UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. START CONNECTING LLC, d/b/a USA Student Debt Relief, a Florida limited liability company; START CONNECTING SAS, d/b/a USA Student Debt Relief, a Colombia corporation; DOUGLAS R. GOODMAN, individually and as an officer of START CONNECTING LLC; DORIS E. GALLON-GOODMAN, individually and as an officer of START CONNECTING LLC; and JUAN S. ROJAS, individually and as an officer of START CONNECTING LLC and START CONNECTING SAS, Defendants.	Case No. 8:24-cv-1626-KKM-AAS

PLAINTIFF'S RESPONSE TO THE GOODMAN DEFENDANTS' RULE 12(e) MOTION FOR A MORE DEFINITE STATEMENT

Plaintiff, the Federal Trade Commission ("FTC"), filed its Complaint, (Doc. 1), and the Court for good cause granted emergency injunctive relief,

(Doc. 13), to halt an unlawful student loan debt relief telemarketing enterprise doing business as "USA Student Debt Relief" that was operated by the five named Defendants, including Defendants Douglas R. Goodman and Doris E. Gallon-Goodman (the "Goodman Defendants"). Misunderstanding well-established principles of joint liability under the FTC Act, 15 U.S.C. §§ 41–58; *see, e.g.*, *FTC v. On Point Cap. Partners LLC*, 17 F.4th 1066, 1081–84 (11th Cir. 2021), the Goodman Defendants now move under Federal Rule of Civil Procedure 12(e) for the FTC to provide a more definite statement specifying the parts of the unlawful scheme for which they are individually responsible. *See* (Doc. 51).

As district courts in this Circuit have routinely held when considering similar Rule 12 motions involving FTC consumer protection complaints, individuals like the Goodman Defendants can be held liable for all of the unlawful conduct perpetrated by the common enterprise they managed, so the FTC's allegations about the overarching scheme appropriately combine such individuals with the common enterprise's corporate entities. *See, e.g.*, *FTC v. Student Aid Ctr., Inc.*, 281 F. Supp. 3d 1324, 1334–35 (S.D. Fla. 2016); *FTC v. Centro Nat. Corp.*, 2014 WL 7525697, at *7 (S.D. Fla. Dec. 10, 2014); *FTC v. IAB Mktg. Assocs., LP*, 2013 WL 11330607, at *1 (S.D. Fla. Nov. 8, 2013); *FTC v. Sterling Precious Metals, LLC*, 2013 WL 595713, at *4–5 (S.D. Fla. Feb. 15, 2013); *FTC v. Call Ctr. Express Corp.*, 2005 WL 8155861, at *1

(S.D. Fla. Jan. 5, 2005). Because the FTC's Complaint sufficiently alleges (1) that the corporate Defendants formed a common enterprise and (2) the individual Defendants had both knowledge of the enterprise's actions *and* authority to control them (the standard for individual liability in FTC cases), the Complaint is properly pled and the Rule 12(e) motion should be denied.

BACKGROUND

The Complaint alleges that, since 2019, Defendants—two corporate entities and three individual family members—operated a predatory student loan debt relief scheme doing business as USA Student Debt Relief. *See* (Doc. 1 at ¶¶ 2, 9–13). The Complaint describes in detail how, through deceptive online advertising and thousands of illegal telemarketing calls originating from a call center in Colombia, Defendants' scheme employed a series of false and misleading statements and other unlawful conduct to bilk struggling student loan borrowers out of millions of dollars. *See* (*id*. at ¶¶ 21–56). Important here, by asserting common enterprise *and* facts supporting individual liability, the Complaint alleges a sufficient basis to hold all five Defendants jointly and severally liable for the broad range of misconduct perpetrated by USA Student Debt Relief. *See* (*id*. at ¶¶ 9–14).

First, the Complaint asserts that the two corporate Defendants—Start Connecting LLC and Start Connecting SAS—form a "common enterprise." (*Id*. at ¶ 14). According to the Complaint, Start Connecting LLC was based in

Sarasota, Florida and managed "telephone numbers," "domain names," and "merchant processing accounts" associated with USA Student Debt Relief, while its "sister company" Start Connecting SAS operated the Colombian boiler room bombarding American consumers with USA Student Debt Relief's telemarketing calls. (*Id*. at ¶¶ 9–11, 13). Because the two companies are alleged to have "common ownership, officers, and business functions" and "commingled funds," they form a "common enterprise" where each entity is jointly "liable for the acts and practices" alleged in the Complaint. (*Id*. at ¶ 14).

