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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AMERICAN FINANCIAL BENEFITS
CENTER, a corporation, also d/b/a AFB and AF
STUDENT SERVICES;

AMERITECH FINANCIAL, a corporation;

FINANCIAL EDUCATION BENEFITS
CENTER, a corporation; and

BRANDON DEMOND FRERE, individually
and as an officer of AMERICAN FINANCIAL
BENEFITS CENTER, AMERITECH
FINANCIAL, and FINANCIAL EDUCATION
BENEFITS CENTER,

Defendants.

Case No. 4:18-cv-00806-SBA

Related Case: 4:17-cv-04817-SBA

**DECLARATION OF DONALD S.
CLARK IN SUPPORT OF FTC'S
MOTION FOR PRELIMINARY
INJUNCTION**

DECLARATION OF DONALD S. CLARK

1
2 1. My name is Donald S. Clark. Since August 1988, I have served as Secretary of
3 the Federal Trade Commission (“Commission”) in Washington, D.C. I am over 18 years old.
4 The following statements are within my personal knowledge and derived from my experience as
5 Secretary and as an attorney with the Federal Trade Commission, and if called upon as a witness,
6 I could and would testify thereto.

7 2. The Secretary is the Commission’s “court clerk,” responsible for implementing
8 the Commission’s voting procedures, creating official records of its decisions, receiving and
9 serving Commission orders and other official documents, and coordinating the preparation of
10 responses to congressional constituent inquiries.

11 3. The Commission received over 2.68 million pieces of correspondence in calendar
12 2017, including consumer complaints, letters from counsel, and inquiries from law enforcement
13 partners. This count does not include correspondence sent to individual Commission staff
14 attorneys. Due to the high volume of correspondence the Commission receives, it cannot write
15 unique responses to each inquiry.

16 4. Since August 2015, the Commission has received at least ten pieces of
17 correspondence from Robby H. Birnbaum, an attorney with the law firm Greenspoon Marder,
18 LLP. For example, on December 15, 2016, Mr. Birnbaum sent a letter to former Chairwoman
19 Edith Ramirez expressing frustration that FedLoan Servicing, a government loan servicer, sent a
20 notice to borrowers warning them about using third-party organizations to consolidate their
21 student loans. A true and correct copy of Mr. Birnbaum’s December 15, 2016 letter to
22 Chairwoman Ramirez is attached as **Clark Attachment A**. The Commission received a follow-
23 up letter from Mr. Birnbaum on March 1, 2017, a true and correct copy of which is attached as
24 **Clark Attachment B**. On March 15, 2017, the Consumer Response Center in the Commission’s
25 Bureau of Consumer Protection added Mr. Birnbaum’s supplemental letter to Consumer
26 Sentinel, the Commission’s complaint database, and sent Mr. Birnbaum a standard response

27
28 DECLARATION OF DONALD S. CLARK IN SUPPORT OF FTC’S MOTION FOR
PRELIMINARY INJUNCTION

1 acknowledging receipt of his letter. A true and correct copy of the Consumer Response Center's
2 response to Mr. Birnbaum is attached as **Clark Attachment C**.

3 5. Commission staff opened an investigation into the business practices of American
4 Financial Benefits Center, Ameritech Financial, and Financial Education Benefits Center
5 (collectively "Ameritech") on December 6, 2016, after receiving numerous consumer
6 complaints.

7 6. According to the Commission Mail Room's Daily Accountable Mail and Package
8 Log for the month of January 2017, the Commission received a letter from Mr. Birnbaum on
9 January 3, 2017. An administrative staff member from former Chairwoman Ramirez's office
10 retrieved the letter from the FTC Mail Room, but there is no further record of the whereabouts of
11 the letter. There is no evidence that the letter was forwarded to FTC staff investigating
12 Ameritech.

13 7. The Commission's Division of Consumer & Business Education ("DCBE") gives
14 consumers the tools they need to make informed decisions and businesses the tools they need to
15 comply with the law. DCBE produces, promotes, and disseminates information that is timely,
16 targeted, objective, actionable, and in plain language. DCBE's information is available free on
17 the Commission's publicly available website, www.ftc.gov. For example, the website includes a
18 "Business Center" page that includes, among other things, a 13-page guide entitled "*Debt Relief*
19 *Services & the Telemarketing Sales Rule: A Guide for Business*," and a detailed document
20 entitled "*Complying with the Telemarketing Sales Rule*." The Business Center also includes
21 extensive information about the requirement that businesses clearly and conspicuously disclose
22 material information to consumers. For example, the guide entitled "*Big Print. Little Print.*
23 *What's the Deal*" discusses "why fine print is not so fine in advertising and what you need to do
24 to disclose the details of the deal."

