

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FEDERAL TRADE COMMISSION, <div style="text-align: right;">Plaintiff,</div>)	
)	
)	
v.)	Case No. 4:08-cv-067
)	
NATIONAL HOMETEAM SOLUTIONS, LLC, et al.,)	
)	
Defendants.)	
)	

**PLAINTIFF’S CONSOLIDATED REPLY TO ELIAS TAYLOR’S RESPONSE TO WHY
ELIAS TAYLOR SHOULD NOT BE HELD IN CONTEMPT AND RESPONSE TO
ELIAS TAYLOR’S MOTION FOR DISMISSAL**

Plaintiff Federal Trade Commission submits this reply in response to Elias Taylor’s¹ “Motion for Dismissal, Response to Why Elias Taylor should not be held in Contempt” (“Response”) [Docs. 80, 81].²

I. Elias Violated the Court’s PI and Permanent Injunctions

As this Court is well aware, and as more specifically described in the Federal Trade Commission’s Motion for an Order to Show Cause Why Everard Taylor, Elias Taylor, Ebony Taylor, and National Financial Assistance, LLC Should Not Be Held in Contempt and

¹ Because Contempt Defendants share the same last name, for clarity, Plaintiff will refer to them by their first name.

² Elias’s Response is docketed both at Docket Nos. 80 and 81, presumably because it combines a “Motion to Dismiss,” *see* Doc. 80, with a “Response” to both the Federal Trade Commission’s “Motion to Modify” [Doc. 62] and “Motion to Enforce” [Doc. 63], *see* Doc. 81. Both documents appear identical. Accordingly, Plaintiff will address both documents together as one “Response.” Additionally, as described herein, Plaintiff contends the use of a “Motion to Dismiss” to attack the Court’s “Amended Show Cause Order” [Doc. 78] is improper. *See infra* § III.

Memorandum in Support [Doc. 59] (“Motion for Contempt”), this is a civil contempt action arising from the Contempt Defendants’³ violations of this Court’s Preliminary Injunction [Doc. 38] (“PI”) and Permanent Injunctions.⁴

Specifically, Contempt Defendants misrepresented to consumers that they would be able to stop, postpone, or prevent consumers’ foreclosures in violation of the PI and Permanent Injunctions. As detailed in the Motion for Contempt, consumers who paid Nationwide Financial Aid’s fees found that it did little or nothing to stop, postpone, or prevent their foreclosures. Contempt Defendants failed to obtain loan modifications or refinancing, and failed to provide refunds as promised. From March 2008 until at least July 2009, Contempt Defendants made false representations about their mortgage foreclosure rescue services in violation of Section I of the Permanent Injunctions and Section I of the PI, which prohibit Everard and Elias, and those in active concert or participation with them (*i.e.*, Ebony and National Financial Assistance), from falsely representing that they would stop, postpone, or prevent home mortgage foreclosures and from falsely representing that consumers would be provided refunds. Contempt Defendants’ contumacious conduct caused consumer injury of at least \$126,131.80.

In his response, Elias unsuccessfully attempts to distance his involvement from the remaining Contempt Defendants by arguing, essentially, that: (1) his actions all occurred prior to entry of the PI and/or Permanent Injunctions; (2) his involvement with Contempt Defendants was

³ “Contempt Defendants” are Elias Taylor, Everard Taylor, Ebony Taylor, and National Financial Assistance, LLC.

⁴ See “Stipulated Permanent Injunction and Final Order as to Defendants Evalan Services, LLC, and Everard Taylor” [Doc. 52] and its “Stipulated Permanent Injunction and Final Order as to National Hometeam Solutions, LLC; National Financial Solutions, LLC; Elant, LLC; and Elias Taylor” [Doc. 54] (collectively “Permanent Injunctions”).

limited; and (3) that the statements of Plaintiff's declarants do not support the Commission's contentions. Elias' arguments are insufficient to overcome the Commission's evidence proving his involvement in victimizing consumers who were taken by Contempt Defendants' mortgage foreclosure rescue scheme.

II. Elias Fails to Rebut the FTC's Prima Facie Showing That He Violated the Court's PI and Permanent Injunctions

Plaintiff has met the standard for holding Elias in contempt. As demonstrated in the Motion for Contempt, there is clear and convincing evidence that Elias violated the PI and Permanent Injunctions. *See FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999) (holding that to establish a defendant's liability for civil contempt, the plaintiff must show by clear and convincing evidence that the defendant has violated a specific and definite order of the court).