Second, the Complaint alleges facts sufficient to find that all three individual Defendants meet the standard for individual liability for FTC Act violations. Under that standard, individuals are liable for corporate wrongdoing under the FTC Act where they participated directly in the underlying practices *or* had authority to control them, and also had some knowledge that they were occurring. The allegations here establish that the Goodman Defendants had the requisite authority to control and knowledge of USA Student Debt Relief's practices.

Specifically, the Complaint alleges that all individual Defendants "formulated, directed, controlled, had the authority to control, or participated in the acts and practices of" both corporate Defendants that formed the common enterprise, and also provides details about the individual

Defendants' roles. (Doc. 1 at ¶¶ 11–13). For example, it alleges that all three individual Defendants were members and officers of Defendant Start Connecting LLC, while Defendant Juan S. Rojas also served as the principal of Start Connecting LLC's "sister company," Defendant Start Connecting SAS. *See* (*id.*) The Complaint also includes examples of the individual Defendants exercising their authority over the corporate Defendants: Defendant Goodman was a signatory on Defendant Start Connecting LLC's financial and business accounts, regularly wired money to the enterprise's Colombian operation, and handled the enterprise's interactions with the Better Business Bureau and state regulators; his wife, Defendant Gallon-Goodman, was a signatory on a merchant processor account and identified as owning a significant portion of Defendant Start Connecting LLC; and her son, Defendant Rojas, managed the enterprise's Colombian call center and helped handle relationships with payment processors and the Better Business Bureau. *See* (*id.*) As discussed further *infra* in Section 2, the allegations about each individual Defendant's managerial role are sufficient at this stage to treat them as jointly liable for the enterprise's misconduct.

Because each Defendant is alleged to be liable for the common enterprise's actions, the Complaint's description of the scheme permissibly treats all Defendants as jointly responsible for the entire range of misconduct. The Complaint asserts nine counts against all five Defendants:

Three counts allege unfair or deceptive conduct under Section 5 of the FTC Act, 15 U.S.C. § 45, and the remaining six counts allege conduct prohibited by the Telemarketing Sales Rule, 16 C.F.R. pt. 310, and the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821, which are both enforceable under Section 19 of the FTC Act, *id*. § 57b. *See* (Doc. 1 at ¶¶ 63–71, 84–93, 99–102). Based on the FTC's emergency *ex parte* motion for a Temporary Restraining Order ("TRO"), which included arguments and evidence in support of the Complaint's common enterprise and individual liability theories, *see* (Doc. 3 at 16–17 (common enterprise), 21–22 (individual liability)), the Court issued a TRO, finding there is good cause to believe that Defendants have engaged in the violations alleged in the Complaint and that the FTC is likely to prevail on the merits of the case, *see* (Doc. 13 at 2–4).

LEGAL STANDARD

Under Rule 12(e), defendants "may move for a more definite statement" if the complaint "is so vague or ambiguous that [they] cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). "Motions for more definite statement are disfavored in light of the liberal pleading requirements" established by the Federal Rules. *Sterling Precious Metals*, 2013 WL 595713, at *2 (internal quotation marks omitted). Although Rule 12(e) may be used to address a "shotgun pleading" that violates Rules 8(a)(2) or 10(b), the motion

must identify an actual Rule violation. *Weiland v. Palm Beach Cty. Sheriff's Off.*, 792 F.3d 1313, 1320, 1321 n.10 (11th Cir. 2015).

In this case, the FTC's Complaint exceeds the Rules' notice-pleading requirements and thus easily withstands scrutiny under Rule 12(e).

ARGUMENT

The Goodman Defendants' contention that a more definite statement is required because the FTC's Complaint impermissibly lumps all Defendants together rests on a misapprehension of two basic principles of joint liability under the FTC Act. First, the law is clear that collective pleading is permissible in cases involving allegations of a common enterprise between entwined corporate entities. Here, the FTC's Complaint properly alleges that Defendants' student loan debt relief scheme operated as a common enterprise, which makes the two corporate Defendants jointly liable for one another's misconduct. Second, the law is clear that individuals may be held liable for the actions of a common enterprise under the FTC Act. The FTC's Complaint alleges that the three individual Defendants are individually liable for all nine counts because they were owners and principals of the enterprise, had authority to control it, and participated in and had knowledge of its practices. Read together, these two principles render the FTC's Complaint more than sufficient to provide the Goodman Defendants with notice of their potential liability for the violations detailed in the Complaint.