25 8. The Commission's website also includes extensive information about companies
26 and practices that the Commission alleges have violated the law. For example, on May 25, 2016,

1 the Commission issued a press release describing three federal court complaints it filed against
2 several student loan debt relief companies for violating the FTC Act and the Telemarketing Sales
3 Rule.

4 9. The Commission has in the past filed “sweeps” of cases concerning certain
5 industries and practices which, as a corollary to addressing violations of the laws the
6 Commission enforces, raise awareness among consumers and businesses as to the potential
7 illegality of the practices at issue. For example, on May 12, 2017, the Commission announced a
8 sweep called Operation Tech Trap which, as the Commission press release describing it states,
9 addressed “tech support scams that trick consumers into believing their computers are infected
10 with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs.”
11 The Commission reviews and by vote approves filing each case in a sweep only if it has reason
12 to believe that the law has been violated as alleged in the complaint filed in that case.

13 10. On October 13, 2017, the Commission announced “Operation Game of Loans,” a
14 sweep involving student loan debt relief companies. None of the defendants in this case was a
15 defendant in any of the cases in the Operation Game of Loans sweep.

16 11. I declare under penalty of perjury that the foregoing is true and correct. Executed
17 on the seventeenth day of April, 2018, in Washington, DC.

18 

19
20 Donald S. Clark

Clark Attachment A

GreenspoonMarder

From the desk of: Robby H. Birnbaum, Esq.
Trade Centre South, Suite 700
100 W. Cypress Creek Road
Fort Lauderdale, Florida 33309-2140
954.491.1120 (Telephone)
954.343.6960 (Facsimile)
Email: Robby.Birnbaum@gmlaw.com

December 15, 2016

Via Certified Return Receipt U.S. Mail

Chairwoman Edith Ramirez, Esq.
Federal Trade Commission
600 Pennsylvania Avenue
Washington, D.C. 20850

RE: Complaint against FedLoan Servicing For Aggressive and Unfair
Consumer Practices.
Our File No.: 33508.0006

Dear Chairwoman Ramirez:

This firm represents a number of companies that specialize in federal student loan document preparation and processing services to assist borrowers identify and gain approval for one or more government-offered debt relief programs.

I am sending this letter as we recently received a copy of an e-mail that FedLoan Servicing appears to be transmitting to some of its student loan debtors. As you probably know, FedLoan Servicing is a student loan account services and collector that works under permission from the US Department of Education. Here is one of their emails sent to financially vulnerable consumer debtors:

Thank you for contacting FedLoan Servicing!

Our records indicate that you were most likely going through a third party organization who offered to assist with the consolidation process. However, FedLoan Servicing now holds and services your newly consolidated loan as of May 26, 2016.

If you are not satisfied with the assistance you are receiving from the third party company you hired, you can contact the Federal Trade Commission (FTC) with your complaints. It is important to note that your complaint is against the company you hired to assist you in the repayment of your Federal Student Loans and not the student loan servicer.

The complaint can be filed online by visiting the FTC website (ftc.gov) or

Boca Raton | Denver | Ft. Lauderdale | Las Vegas | Miami | Miami Beach | Naples | New York
Orlando | Port St. Lucie | San Diego | Tallahassee | Tampa | West Palm Beach

Chairwoman Edith Ramirez, Esq.
December 15, 2016
Page No. 2

by telephone by calling the toll-free telephone number of 1-877-FTC-HELP ([1-877-382-4357](tel:1-877-382-4357)).

Your account is currently past due from November 10, 2016 for \$239.67. We report the account status monthly to each nationwide consumer reporting agency.

We recommend that you use the "Contact Us" links on our website, MyFedLoan.org, to submit inquiries via a secure email form. Please use your email address on file when completing this form. You may also call us toll-free at [\(800\) 699-2908](tel:800-699-2908) to reach our Customer Service Department, which is open Monday through Friday from 8:00 AM until 9:00 PM (ET).

The correspondence highlights the unethical collection practices employed by some of the federal loan servicing companies. The correspondence above starts with a supposition that the consumer has hired a third party to assist in consolidating their loans. It then directs the consumer to contact the FTC if they were not satisfied with the company assisting them, providing specific instructions and website link as well as a toll-free telephone number. From there, it reminds the consumer that the consumer is past due on loan payments.