Once the plaintiff has produced clear and convincing evidence of contempt, the burden then shifts to the contemnors to demonstrate why they were unable to comply. *United States v. Rylander*, 460 U.S. 752, 755 (1983); *Norris v. Johnson*, No. 96-30146, 1997 U.S. App. LEXIS 41449 at *25-26 (5th Cir. 1997). Instead of offering evidence to show inability to comply with the PI or Permanent Injunctions, Elias chose to devote the majority of his Response to attacking the evidence submitted by the Commission in support of its Motion for Contempt. Elias presents no independent evidence to the Court disputing the Commission's evidence or contradicting the arguments contained in the Motion for Contempt.

Elias makes several admissions in his response that are material to the Motion for Contempt. For instance, Elias admits that he acted on behalf of "Nationwide Financial

Assistance” [sic]⁵ to provide “the limited service of negotiating with homeowner’s mortgage companies” but he contends that his actions took place prior to entry of the PI or Permanent Injunctions or that his actions in dealing with lenders and servicers did not violate the PI. *See generally* Response at p.1 ¶¶ 1, 2; p.2 ¶ 1 (“Elias, as he did when contracting for Nationwide Financial Assistance . . . provides a limited specific service[.]”). He further states that he “forgot” about a toll-free telephone number (877-570-5494) that he used, *see* Response at p.2 § III. Also, Elias admits that he assumed the pseudonym “Specialist White” when working with consumers. *See* Response at p.3 ¶ 2.

Elias quibbles, however, that the Commission has failed to present any evidence that shows he violated the PI or Permanent Injunctions either because his actions took place prior to their entry, or because his actions were not covered by their terms. These allegations are wrong, as the Commission has presented evidence to the Court showing Elias’ involvement in Contempt Defendants’ scheme.

As evidenced in the Motion for Contempt, the Commission presented evidence to the Court that Nationwide Financial Aid instructed customers to contact a Specialist White (Elias) at a toll-free number (877) 570-5494 to obtain additional information about the progress of their cases.⁶ Telephone records reveal that calls to the toll-free phone number, (877) 570-5494, were routed to Elias’ personal cell phone from the day the account was opened in May 2006 until it

⁵ It is uncertain whether Elias means to refer to “National Financial Assistance, LLC,” “Nationwide Financial Aid,” or some other new “NFA” entity. However, he makes this assertion multiple times in the Response. *See, e.g.*, Response at p.1 § I (“Nationwide Financial Assistance”), § II (“Nationwide Financial Assistance”), p.2 ¶ 1 (“Nationwide Financial Assistance”), p.3 ¶ 1 (“Nationwide Financial Assistant” [sic]).

⁶ Fuller, App. 129 ¶ 8; *see also* App. 1822 (Antonio King’s complaint submitted to the Commission).

was closed on September 10, 2009.⁷ In his Response, Elias claims that because of a “lack of use” of the telephone number, he was not billed and therefore unaware of its continued existence until nearly a year after the Permanent Injunctions.⁸ However, the evidence shows that after September 8, 2008, approximately 749 telephone calls were made to toll-free number (877) 570-5494, and these calls, in turn, were routed to Elias’ cell phone.⁹ While the bulk of these calls occurred in 2008, calls were made at least once in each of the months of January, February, March, April, June, and August 2009.¹⁰ This demonstrates a significant and continuous use of the telephone number following entry of the Permanent Injunctions, contradicting Elias’ claims.

In his Response, Elias admits that he participated as an “independent contractor” for Nationwide Financial Aid.¹¹ Both of Contempt Defendant National Financial Assistance’s bank accounts show payments made to Elias.¹² In his Response, Elias claimed that one of the payments referenced in the FTC’s Motion for Contempt was for actions taken prior to the PI being entered.¹³ However, Elias provides no evidence to show that this payment was made for

⁷ App. 860-913 (uReach Technologies records showing calls made to (877) 570-5494 were routed to telephone number (972) 955-0526); *see* App. 917-22 (Verizon Wireless business records showing Elias Taylor owned telephone number (972) 955-0526); *see also* Gosha, App. 1935 ¶ 20 (discussing the business records associated with toll free telephone number (877) 570-5494, and telephone number (972) 955-0526).

⁸ *See* Response at pp.2-3 § III.

⁹ App. 899-913.

¹⁰ App. 913.

¹¹ Response at p.1 § II.

¹² App. 1306 (Wachovia bank records showing payment of \$1280.00 to Elias Taylor on June 16, 2008); App. 949 (WAMU bank records showing payment of \$1230.00 to Elias Taylor that was posted on March 10, 2008).

¹³ Response at p.3 ¶ 1.

services rendered prior to the entry of the PI. In addition, Elias does not address the second, later payment that was referenced in the Motion for Contempt.

Elias' Response addresses two consumer declarations that reference services provided by "Specialist White," which Elias admits was him. In the case of Alonzoe Fuller, Elias claims that Nationwide Financial Aid was able to assist Mr. Fuller to stop his foreclosure.¹⁴ Elias does not contest the fact that "Specialist White" contacted Ms. Fuller and told her that Nationwide Financial Aid could not stop her family's foreclosure. Elias attempts to show that in the case of Mr. Fuller, Nationwide Financial Aid did what it promised; however, as the evidence shows, Mr. Fuller was required to pay close to half of his past due mortgage debt.¹⁵ Elias' Response fails to mention that Nationwide Financial Aid promised Mr. Fuller to stop his foreclosure by taking his lender to court, which it did not do.¹⁶ In addition, Nationwide Financial Aid guaranteed to move all of Mr. Fuller's defaulted mortgage debt to the end of his loan, which it also did not do.¹⁷

In the case of George Willis, Elias claims that Nationwide Financial Aid did what it promised by postponing an August 5, 2008 foreclosure sale date; however, as Mr. Willis' declaration shows, he was told that Nationwide Financial Aid would stop his foreclosure by filing an injunction.¹⁸ Moreover, Mr. Willis was promised that he would get a better interest rate and that he would not have to make a mortgage payment for three months while the injunction

¹⁴ Response at p.3 ¶ 2.

¹⁵ Fuller Dec., App. 130 ¶ 10.

¹⁶ Fuller Dec., App. 128 ¶ 2.

¹⁷ *Id.*

¹⁸ Willis Dec., App. 141 ¶ 3.

proceeded through the court system.¹⁹ Mr. Willis was told by Nationwide Financial Aid that it could not stop his foreclosure.²⁰ Elias also claims that contrary to Mr. Willis' declaration, he never performed any collection services for Nationwide Financial Aid; however, Elias offers no evidence substantiating this other than his unsworn statement in the Response.²¹

Elias admits that he had interaction with lenders as well as borrowers who were relying on him to negotiate home foreclosure modification or rescue services. *See* Response at p.1 § II. The Commission strongly disagrees with Elias' limited characterization of his work for "Nationwide Financial Assistance" and has presented evidence of his role. Nevertheless, Elias admits that he was directly engaged in the sale of home foreclosure prevention services by communicating with consumers concerning their home foreclosure rescue efforts. He assisted the Contempt Defendants in the sale of these home foreclosure rescue services by performing tasks such as communicating with lenders and borrowers concerning the success or, rather, the failure of mortgage foreclosure services, in violation of the PI and Permanent Injunctions. Not only was he, through his actions, directly involved in the sale of these services, but his actions were also taken "in connection with" both his and his relatives' promotion, offering for sale, and sale of foreclosure prevention services in violation of the PI and Permanent Injunctions.

Moreover, Elias' claim that he is not "privileged to know or have access to the marketing, promoting, structures, guarantees, and other aspects or details" of Nationwide Financial Aid's operations is absurd. His work with Contempt Defendants is not remotely comparable to work for a large corporation like Fannie Mae or Saxon, of which he would be but a cog in the giant

¹⁹ *Id.*

²⁰ Willis Dec., App. 143 ¶ 10.

²¹ Response at p.3 ¶ 3.

corporate wheel. Rather, he worked with his *brother* Everard and his *sister-in-law* Ebony in a tight-knit scheme that preyed on consumers who believed Contempt Defendants' promises that they would stop, postpone, or prevent their home foreclosures. The Commission's evidence in its Motion for Contempt demonstrates the efforts that these three Contempt Defendants utilized to try and hide their scheme, through the use of telephone numbers that forward to other numbers, pseudonyms to deal with customers, and other devices designed to conceal their identities.

