

No. 20-2215

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**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

Federal Trade Commission,  
*Plaintiff-Appellee*

v.

Andris Pukke,  
*Defendant-Appellant*

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On Appeal from the United States District Court  
for the Southern District of Maryland

No. 18-cv-3309

Hon. Peter J. Messitte

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**FTC's Informal Response Brief**

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## Introduction and Background

This appeal arises from nearly 20 years of litigation in which the Federal Trade Commission has sought to stop appellant Andris Pukke's multiple consumer scams and to counter his machinations to avoid returning the proceeds of those scams to consumers. At the time of the appeal, the district court had before it two consolidated cases: (1) a contempt action arising from Pukke's violations of a 2006 permanent injunction in connection with a debt-counseling scam, including conditions that suspended most of its \$172 million judgment against him (*AmeriDebt*); and (2) a separate enforcement matter against Pukke and others involving a real-estate investment scam (*Sanctuary Belize*). The two matters are related because the real-estate scam involved land that was an asset Pukke should have disclosed and relinquished to satisfy the earlier judgment, but which he hid instead. In the order on appeal, the district court found that because Pukke failed to comply with conditions the court imposed when it suspended the \$172 million *AmeriDebt* judgment, the full amount of that judgment is due. D.Ct. Docket No. 1080.

Pukke argues (1) that the district court did not give him the opportunity to be heard on whether he fulfilled his obligations under the *AmeriDebt* judgment; (2) that the court waited too long to make its determination; and (3) that his failure to comply with the 2006 permanent injunction was not

pleaded or litigated before the court's decision. Pukke Br. 1. Those claims lack any legal or factual merit.

### **1. The *AmeriDebt* Scam**

In 2003, the FTC brought an enforcement action against Pukke and others to halt a credit-counseling scam that took more than \$172 million from consumers. *See FTC v. AmeriDebt, Inc.*, 373 F. Supp. 2d 558, 560-561 (D. Md. 2004). In 2006, on the eve of trial, Pukke agreed to an injunction barring him from deceptive telemarketing and a judgment against him for \$172 million. *Id.* at 3; *AmeriDebt*, No. 8:03-cv-3317 (D. Md.) Docket No. 473. The court's order provided that all but \$35 million of the judgment would be suspended if Pukke complied with specific conditions regarding his assets and the Commission's efforts to restore the stolen money to victims. *Id.* at 9-12. In particular, Pukke agreed to assign all of his assets to the Commission, waive any claim to them, and "cooperate fully with the Commission" to effect the transfer. *Id.* at 11-12. The order provided that if Pukke did not satisfy the stated conditions, "[t]he Judgment shall not be suspended, and [Pukke] shall owe the FTC \$172,000,000." *Id.* at 12.

The court directed the Commission to provide redress to victims of the *AmeriDebt* scam in coordination with counsel for the plaintiffs in a class ac-

tion (*Polacsek*<sup>1</sup>) based on the same illegal practices, which was settled at the same time as the Commission's enforcement case. *Id.* at 17. As discussed in part 4 below, the Commission's coordination with the class action case is relevant to how the order on appeal eventually came to be decided 14 years later.

## 2. Pukke's Failure To Cooperate

Almost immediately, Pukke failed to comply with his obligation to cooperate with the Commission. In 2007, the district court found that Pukke had concealed assets—including a large parcel of land in Belize that ultimately became the basis for the *Sanctuary Belize* scam—and ordered him to turn those assets over to the *AmeriDebt* receiver. *AmeriDebt* Docket No. 571 at 2-5. Pukke did not comply with that order, and the district court held him in contempt again, ordering that he be incarcerated “until [he] purges his contempt by complying with the [first] Contempt Order.” *AmeriDebt* Docket No. 604 at 2. Even then, Pukke did not comply. He was released from confinement based on his agreement to several conditions which—yet again—he failed to meet. *See* D.Ct. Docket No. 1020 at 19-20. As discussed below, that act of obstruction was one of the contempt charges arising from *Ameri-*

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<sup>1</sup> *Polacsek v. Debticated Consumer Counseling, Inc.*, Case No. 8:04-cv-00631-PJM (D. Md.).

