandated Defendants repatriate assets, [*id.* at § 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 (*id.* at § XIII).

On November 17, 2016, and after a hearing at which Defendants did not appear, the Court entered the Contempt Order, holding 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[;] ... 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.

(Doc. 27 at 9). The Court also determined that the record demonstrated, 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. (Doc. 22 at Ex. B). These actions violate the TRO's and PI's asset freeze.
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.

(*Id.* at 9-11).

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, 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.

(*Id.* at 11-13) (emphasis in original). The record reflects that Plaintiff FTC filed the *Certificate of Service* of the Contempt Order upon Defendants, as required in 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's terms (by rectifying their violations of the TRO and PI) or potentially face the sanctions listed in the Contempt Order. Plaintiff FTC filed its *Notice of Defendants' Failure to Comply with the Contempt Order* [Doc. 31], as mandated by paragraph (H) above, on November 30, 2016, and shortly later, on December 7, 2016, the present Motion for coercive sanctions.

DISCUSSION

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); *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 ... 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, 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); *SEC v. Solow*, 682 F. Supp.2d 1312, 1325 (S.D. Fla.2010), aff'd 396 F. App'x 635 (11th Cir. 2010); *FTC v. Slimamerica*, No. 97-CIV-06072, 2011 WL 882109, at *3 (S.D. Fla. March 9, 2011); *FTC v. RCA Credit Servs., LLC*, No. 8:08-cv-2062-T-27MAP, 2011 WL 5924969, at *1 (M.D. Fla. Oct. 5, 2011). "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], PI [Doc. 14], and Contempt Order [Doc. 27] 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, PI, and Contempt Order. The relevant portions of the TRO, PI, and Contempt Order are clear, definite, and unambiguous. In addition, the evidence clearly and convincingly demonstrates that

Defendants were able to comply with the TRO, PI, and Contempt Order and voluntarily chose to violate them.

The facts and the record before the Court clearly and convincingly show:

1. Defendants' violations of the asset-freeze, repatriation, and cooperation provisions of the TRO and PI¹ (listed above in paragraphs 1-8, on pages 4-5 of this Order) continue and have not been either partially, substantially, or fully rectified;

2. Defendant have neither partially, substantially, nor fully complied with the requirements of the Contempt Order, quoted above in paragraphs A-E on pages 5-6 of this Order, and;

3. Having failed to comply with the Contempt Order, Defendant Kruchinin is now subject to the sanctions listed in paragraph (H) of that Order, which are not punitive but are instead appropriate to the circumstances and necessary to coerce Defendants' compliance with this Court's prior orders.

CONCLUSION

Accordingly, IT IS ORDERED THAT:

¹ The relevant provisions of the TRO and PI are also quoted at length in the Contempt Order [Doc. 27 at pp. 3-6].

A. Defendants continue to be IN CIVIL CONTEMPT for their violations of the TRO, PI, and Contempt Order;

B. The Court shall issue a warrant for the arrest of Defendant Vadim Olegovich Kruchinin a/k/a David V. Kruchin;

C. The United States Marshals Service is DIRECTED to immediately detain and arrest Defendant Vadim Olegovich Kruchinin a/k/a David V. 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 V. 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;²

D. The United States Marshals Service is DIRECTED to enter this order and the accompanying arrest warrant against Vadim Olegovich Kruchinin a/k/a David V. Kruchin in all national, state, regional, local, and foreign databases as would be reasonably useful to effect the immediate arrest and detention of Vadim Olegovich Kruchinin a/k/a David V. Kruchin;

² Upon information and belief, Defendant Kruchinin holds a United States passport in the name of David V. Kruchin and a Russian passport in the name of Vadim Kruchinin.

E. The arresting entity is DIRECTED to seize any and all passports and official travel documents that Vadim Olegovich Kruchinin a/k/a David V. Kruchin has in his possession or control;

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

G. The arresting entity is DIRECTED to deliver any passport and all travel documents seized from Vadim Olegovich Kruchinin a/k/a David V. Kruchin to the United States Marshals Service for the Northern District of Georgia, at Federal Building, 75 Ted Turner Drive SW, Room 1669, Atlanta, GA 30303, contact number (404) 331-6833. The United States Marshals Service shall so notify the Court, and counsel for Plaintiffs FTC (contact number (404) 656-1350) and the State of Georgia (contact number (404) 656-1761), and deposit said items with the Clerk of this Court;

H. After arresting Defendant Vadim Olegovich Kruchinin a/k/a David V. Kruchin, the arresting entity is DIRECTED to immediately notify the United States Marshals Service for the Northern District of Georgia, contact number (404) 331-

6833, who shall take him into custody, and the United States Marshals Service shall notify this Court, counsel for Plaintiffs, and the Receiver, and;

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

ORDERED this _____ day of _____, 2016.

AMY TOTENBERG
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF GEORGIA