Elias' statements about consumers whom he communicated with, at best, raise a fact issue that requires weighing the evidence and testimony concerning his involvement with Contempt Defendants. However, Elias' statements fail to demonstrate his lack of involvement in the Contempt Defendants' contumacious operations. His efforts to deemphasize his involvement are unsupported by the facts.

III. Elias' "Motion to Dismiss" is Procedurally Improper

Elias's Response incorporates a "Motion to Dismiss." *See generally* Response at p.1. However, the Response cites to no authority for this request, and such a request is not permitted by the Federal Rules. Additionally, the Motion does not state precisely what Elias seeks to dismiss, or the grounds for doing so.

A Motion to Dismiss is an improper vehicle for opposing a Motion for Contempt. *See, e.g., Buffalo Wings Factory, Inc. v. Mohd*, 574 F. Supp. 2d 574, 578 (E.D. Va. 2008) ("Plaintiff notes that the vehicle by which Defendants attack Plaintiff's Motion to Enforce and for Contempt Sanctions-a Motion to Dismiss-is the improper vehicle for opposing Plaintiff's Motion. The Court agrees[.]"). Even if the Court were to treat Elias's Motion as proper under Rule 7(b), the Motion fails to state with particularity its grounds or the relief sought. The Court would be well

within its right to strike the “Motion to Dismiss” and consider only the document as a “Response” or to deny the Motion outright. Regardless, Elias’s involvement with Contempt Defendants in violation of this Court’s PI and Permanent Injunctions is sufficient to subject him to civil contempt sanctions, and his “Motion to Dismiss” should be denied.

IV. Conclusion

For the foregoing reasons, as well as those set forth in the Motion for Contempt, Elias Taylor is in contempt of the PI and the Permanent Injunctions and is jointly and severally liable with Everard, Ebony, and National Financial Assistance for compensation to consumers for their losses that are tied to Contempt Defendants’ contumacious activities.

Respectfully submitted,

WILLARD K. TOM
General Counsel

DEANYA T. KUECKELHAN
Regional Director

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/s/ James E. Elliott
James E. Elliott, Attorney-in-Charge
jelliott@ftc.gov
Texas Bar Number 06557100
Luis H. Gallegos
lgallegos@ftc.gov
Oklahoma Bar No. 19098
Ryan L. Nelson
rnelson1@ftc.gov
Texas State Bar No. 24037169
Federal Trade Commission
1999 Bryan Street, Suite 2150
Dallas, Texas 75201
(214) 979-9373 (Mr. Elliott)
(214) 979-9383 (Mr. Gallegos)
(214) 979-9362 (Mr. Nelson)
(214) 979-9350 (Office)
(214) 953-3079 (Facsimile)

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

CERTIFICATE OF SERVICE

I certify that Plaintiff Federal Trade Commission has sent a true and correct copy of the foregoing document by United States First Class Mail to the following:

Elias H. Taylor
Individually and as an officer of National Hometeam Solutions, LLC; Elant, LLC; and National Financial Solutions, LLC
1513 Kimberly Ct.
Wylie, Texas 75098
eliastaylor@hotmail.com

Everard Taylor
Individually and as an officer of Evalan Services, LLC and National Financial Assistance, LLC
1910 Arrow Star Ct.
Katy, Texas 77493
everard.taylor@gmail.com

Ebony Taylor
Individually and as Manager of Evalan Services, LLC
1910 Arrow Star Ct.
Katy, Texas 77493
ebonyntaylor@gmail.com

Emanuel Taylor
Individually and as an officer of United Financial Solutions, LLC
3920 Diamond Ridge Dr.
Keller, Texas 76248
etaylor772@aol.com

Edwin P. Taylor Sr.
Individually and as an officer of Nationwide Foreclosure Services, LLC
8912 Sumerdale Lane
Conroe, Texas 77302
evtaylor5@suddenlink.net

Dated: October 15, 2010
Dallas, Texas

/s/ Ryan L. Nelson
Ryan L. Nelson, Attorney for Plaintiff