*Debt* which was consolidated with the *Sanctuary Belize* action. *AmeriDebt* Docket No. 625-1 at 3.

In 2010, Pukke directly admitted in a plea agreement for obstruction of justice that he concealed and lied about assets he had agreed to relinquish to the Commission in the *AmeriDebt* case. *United States v. Pukke*, No. 8:10-cr-734 (D. Md.) Docket No. 7-1 (“*Pukke Plea*”) at 2. The assets included investments in internet gambling operations, foreign accounts, and the Belize real estate. *Id.* at 2-5. Pukke was sentenced to 18 months in prison on the charge.

During the years of judicial proceedings showing that Pukke had breached his obligations under the *AmeriDebt* settlement agreement and order, the district court never ruled directly on whether Pukke had cooperated with the Commission and, consequently, whether its suspension of the \$172 million judgment against him was still in effect. Last year, the court ruled twice, first in August and again in November, that Pukke did not fulfil his cooperation obligations and that the full \$172 million judgment was therefore due. D.Ct. Docket Nos. 1020 and 1080. The second of those orders is the order on appeal.

### **3. *Sanctuary Belize* And The Consolidated *AmeriDebt* Contempt Charges**

As a result of his maneuvers, Pukke retained control of the Belize property, which he used to embark on a new scam. D.Ct. Docket No. 1020 at 19-21. Pukke and his codefendants lured consumers to buy properties in a resort community—“Sanctuary Belize”—by promising that they would be making a low-risk investment that would quickly appreciate in value. They promised that the resort would feature a host of luxury amenities such as including an airstrip, a championship-caliber golf course, a casino and hotel, a medical center, and high-end boutiques and restaurants. In fact, the promised development never came, most buyers who tried to build on their lots could not do so, and the resale market Pukke promised never emerged. *See generally id.* at 33-79.

In 2018, the Commission sued to halt the Sanctuary Belize scam. *See* D.Ct. Docket No. 1. At the same time, the Commission filed three contempt motions in the *AmeriDebt* case, alleging (1) that Pukke violated the permanent injunction in *AmeriDebt* by engaging in deceptive telemarketing practices for Sanctuary Belize (D.Ct. Docket. No. 266); (2) that he violated the order to turn over the land in Belize (D.Ct. Docket No. 267); and (3) that he violated the order releasing him from coercive confinement in *AmeriDebt* (D.Ct. Docket No. 268).

In light of the overlap between the *AmeriDebt* contempt motions and the allegations in the Sanctuary Belize complaint, the district court consolidated the contempt proceedings with the new complaint. D.Ct. Docket No. 261. The case proceeded to trial in early 2020 on both the *Sanctuary Belize* complaint and the *AmeriDebt* contempt allegations. Following the trial, the district court issued findings of fact and conclusions of law in which it determined to grant a permanent injunction, order restitution to victims of the Sanctuary Belize scam, and hold Pukke in contempt on two of the three charges leveled by the Commission. D.Ct. Docket No. 1020 at 6.

To decide the third contempt charge (involving the conditions of Pukke's release from coercive confinement), the Court had to determine whether Pukke had fully satisfied the judgment against him in *AmeriDebt*, and thus whether the amount due was the full \$172 million or instead the suspended judgment amount of \$35 million. *See* D.Ct. Docket No. 1020 at 172-173, 175. Pukke argued that the lower number should apply and that he had fully satisfied the judgment, whereas the Commission primarily contended that Pukke did not cooperate, owed the full \$172 million, and had not paid it.<sup>2</sup> *Id.* at 175-176. The court held that the facts determined in its prior contempt or-

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<sup>2</sup> In the alternative, the Commission argued that if the court found Pukke owed only the amount of the suspended judgment, he had not made payments totaling \$35 million. *See* D.Ct. Docket No. 861 at 6-8, D.Ct. Docket No. 965 at 3-4.



ders and by Pukke’s obstruction of justice conviction “conclusively establish the fact of Pukke’s non-cooperation with the FTC and trigger the \$172 million judgment.” *Id.* at 176; *see also id.* at 18-21 (detailing the prior contempt holdings). As discussed below, the court entered its final order on the contempt proceedings after this appeal was filed. *See* D.Ct. Docket No. 1113.

#### **4. The Order On Appeal**

The order that Pukke appeals from traces back to the 2006 settlements of the *AmeriDebt* enforcement case and the *Polacsek* class action. At the district court’s direction, the Commission, the court-appointed receiver, and class counsel coordinated to provide redress to members of the *Polacsek* class from the assets that the receiver collected from Pukke and other defendants. *See AmeriDebt* Docket No. 473 at 17. Although an initial distribution to class members was completed in 2008, efforts to recover assets from Pukke continued, and class counsel eventually sought the court’s approval to make a second distribution from about \$4 million that was recovered later.<sup>3</sup>

The proposed distribution raised a question that overlapped with the contempt charge described above: whether funds proposed to be paid to the *Polacsek* class members (and payments to class counsel) should count toward Pukke’s obligation to satisfy the *AmeriDebt* judgment. That question, in

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<sup>3</sup> *Polacsek*, Case No. 8:04-cv-00631 (D. Md.), Docket No. 490.

turn, raised whether the amount due on the judgment was \$35 million or \$172 million. The Commission therefore filed (at the court's request) an accounting of payments made toward the *AmeriDebt* judgment (D.Ct. Docket No. 861), and briefed issues related to the disposition of any funds that should remain after the new distribution (*see* D.Ct. Docket No. 965, 1068, 1076).

The district court then entered the order at issue in this appeal. D.Ct. Docket No. 1080. The court reiterated its findings from the ruling on the third contempt charge, holding that “Pukke did not cooperate with the FTC” as required by the *AmeriDebt* judgment; that “the \$172 million judgment is not suspended,” and that “Pukke has not satisfied the \$172 million judgment.” *Id.* at 2-3 (citing its memorandum opinion, D.Ct. Docket No. 1020). Because the judgment was not satisfied, the court found it appropriate to approve a second distribution to the *Polacsek* class members. *Id.* at 3. The court ordered Pukke to satisfy the remaining part of the \$172 million judgment against him and directed the class administrator to distribute the \$4 million to class members. *Id.* at 3-4.

After Pukke filed his appeal from that order, the court entered two more pertinent orders: (1) the final order in the *Sanctuary Belize* action (Docket No. 1111); and (2) an order holding Pukke (and others) in contempt on two

of the three charges arising from *AmeriDebt* (Docket No. 1113). In the latter order, the court found that Pukke was “provided ample notice of the contempt allegations,” received “an opportunity to be heard as to the allegations, and in fact did respond . . . at trial and in post-trial filings.” D.Ct. Docket No. 1113 at 2. The court reiterated that “Pukke did not cooperate with the FTC in connection with the Monetary Relief and turnover provisions of the Court’s prior order in *AmeriDebt*,” and again ordered him “to pay the FTC \$172 million . . . as reduced by the amounts credited to him and increased by any applicable interest.” *Id.* at 2-3.

### **Argument**

Pukke claims that the district court erred in three respects when it held that he did not cooperate with the Commission as required by the judgment in *AmeriDebt* and reinstated the full \$172 million judgment against him. Before addressing those arguments, however, the Commission notes that it is unclear whether the order on appeal is the appropriate vehicle for the Court to address them. The district court found that Pukke failed to cooperate in an opinion issued *before* the order on appeal (D.Ct. Docket No. 1020 at 178), and it ordered him to pay the outstanding balance of the full \$172 million

judgment in a final order issued *after* the order on appeal. (D.Ct. Docket No. 1113).<sup>4</sup>

In any case, Pukke's arguments are plainly wrong. He first claims that the conduct he admitted in his obstruction-of-justice plea occurred before he agreed to the *AmeriDebt* order, so it is "impossible" to find that he failed to cooperate with the Commission based on that conduct. Pukke Br. 5-6. Second, Pukke argues that the district court violated contractual and due process rights that he claims entitle him to suspension of all but \$35 million of the \$172 million *AmeriDebt* judgment. *Id.* at 8-11. Finally, he argues that the district court's finding was barred by laches, the statute of limitations for fines in 28 U.S.C. § 2462, and Federal Rule of Civil Procedure 43(a). *Id.* at 13-15. None of those arguments has merit.

**A. Pukke's plea agreement shows that he did not cooperate with the Commission.**

The district court entered the permanent injunction in *AmeriDebt* on May 17, 2006. Pukke argues that it was impossible for him to breach his obligation to cooperate with the Commission under the injunction through actions he took *before* the injunction was entered, and claims that the admissions he

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<sup>4</sup> The order on appeal denotes itself "final," but not as to Pukke's obligation to pay the full \$172 million from *AmeriDebt*; it is titled "Final Order *Concerning Second Polacsek Distribution and Further Distribution of Excess Funds.*" D.Ct. Docket No. 1080 at 1 (emphasis added).

made in his obstruction-of-justice plea solely concern conduct that predated the *AmeriDebt* injunction. Pukke Br. 3-7. That argument fails on the plain facts because Pukke's plea-agreement admissions encompass conduct both before *and after* the *AmeriDebt* order. It also fails because Pukke's obligation to cooperate under the *AmeriDebt* order included accurately disclosing his assets. He could not fulfill his cooperation agreement while keeping them hidden, which is exactly what he admitted to in the criminal plea agreement.

Pukke admitted that he obstructed the *AmeriDebt* proceeding "by concealing and making false statements" about his assets between "July 2005 and in or about 2007." *Pukke Plea 2*. That period includes the point when Pukke agreed to cooperate and the district court's May 17, 2006 entry of the permanent injunction, and it continues for at least seven months afterward. Thus, Pukke admitted to concealing assets from the Commission *after* he agreed to cooperate. In addition, Pukke specifically admitted to lying about his ownership interest in a company at a deposition held December 20, 2006, well *after* he agreed to cooperate. *Id.* at 5.

More broadly, Pukke's argument misreads his obligation to cooperate. Pukke agreed that substantially *all* of his assets were "derived from consumers" as a result of the *AmeriDebt* scam and that he had no "legitimate claim"

to them. *AmeriDebt* Docket No. 130 at 3; *see also id.* at 6-7 (designating Pukke's assets as "Receivership Property"). As a condition of suspending all but \$35 million of the \$172 million judgment, Pukke agreed to "irrevocably assign, waive, release, discharge, and disclaim" his interest in that property to the Commission, and to cooperate with the Commission by effecting the transfer. *Id.* at 10-11. He could not fulfill that obligation without fully and accurately disclosing the very assets to which he admitted he had no legitimate claim. But as his plea agreement shows, Pukke concealed and lied about those assets instead. *Pukke Plea* 2-5. It is true that the plea agreement recites actions Pukke took with regard to various assets before May 2006 (*see id.*), but those facts simply trace Pukke's ownership to establish that he hid and retained assets instead of fulfilling his obligation to disclose and disclaim them.

**B. Pukke's Due Process and contractual rights were not violated.**

Pukke's second argument is that he has a contractual and due process right to keep all but \$35 million of the *AmeriDebt* judgment suspended. Pukke Br. 8. He claims that he complied with terms of the order *other than the obligation to cooperate*, but the Commission somehow breached "its end of the bargain" when it asked the court to find that he failed to cooperate. *Id.*

at 9. He further claims he was not afforded any hearing or opportunity to be heard on the question. *Id.* at 9-10.

To begin with, Pukke has no “expectation interest” in suspension of the full *AmeriDebt* judgment without having complied with a basic condition of the agreement: that he cooperate with the Commission in securing his assets. *AmeriDebt* Docket No. 473 at 9-12. The judgment plainly states that if Pukke does not satisfy the court’s conditions, “[t]he Judgment shall not be suspended, and [Pukke] shall owe the FTC \$172,000,000.” *Id.* at 12. He failed to satisfy the conditions, and now faces the consequence he agreed to. That itself disposes of his contract and due process claims.