1. Collective Pleading Is Permissible and Appropriate in Cases Involving Allegations of Common Enterprise

Cases involving allegations of common enterprise constitute an exception to the general rule against pleadings that "assert[] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions." *Weiland*, 792 F.3d at 1323. The doctrine of common enterprise holds "that a corporate entity can be responsible for the actions of other corporations in a business venture when the structure, organization, and pattern of a business venture reveals a common enterprise or a maze of integrated business entities." *On Point*, 17 F.4th at 1081 (internal quotation marks omitted). Unlike complaints pleading more traditional theories of liability, "complaints alleging the liability of a common enterprise need not allege that each defendant committed a particular unlawful act." *CFPB v. Ocwen Fin. Corp.*, 2019 WL 13203852, at *8 (S.D. Fla. Sept. 30, 2019) (internal quotation marks omitted). So long as the complaint "plausibly alleges common enterprise liability, . . . it is not necessary to replead to differentiate the Defendants." *Id.* at *10.

Here, the Goodman Defendants do not contend that the FTC failed to sufficiently plead a common enterprise (nor would a Rule 12(e) motion be an appropriate vehicle for doing so). Instead, they argue that they cannot be subject to liability under a common-enterprise theory because they were not

specifically included in the list of defendants that the FTC alleges comprised the common enterprise. *See* (Doc. 51 at 9 (noting the Complaint "alleges that only Start Connecting LLC and Start Connecting SAS 'operated as a common enterprise'") (quoting Doc. 1 at ¶ 14)). This argument misapprehends the doctrine, which concerns when it is appropriate to "disregard[] corporateness." *FTC v. Wash. Data Res.*, 856 F. Supp. 2d 1247, 1271 (M.D. Fla. 2012), *aff'd*, 704 F.3d 1323 (11th Cir. 2013). A common enterprise by definition includes only corporate entities, *see, e.g.*, *On Point*, 17 F.4th at 1081, but individuals can—and here, *should*—be held liable for the actions of that enterprise pursuant to the standard governing individual liability under the FTC Act.

2. As Controlling Principals of the Common Enterprise, the Goodman Defendants Are Individually Liable for the Acts of the Enterprise

The Goodman Defendants complain that the FTC's Complaint "fails to delineate specific acts conducted by any individual defendant," and therefore does not provide them with adequate notice "as to which actions they are alleged to have committed on an individual basis." (Doc. 51 at 8–9). But individual liability for a corporate entity's FTC Act violations does not require that the individuals themselves directly perpetrated the specific acts or omissions giving rise to the violations. Instead, as already noted above, individuals are liable for a corporate entity's FTC Act violations if they (1)

"participated directly in the practices or acts or had authority to control them," and (2) "had some knowledge of the practices."[1] *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 470 (11th Cir 1996) (internal quotation marks omitted).

The FTC's Complaint sufficiently pleads that the Goodman Defendants are individually liable under this standard. The Complaint alleges that both Goodman Defendants had authority to control the enterprise's practices because both are members and officers of the three-member LLC that constituted half of the common enterprise. *See* (Doc. 1 at ¶¶ 11–12). "[S]tatus as a corporate officer gives rise to a presumption of ability to control a small, closely-held corporation." *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1270 (S.D. Fla. 2007) (internal quotation marks omitted). Moreover, as discussed above, the Complaint pleads that this was a family business; the Colombian half of the common enterprise was run not by a distant business associate, but by the Goodman Defendants' immediate family member and fellow LLC member, Defendant Rojas. *See* (Doc. 1 at ¶¶ 11–13). Finally, the Complaint pleads that the individual Defendants had knowledge of their enterprise's unlawful practices. *See, e.g.*, (*id.* at ¶¶ 57–58). They are therefore liable for all the actions alleged in the Complaint regardless of whether they

[1] The "knowledge" element can be satisfied "if an individual (1) had actual knowledge of material misrepresentations or other unlawful conduct, (2) was recklessly indifferent to the truth or falsity of such misrepresentations, or (3) had an awareness of a high probability of fraud and intentionally avoided knowing the truth." *FTC v. Simple Health Plans LLC*, 2024 WL 473995, at *12 (S.D. Fla. Feb. 7, 2024) (quotation marks and alterations omitted).

directly participated in each and every one. *See Gem Merch.*, 87 F.3d at 470 (to establish individual liability, the FTC may show an individual defendant's direct participation in *or* authority to control unlawful acts); *see also On Point*, 17 F.4th at 1084 (an individual FTC defendant need not manage a company's "day-to-day affairs" to face liability for its actions).

