

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

COMMERCIAL RECOVERY SYSTEMS, INC.,

TIMOTHY L. FORD, individually and as an officer
of COMMERCIAL RECOVERY
SYSTEMS, INC., AND

DAVID J. DEVANY, individually and as a former
officer of COMMERCIAL RECOVERY
SYSTEMS, INC.

Defendants.

Case No. 4:15-CV-36

JUDGE AMOS L. MAZZANT III

**ORDER FOR PERMANENT
INJUNCTION AGAINST
DEFENDANTS COMMERCIAL
RECOVERY SYSTEMS, INC. AND
TIMOTHY L. FORD, ONLY**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“Commission”), filed its Complaint for Injunctive Relief and Civil Penalties (“Complaint”), for a permanent injunction, civil penalties, and other equitable relief in this matter, pursuant to Sections 13(b) and 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 56(a)(1). Defendants have been served with the summons and the Complaint and have filed answers with the Court. (Dkt. #7).

The Court granted summary judgment against defendants Commercial Recovery Systems, Inc. (“CRS”) and Timothy L. Ford (“Ford”) in favor of Plaintiff on April 7, 2016 (Dkt. #69), and found CRS and Ford liable for violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and multiple provisions of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§

1692-1692*l*, (Dkt. #69 at 15). The Court found that Plaintiff is entitled to a permanent injunction sought against Defendants CRS and Ford and reserved for trial the determination of civil penalties as to Defendant Ford personally. The Court now makes the following findings and enters this Order for Permanent Injunction (“Order”):

FINDINGS

1. This Court has subject matter jurisdiction of this case and personal jurisdiction over Defendants pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 1692*l*(a).

2. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1)-(2), (c)(1)-(2), and (d), and 1395(a), and 15 U.S.C. § 53(b).

3. The activities of Defendants are in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. Defendants CRS and Ford are “debt collectors” as defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

5. Plaintiff’s Complaint alleges that Defendants CRS and Ford participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, in connection with their debt collection activities.

6. The Complaint states a claim upon which relief may be granted against Defendant CRS under Sections 5(a), 13(b), and 16(a)(1) of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 56(a), and under Sections 807 and 814(a) of the FDCPA, 15 U.S.C. §§ 1692e and 1692*l*(a).

7. The Complaint states a claim upon which relief may be granted against Defendant Ford under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a)(1) of the FTC Act, 15 U.S.C. §§ 45(a),

45(m)(1)(A), 53(b) and 56(a), and under Sections 807 and 814(a) of the FDCPA, 15 U.S.C. §§ 1692e and 1692l(a).

8. By Order dated April 7, 2016, the Court granted Plaintiff's Motion for Summary Judgment as to Defendants CRS and Ford. The Court found Defendant CRS violated Section 5 of the FTC Act, 15 U.S.C. § 45(a), and multiple provisions of the FDCPA, 15 U.S.C. §§ 1692-1692l, including Sections 807(2), 807(3), 807(4), and 807(5) of the FDCPA, 15 U.S.C. § §1692e(2),1692e(3), 1692e(4), and 1692e(5), and, therefore, Defendants are liable for injunctive relief under Section 5 of the FTC Act. (Dkt #69 at 10-12). The Court found Defendant Ford, President and owner of CRS, "by virtue of his management positions and his day-to-day involvement in the company's operations" also subject to injunctive relief and found him liable for civil penalties for FDCPA violations by CRS. (Dkt. #69 at 14-15).

9. Plaintiff has authority under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a), of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and Sections 807 and 814(a) of the FDCPA, 15 U.S.C. §§ 1692e and 1692l(a), to seek, and the Court has the legal authority and equitable power to award, the civil penalty and injunctive relief requested.

10. There is no genuine issue as to any material fact concerning the liability of Defendants CRS and Ford for injunctive relief for deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and for violations of the FDCPA, 15 U.S.C. §§ 1692-1692l, as alleged in the Complaint.

11. As no material facts are in dispute, Plaintiff is entitled to judgment as a matter of law pursuant to Rule 56(c) of the Federal Rules of Civil Procedure against Defendants CRS and Ford.

12. There is a reasonable likelihood that Defendants CRS and Ford will continue to

engage in the same or similar activities alleged in the Complaint unless permanently enjoined from those activities.

13. Entry of this Order for Permanent Injunction as to Defendants CRS and Ford is in the public interest.

14. Defendants CRS and Ford have no claims under the Equal Access to Justice Act, 28 U.S.C. § 2412.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. **“Debt”** means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.

B. **“Debt collection activities”** means any activity the principal purpose of which is to collect or attempt to collect, directly or indirectly, debts owed, or asserted to be owed, or due.

C. **“Debt collector”** means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term also includes any creditor who, in the process of collecting its own debts, uses any name other than its own which would indicate that a third person is collecting or attempting to collect such debts. The term also includes any person to the extent such person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt.

D. **“Defendants”** means both the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination.

1. **“Corporate Defendant”** means Commercial Recovery Systems, Inc., and its successors and assigns.
2. **“Individual Defendant”** means Timothy L. Ford.

ORDER

I. BAN ON DEBT COLLECTION ACTIVITIES

IT IS THEREFORE ORDERED that Defendants, whether directly or through an intermediary, are permanently restrained and enjoined from:

- A. Participating in debt collection activities; and
- B. Advertising, marketing, promoting, offering for sale, selling, or buying any consumer or commercial debt or any consumer information relating to a debt.

II. PROHIBITION AGAINST DECEPTIVE CLAIMS, INCLUDING FALSE AND/OR UNSUBSTANTIATED CLAIMS

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the sale of any product or service, are permanently restrained and enjoined from:

- A. Making any misrepresentation, or assisting others in making any representation, expressly or by implication:
 1. that any person is affiliated with, endorsed or approved by, or otherwise connected to any other person, government entity, or other public or commercial entity, including an attorney’s office, law firm, or court system;
 2. the nature, expertise, position, or job title of any person who provides any product or service;

3. any other fact material to consumers concerning a product or service, including: the total costs, material restrictions, limitations, conditions, or material aspect of its performance, efficacy, nature, or central characteristics.

B. Making any representation or assisting others in making any representation, expressly or by implication, about the benefits, performance, or efficacy of any product or service, unless the representation is non-misleading, and, at the time such representation is made, Defendants possess and rely upon competent and reliable evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant fields, when considered in light of the entire body of relevant and reliable evidence, to substantiate that the representation is true.

III. CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly:

A. Disclosing, using, or benefitting from consumer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a consumer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with third party debt collection; and

B. Failing to destroy such consumer information in all forms in their possession, custody, or control within 30 days after entry of this Order.

Provided, however, that consumer information need not be disposed of, and may be

disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

IV. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

- A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 15 years after entry of this Order, Individual Defendant, for any business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of this Order in Section II; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

V. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and Plaintiff may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
2. Additionally, Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role,

responsibilities, participation, authority, control, and any ownership.

B. For 15 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of Corporate Defendant or any entity that any Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s

full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *United States v. Commercial Recovery Systems, Inc., X150014*.

VI. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 15 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendant and Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each unique advertisement or other marketing material.

VII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission or Plaintiff, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission and Plaintiff are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69, provided that Defendants, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order for one or more of the protections set forth in Rule 26(c).

B. For matters concerning this Order, the Commission and Plaintiff are authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission and Plaintiff to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission and Plaintiff may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission or Plaintiff, any

consumer reporting agency must furnish consumer reports concerning Individual Defendant,
pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

VIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes
of construction, modification, and enforcement of this Order.

SIGNED this 18th day of April, 2016.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE