
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**LOANPOINTE, LLC, EASTBROOK
LLC, JOE S. STROM, BENJAMIN J.
LONSDALE, JAMES C. ENDICOTT,
and MARK S. LOFGREN,**

Defendants.

**FINAL ORDER OF JUDGMENT AND
PERMANENT INJUNCTION AS TO
DEFENDANTS EASTBROOK, LLC,
LOANPOINTE, LLC, and JOE STORM**

Case No. 2:10-CV-225DAK

Judge Dale A. Kimball

Based upon the record in this case and upon this Court's Memorandum of Decision and Order, filed September 22, 2011 (Docket No. 65), and good cause appearing as set out therein,

MONETARY RELIEF

I. IT IS HEREBY ORDERED AND ADJUDGED THAT,

- A. Defendants are required to disgorge, jointly and severally, profits from violations of Section 5 of the FTC Act, the FDCPA, and the Credit Practices Rule in the amount of \$294,436.31, with post judgment interest to accrue at the legal rate from the date of this Judgment and said Judgment may be pursued and enforced by the FTC in any lawful manner. The monetary judgment is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment, or forfeiture.

- B. Any funds received by the FTC pursuant to this Order shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including but not limited to, consumer redress and may be used for paying any attendant expenses of administering any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for such other equitable relief, including but not limited to consumer information remedies, as the FTC determines to be reasonably related to the practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as equitable disgorgement.
- C. Defendants shall have no right to challenge the FTC's choice of remedies or the manner of distribution. Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.
- D. This monetary judgment is enforceable against any asset owned jointly by, on behalf of, for the benefit of, or in trust by, or for, any Defendant, whether held as tenants in common, joint tenants with or without the right of survivorship, tenants by the entirety, and/or community property.
- E. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon each Defendant, their successors and assigns, and their officers, agents, servants, employees and attorneys, and upon those persons or entities in

active concert or participation with them who receive actual notice of this Order of Judgment by personal service or otherwise.

- E. Upon request, Defendants each are required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC their tax identification numbers, which shall be used for purposes of collecting and reporting any delinquent amount arising out of this Order.

PERMANENT INJUNCTION

I. IT IS FURTHER ORDERED AND ADJUDGED THAT,

Defendants, whether acting directly or through any other person, are permanently restrained and enjoined from:

- A. Taking or receiving from a consumer an obligation that constitutes or contains an assignment of wages or other earnings;
- B. Assisting others in taking or receiving from a consumer an obligation that constitutes or contains an assignment of wages or other earnings;
- C. Taking or receiving any funds pursuant to an assignment of wages or other earnings; or
- D. Assisting others in taking or receiving from a consumer any funds pursuant to an assignment of wages or other earnings.

Nothing in this Order shall be read as an exception to this paragraph.

II. IT IS FURTHER ORDERED AND ADJUDGED THAT,

Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any other them who

receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the extension of credit to consumers, are permanently restrained and enjoined from

- A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, the terms or rates that are available for any loan or other extension of credit, that the loan is legal under the laws of the state in which the consumer resides, or that the lender has the legal authority to extend credit in the state in which the consumer resides, or any other fact material to a consumer's decision to obtain credit.
- B. Failing to comply with the provisions of the Truth in Lending Act governing transactions other than under an open end credit plan and the advertising of such plans, 15 U.S.C. §§ 1638, 1664, and the corresponding implementing Regulation Z, 12 C.F.R. Parts 226.17, 226.18, 226.20, 226.22.
- C. Failing to comply with the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and its implementing Regulation Z, 12 C.F.R. Part 226.

III. IT IS FURTHER ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or any other means, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the extension of credit to consumers, are

permanently restrained and enjoined from violating any provision of the Credit Practices Rule, 16 C.F.R. Part 444.

IV. IT IS FURTHER ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons and entities in active concert or participation with any of them who receive action notice of this Order by personal services, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the collection of a debt from any consumer, are hereby permanently restrained and enjoined from:

- A. Misrepresenting, or assisting others who are misrepresenting, expressly or by implication:
 - 1. That any person is authorized to garnish the pay of a consumer without first obtaining a court order authorizing such garnishment;
 - 2. That, before any person sends a garnishment request to a consumer's employer, such person has notified the consumer of their intent to garnish and has provided the consumer with the opportunity to dispute the debit that is the subject of the garnishment; or
 - 3. Any material fact to collect or attempt to collect a debt;
- B. Contacting, or assisting others in contacting, directly or indirectly, a consumer's employer unless the communication is in connection with seeking garnishment of the consumer's wages pursuant to a valid court order authorizing such garnishment, or the communication is for the

purpose of acquiring information about the consumer's location pursuant to Part IV. C of this Order; or

- C. Contacting, or assisting others in contacting, directly or indirectly, any person other than a consumer for the purpose of acquiring information about the consumer's location unless the Defendant (or those it is assisting) making contact:
1. identifies himself or herself, states that he or she is confirming or correcting location information concerning the consumer, and, only if expressly requested, identifies his or her employer;
 2. does not state that such consumer owes any debt;
 3. does not communicate with any such person more than once unless requested to do so by such person or unless he or she reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
 4. does not communicate by post card;
 5. does not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that he or she is in the debt collection business or that the communication relates to the collection of a debt; and
 6. after he or she knows the consumer is represented by an attorney with regard to the subject debt and has knowledge or, or can readily ascertain, such attorney's name and address, not communication with any person

other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from him or her.