Basically, it scares the consumer into second-guessing their decision to contract with a private company and then pushes for outstanding sums to bring the consumer current. It doesn't necessarily provide suggestion about other avenues and alternatives, such as income-based repayment programs that could assist a consumer who might otherwise be having difficulty bringing loan payments current.

For some time we have been advised that various student loan servicers are verbally criticizing student loan document preparation companies and directing borrowers to contact regulators (even when the consumers expressed no concern over the services they were receiving). Now, it seems the servicers are putting their directions in writing, demonstrating bias, and anti-consumer choice collection practices. Indeed, I have heard from dozens of consumers about how aggressive FedLoan Servicing is. In fact, we were previously advised that a customer of one of our clients said that FedLoan (while the customer was on hold with FedLoan's customer service) heard a recording directing consumers not to work with private companies for student loan assistance. Then the customer service representative repeated the same information two more times when back on the telephone before actually assisting the consumer. Such tactics fit right in line with other allegations that servicers are blanketly calling student loan document prep companies "scams." The collection agents seem to have been given full autonomy to say what they want about third parties. I'd imagine that recorded calls between the servicers and the borrowers who have hired third parties to assist them apply for federal loan programs would show a clear pattern of such aggressive behavior.

It was when one of our compliance-focused clients (that complies with the FTC's TSR debt relief amendment) received a copy of the written verbiage above from one of its customers that we became extra concerned. Clearly, FedLoan (and other loan servicers) are trying to block

Chairwoman Edith Ramirez, Esq.
December 15, 2016
Page No. 3

consumers from receiving private help to fight against the unethical practices that the student loan servicers have been employing for some time. As the FTC and CFPB are aware and lawsuits have been filed against certain federal loan services (i.e. Navient), such companies have repeatedly demonstrated that they are not necessarily looking out for the best interests of the consumers and placing them into federal loan programs that could have allowed zero-dollar payments based on earnings and eventually led to debt forgiveness.


We have attempted to reach out to loan servicers, including FedLoan and MOHELA but are constantly treated rudely and they state they are "turning in" our clients. You would not believe the verbal anger expressed by these groups, and it is shocking that they refuse to even have a rational discussion relating to the benefits of protecting consumers and giving them choices. My feeling is that they don't like the competition from our FTC-compliant clients (relief providers) and, instead, want to continue to pressure debtors into heeding their heavy-handed financial demands.

Where our clients are complying with regulations governing their marketing, contracts and services and the federal loan servicers are not, it is clearly unjust that the private student loan document preparation companies get negatively branded and looked down upon by regulators when the harm is coming from the servicers' collection practices and their constant efforts to direct consumers to file grievances against the private companies.

My hope is that in bringing this persistent problematic situation to your attention, the Commission will be mindful that it is our clients who are fighting to protect consumers.

Very Truly Yours,

GREENSPOON MARDER, P.A.


Robby H. Birnbaum, Esq.
For the Firm

cc: Client

Clark Attachment B

GreenspoonMarder

From the desk of: Robby H. Birnbaum, Esq.
Trade Centre South, Suite 700
100 W. Cypress Creek Road
Fort Lauderdale, Florida 33309-2140
954.491.1120 (Telephone)
954.343.6960 (Facsimile)
Email: Robby.Birnbaum@gmlaw.com

February 22, 2017

Via Certified Return Receipt U.S. Mail
Chairman Maureen K. Ohlhausen, Esq.
Federal Trade Commission
600 Pennsylvania Avenue
Washington, D.C. 20850

Federal Trade Commission
Received

MAR 01 2017

Chairman

14016278

RE: Complaint against FedLoan Servicing For Aggressive and Unfair
Consumer Practices.
Our File No.: 33508.0006

Dear Chairman Ohlhausen:

I am supplementing a letter that I sent on December 15, 2016 to the Commission's prior Chairman, Ms. Ramirez, relating to abusive behavior by federal student loan servicers (collection agencies that work for the Department of Education against American consumers).

Given that there has been some transition within the FTC the past few months, and that we have not yet heard back from the Commission, I'm enclosing as **Exhibit A** a copy of my December correspondence for your reference. This letter now supplements my prior December letter because we have learned of additional alarming activity by these large debt servicer organizations that work against consumers in unsettling and aggressive ways.