Moreover, Pukke is simply wrong that the Commission breached a contractual obligation by even raising the issue of the amount of the judgment. As described above, whether Pukke cooperated and the amount that remained due under the *AmeriDebt* judgment were relevant in the contempt proceeding filed along with the *Sanctuary Belize* complaint. *See* D.Ct. Docket No. 268. Pukke himself raised the cooperation issue by arguing in his defense that “he had fully satisfied his judgment to the FTC” in *AmeriDebt*. D.Ct. Docket No. 1020 at 175; *see also id.* at 175-176 (describing Pukke’s argument). That claim opened the door to the Commission’s claim that Pukke’s failure to cooperate was conclusively established by his ob-

struction plea and the court's prior contempt rulings. *See* D.Ct. Docket No. 861 at 1-4, 7-8; Docket No. 1020 at 176. The court found that Pukke's guilty plea was "based on concealment and false statements concerning his interests" in various entities, "[e]ven as he was supposed to hand over certain assets to the Receiver." D.Ct. Docket No. 1020 at 22. It agreed that those facts "conclusively establish" his lack of cooperation. *Id.* at 176.

Pukke was not denied due process simply because the court incorporated that finding in its subsequent order on whether to approve a second payment to the members of the *Polacsek* class action. To the contrary, the parties and the court acknowledged that whether Pukke cooperated was an issue common to both matters, as reflected in the briefing below. *See* D.Ct. Docket No. 861 (discussing cooperation in both contexts); D.Ct. Docket No. 965 (brief on the class distribution issue arguing that Pukke did not cooperate). Pukke is simply wrong that he was taken by surprise or denied the opportunity to heard on whether he cooperated with his obligations under the *AmeriDebt* judgment.

**C. Pukke's remaining arguments are frivolous.**

Pukke's final claims are that district court's order is barred by laches and the statute of limitations for fines in 28 U.S.C. § 2462 because the court's non-cooperation finding was entered 14 years after the *AmeriDebt* order. He



also claims that Federal Rule of Civil Procedure 43(a) somehow bars the claim. Pukke Br. 13-15.

Pukke does not assert any authority for the proposition that laches prevents the district court from deciding whether Pukke fulfilled the conditions it placed on its suspension of the judgment against him. Even if that doctrine did apply, however, laches requires proof of “lack of diligence by the party against whom the defense is asserted.” *Costello v. United States*, 365 U.S. 265, 282 (1961). Pukke cannot show that here. As described above, the Commission has relentlessly attempted to recover assets that Pukke hid and lied about. Starting soon after the *AmeriDebt* judgment, the Commission successfully asked the district court multiple times to hold Pukke in contempt for his acts of concealment and obstruction, continuing right up to the contempt charges filed along with the *Sanctuary Belize* complaint. Moreover, laches is an equitable remedy, and “he who comes into equity must come with clean hands.” *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814 (1945). Where, as here, the suit involves the public interest, “this doctrine assumes even wider and more significant proportions.” *Id.* at 815. After 14 years of obstruction egregious enough that it lead to coercive incarceration and a criminal conviction, Pukke’s hands are especially dirty.

Pukke's invocation of the five-year statute of limitations described in 28 U.S.C. § 2462 fails because whether suspended in part or not, the *AmeriDebt* judgment is not "a suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture," which are the only proceedings subject to the limitations period. 28 U.S.C. § 2462.

Pukke's argument that the order on appeal violates Rule 43 (Br. 14-15) is nonsensical. Rule 43(a) states that testimony must be taken in open court unless allowed by other rules. Pukke suggests that his failure to cooperate was not part of the Sanctuary Belize case and that he was not given any opportunity to contest it, but does not explain how that would violate Rule 43 even if it were true. In any case, the assertion is not true. As described in part A above, Pukke himself placed his cooperation in issue and it was part of the briefing and trial below.

### Conclusion

The district court's order should be affirmed.

Jan. 25, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on January 25, 2021, I filed this brief using the Court's appellate CM-ECF system, and served the appellant by U.S. mail at the following address:

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