- D. Disclosing, or assisting others in disclosing,, directly or indirectly, the existence of a consumer's debt or purported debt to any person other than the consumer, the consumer's attorney, a consumer reporting agency if permitted by law, the creditor, the creditor's attorney, or his or her attorney, unless he or she has the prior express consent of the consumer given directly to him or her, the express permission of a court of competent jurisdiction, or her or she can show that such disclosure is reasonably necessary to effectuate a post judgment judicial remedy, provided that for purposes of this subpart "consumer" shall include "the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator."

V. IT IS FURTHER ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert of participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from collecting, attempting to collect, or assisting others in collecting or attempting to collect, directly or indirectly, from any consumer who owes or owed a debt to any Defendant, payment on that portion of any such debt for which any Defendant has already received payment, including but not limited to payments received through wage garnishment, wage assignment,

voluntary payments made by consumers, or through any other lawful means of collection of debts; provided, however, that Defendants may use any lawful means of collection of debts to collect that portion of any such debt for which no payment has yet been made.

VI. IT IS FURTHER ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert of participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the collection of a debt from a consumer, are permanently restrained and enjoined from violating any provision of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, including but not limited to:

- A. Violating Section 807 of the FDCPA, 15 U.S.C. § 1692e, by using any false, deceptive, or misleading representation or means in connection with the collection of any debt, including but not limited to falsely representing to consumers' employers, directly or indirectly, expressly or by implication, that: (1) any such person is authorized under the Debt Collection Improvement Act of 1996 to garnish the pay of consumers who owe debts to any person, without first obtaining a court order; or (2) before sending a garnishment request to consumers' employers, any person has notified the consumer of the intent to garnish the consumer's wages and has provided the consumer with the opportunity to dispute the debt that is the subject of the garnishment; or
- B. Violating Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b), by communicating with third parties for purposes other than acquiring location information about a

consumer, without having obtained directly the prior consent of the consumer or the express permission of a court or competent jurisdiction, and when not reasonably necessary to effectuate a post judgment judicial remedy.

VII. IT IS FURTHER ORDERED THAT,

For the purpose of monitoring and investigating compliance with any provision of this Order:

The FTC is authorized to use all lawful means, including but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
2. having its representatives pose as consumers and suppliers to the Defendants, their employees, or any other entity manages or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice.

Provided however, that nothing in this Order shall limit the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. §45(a)(1)).

VIII. IT IS FURTHER ORDERED THAT, in order to ensure that compliance with the provisions of this Order may be monitored,

For a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

1. Individual Defendants shall notify the FTC of any changes in his name, residence, mailing addresses, telephone numbers, employment, and ownership of any business entity within 30 days of the date of such change.

2. Defendants shall notify the FTC of any changes in structure of any Corporate Defendant or any business entity that any Defendant directly or indirectly controls or has an ownership interest in, that may affect compliance obligations arising under this Order. Corporate Defendant:

3. Each Defendant shall notify the FTC of the filing of a bankruptcy petition by such Defendant within 15 days of filing.

4. For the purposes of this Order, Defendants shall, unless otherwise directed by the FTC's authorized representatives, send all reports, notifications, and other communications as required by this Order, to the FTC at the following address:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
RE: FTC v. LoanPointe LLC (X100032)

5. For purposes of the compliance reporting and monitoring required by this Order, the FTC is authorized to communicate directly with each Defendant.

IX. IT IS FURTHER ORDERED that for a period of three (3) years from the date of this Order, the Corporate Defendants and the Individual Defendants, for any business for which he individually or collectively, is the majority owner or directly or indirectly controls, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, monies loaned and collected, revenues generated, and the disbursement of such revenues;
- B. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, amount of monies loaned and collected, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- C. Complaints and refund requests (whether received directly or indirectly, such as through a third party), and any response to those complaints or requests;
- D. Copies of all sales and/or collection scripts, training materials, advertisements, or other marketing and/or collection materials; and
- E. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required and all reports submitted to the FTC.

X. IT IS FURTHER ORDERED THAT distribution of this Order shall occur for a period of three (3) years from the date of this Order as follows:

- 1. Corporate Defendant: Each Corporate Defendant must deliver a copy of this Order to: (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure. For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any such business entity

resulting from any change in structure delivery shall be at least ten (10) days prior to the change in structure.

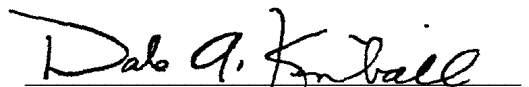
2. Individual Defendant as Control Person: For any business where any Individual Defendant is employed which business engages in conduct related to the subject matter of this Order, he must deliver a copy of the Order to all principals and managers of such business before engaging in such conduct.
3. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

XI. IT IS FURTHER ORDERED that each Defendant within ten (10) business days of receipt of this Order as entered by the Court, must submit to the FTC a truthful sworn statement acknowledging receipt of this Order.

XII. IT IS FURTHER ORDERED this Court shall retain jurisdiction of this matter for purposes of supplemental proceedings, such as modification and enforcement of this Order. However, the Clerk of Court is directed to close the case upon entry of this Final Order of Judgment.

IT IS SO ORDERED, this 8th day of December, 2011.

BY THE COURT:



DALE A. KIMBALL
UNITED STATES DISTRICT JUDGE