My law firm represents various companies that assist in federal student loan application services that help borrowers to identify and gain approval for one or more government-offered debt relief programs. The purpose of my December 2016 letter was to alert the Commission to the aggressive, unethical and injurious tactics that some loan servicers were using to attack consumers. Unfortunately, in the past couple of months I have received additional reports from clients advising that the servicers' behavior has not subsided and, in many cases, is becoming worse.

While I understand that the CFPB has been taking some action against these servicers resulting in a few press-release notable events for the CFPB, their actions have done little to actually help the consumers who are being harmed. Having worked with the FTC for over 17 years on many different consumer protection matters, I have a lot more faith in the Commission and its staff's ability to affect real improvements for these vulnerable consumers.

Boca Raton | Denver | Ft. Lauderdale | Las Vegas | Miami | Miami Beach | Naples | New York
Orlando | Port St. Lucie | San Diego | Tallahassee | Tampa | West Palm Beach

Chairman Maureen K. Ohlhausen, Esq.
February 22, 2017
Page No. 2

Additional complaints that I have received regarding abusive student loan servicer and collection efforts include the following:

- *Profiling* clients that may be working with third-party publically or privately provided application or relief providers (some who are licensed and compliant, and some being nonprofit organizations) and reaching out to those consumers via email and telephone and directing them to file complaints with the FTC, AG, and CFPB. Enclosed as ~~Exhibit B~~ is a sample e-mail that led a consumer to second guess the assistance that the consumer was obtaining. Via telephone, we understand that these servicers are instructing their representatives to describe the independent helpers as being "scams" or worse, with the intention of reeling the consumer back into their aggressive collection systems.
- There have been several instances that we have been told of Fedloan reaching out to customers of the application preparation companies via telephone to inquire about family size, based on what was submitted on an application. Fedloan then proceeds to ask the customers if a third party "inappropriately" submitted false information regarding "dependents" which, of course, startles the customer and makes them second guess their decision to hire a third party for assistance, even though nothing may be wrong.
- Even worse, for those consumers who happen to qualify for \$0.00 Income Driven Repayment plans, when some has called to ask Fedloan about interest not being paid in 2016 (1098 forms), Fedloan is advising that there have been no qualified payments made and no progress on the loans which ~~deceptively~~ causes panic with customers who then feel compelled to cancel payments and not pay for the services that the third parties provided. In fact, the way those income-driven repayment plans work is that even if someone does not have to make monthly payments due to their income and family size, each month is counted towards their total required payments for loan forgiveness programs. This servicer tactic tends to hurt the consumer's long-term chances of repayment success.
- Some servicers are also placing borrowers in forbearance and deferring borrowers' payments when the borrower has available forbearance or deferment when they find out that the consumer was hiring a private company to assist in order to then prevent the consumer from working with such private companies. The servicers should have been assisting from the get-go and not just when they learn that the consumer has had to resort to looking for third party assistance.

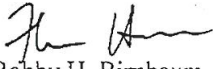
My guess is that a lot of these abuses have to do with the way the servicers and their collection agents are compensated. My hope is that in bringing this persistent problematic situation to your attention, the Commission will be mindful that it is our clients who are fighting to protect consumers.

Congratulations on your position with the FTC. I look forward to working with you.

Chairman Maureen K. Ohlhausen, Esq.
February 22, 2017
Page No. 3

Very Truly Yours,

GREENSPOON MARDER, P.A.


for Robby H. Birnbaum, Esq.
For the Firm

cc: Client
Enclosures

Exhibit A

GreenspoonMarder

From the desk of: Robby H. Birnbaum, Esq.
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100 W. Cypress Creek Road
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December 15, 2016
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Chairwoman Edith Ramirez, Esq.
December 15, 2016
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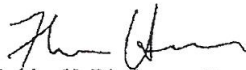
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My hope is that in bringing this persistent problematic situation to your attention, the Commission will be mindful that it is our clients who are fighting to protect consumers.

Very Truly Yours,

GREENSPOON MARDER, P.A.


Robby H. Birnbaum, Esq.
For the Firm

cc: Client

Exhibit B

Subject: FRAUD ALERT - Notice about student loan servicing scams



MOHELA recently became aware of debt relief companies that are charging fees to help you with your student loan such as completing consolidation, applying for an income-driven repayment plan, qualifying for forgiveness programs, and/or getting out of default. **Caution - you never have to pay for student loan help!** The U.S. Department of Education contracts with MOHELA to service your student loan and we in turn provide services to you for FREE.

As your dedicated federal servicer contracted to work for the Department of Education, we can help you:

- Lower monthly payments
- Consolidate federal student loans
- Check on loan forgiveness
- Apply for options to postpone payments
- Resolve delinquency
- Get out of default

You *never* need to pay for these services. MOHELA is committed to providing you with quality and complimentary customer service. For help with your student loan, use our official website mohela.com or call using our official phone number [888.866.4352](tel:888.866.4352).

Protect yourself

Unfortunately, some companies act unethically or potentially illegally to get your business—misrepresenting themselves as having a relationship with the Department of Education, violating students' privacy by inappropriately using their FSA IDs, and claiming that government programs are their own. The Department of Education continues efforts to crack down on these companies to protect student borrowers like you.

If you think that you've been scammed, learn your options. Many state governments have an Office of Consumer Affairs or Consumer Protection either within or affiliated with, the Office of the Attorney General for each state. At the federal level, the FTC and the CFPB have the authority to act against companies that engage in deceptive or unfair practices.

Learn more about how to protect yourself: <http://blog.ed.gov/2016/01/dont-be-fooled-you->

[never-have-to-pay-for-student-loan-help/](#)

Sincerely,

MOHELA

This email is an attempt to communicate timely information to you. If you wish to contact us, please go to www.mohela.com. Replies to this message will not be read or responded to. If you do not want to receive future information of this nature, please [unsubscribe](#) or contact customer service at [1-800-451-4511](#). Please note that unsubscribing from MOHELA's email campaigns will not cancel or change the status of accounts which have elected MOHELA Paperless delivery.

[Privacy Policy](#)

This message is an attempt to collect a debt and any information obtained will be used for that purpose.
California residents: The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 877.FTC.HELP or www.ftc.gov.

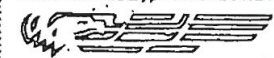
CERTIFIED MAIL®



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U.S. POSTAGE >>> PITNEY BOWES



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Greenspoon
Marder

ATTORNEYS AT LAW

One Boca Place
2255 Glades Road
Suite 400-E
Boca Raton, FL 33431

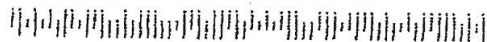
FEB 27 2017

Chairman Maureen K. Ohlhausen, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

20580

33508.0006

2058030001 0000



Declaration of Donald Clark

4:18-CV-00806-SBA

Clark Att. B-11

Clark Attachment C



United States of America
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

Consumer Response Center

March 15, 2017

Robby H. Birnbaum
Trade Center South, Suite 700
100 W. Cypress Creek Road
Fort Lauderdale, FL 33309

FTC Ref. No. 14016278

Dear Mr. Birnbaum:

Thank you for your recent correspondence to Chairman Maureen Ohlhausen on behalf of the aggressive and unfair consumer practices by FedLoan, has been forwarded to the Consumer Response Center (CRC) for a reply.

The FTC works for consumers to prevent fraudulent, deceptive and unfair business practices and to provide information to consumers like you to help spot, stop, and avoid them. Under the Code of Federal Regulations, Section 2.3 the FTC policy as to private controversies, state that the FTC acts in the public interest but is not able to intervene in individual disputes.

While the FDCPA and the FTC Act authorizes the FTC to investigate and take law enforcement action against debt collectors that violate those statues; you should be aware, that in July 2011, changes were enacted to the FDCPA, under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

These changes established the creation of the Consumer Financial Protection Bureau (CFPB), an independent agency with the authority to implement and enforce Federal consumer financial law. These changes also gave certain shared responsibilities and authorities to the CFPB to protect consumers under the FDCPA and require the FTC and CFPB share consumer complaint information.

The Consumer Financial Protection Bureau (CFPB) was given authority to directly handle individual consumer complaints. Through its Consumer Complaint and Dispute Resolution Process, the CFPB directly brings consumer concerns to the attention of companies, and assists in addressing their complaints. For this reason, we forwarded your complaint to that office. If you have not done so, you should contact their office. Their contact information is as follows:

Consumer Financial Protection Bureau
P.O. Box 4503
Iowa City, Iowa 52244
Phone: 1(855) 411-2372
www.consumerfinance.gov

We appreciate your bring your concerns to our attention. Your complaint record has been updated in our secure online Consumer Sentinel database, which is jointly used by the FTC and the CFPB, as well as thousands of civil, and criminal law enforcement authorities worldwide.

Sincerely,

Consumer Response Center