Further demonstrating their misapprehension of the FTC Act's standard for individual liability, the Goodman Defendants argue that the Complaint improperly fails to specify their involvement in various actions taken by the common enterprise they controlled. (Doc. 51 at 4–5, 8–9). In support, they highlight as examples three actions the Complaint alleges were performed by "Defendants"—telemarketing from the Colombian call center, posting fake testimonials to USA Student Debt Relief's social media pages, and settling state enforcement cases—without detailing the Goodman Defendants' involvement. But there is nothing improper or unusual about particular actions in a concerted scheme being ascribed to all Defendants. *See, e.g.*, *Norris v. Honeywell Int'l, Inc.*, 2023 WL 6256183, at *4 (M.D. Fla. Sept. 26, 2023) ("Complaints that attribute the same actions to multiple defendants whom it alleges operate jointly have been found to provide fair notice to defendants for shotgun pleading purposes.") (collecting cases); *cf. Kyle K. v. Chapman*, 208 F.3d 940, 944 (11th Cir. 2000) ("The fact that defendants are accused collectively does not render the complaint deficient.

The complaint can be fairly read to aver that all defendants are responsible for the alleged conduct."). Nor does the FTC need to allege that the Goodman Defendants were onsite in the Colombian boiler room, personally posting fake testimonials, or collectively negotiating settlements in order to hold them responsible for those acts. *See, e.g.*, *FTC v. IAB Mktg. Assocs., LP*, 746 F.3d 1228, 1233 (11th Cir. 2014) (individual FTC defendants could be liable for actions by telemarketers directly supervised by other defendants); *FTC v. Lanier Law, LLC*, 715 F. App'x 970, 980 (11th Cir. 2017) (affirming a Florida lawyer's individual liability under the FTC Act for the conduct of D.C. firms in the common enterprise). Pleading that all Defendants are responsible for actions taken in furtherance of the common enterprise is typical of complaints alleging joint liability for concerted action and does not make the FTC's Complaint into a shotgun pleading or prevent the Goodman Defendants from preparing a response.

At bottom, the Complaint provides the individual Defendants with adequate notice that they are liable for all of the misconduct alleged because (1) the misconduct was perpetrated by the common enterprise, and (2) the individual Defendants had both authority to control that enterprise and knowledge of its practices.[2] Accordingly, this Court should reject the

[2] Even if common enterprise and individual liability did not apply to the FTC's Complaint, the general rule in the Eleventh Circuit for multi-defendant pleadings is that "the

Goodman Defendants' charge of impermissible shotgun pleading, as other courts in this Circuit have routinely done in similar FTC cases. *See, e.g.*, *Student Aid Ctr.*, 281 F. Supp. 3d at 1335 (rejecting shotgun pleading argument where the allegations "all concern one overarching scheme regarding the defendants' student loan operation" perpetrated by "a corporation and two of its officers who had the authority to control the activities of the corporation"); *Centro Nat.*, 2014 WL 7525697, at *7 (holding that the FTC's complaint did not need to specify each defendant's contributions because "the alleged scheme's operation through a web of interconnected companies and individuals is peculiarly within [d]efendants' knowledge"); *id*. ("The FTC's failure to separately allege the precise activities of the eleven defendants [in *IAB Marketing*, 2013 WL 11330607,] did not compel dismissal under Rule 9(b) or a more definite statement under Rule 12(e)."); *Sterling Precious Metals*, 2013 WL 595713, at *4 (denying an individual defendant's motion for a more definite statement about his conduct because the FTC properly alleged he was liable for corporate practices); *Call Ctr. Express*, 2005 WL 8155861, at *1 ("Since the Complaint alleges concerted

allegations can be and usually are to be read in such a way that each defendant is having the allegation made about him individually." *FTC v. Hornbeam Special Situations, LLC*, 308 F. Supp. 3d 1280, 1288 (N.D. Ga. 2018) (quoting *Crowe v. Coleman*, 113 F.3d 1536, 1539 (11th Cir. 1997)).

behavior, it need not delineate the specific acts committed by specific Defendants. Defendants can learn additional facts through discovery.").

CONCLUSION

For the foregoing reasons, the Goodman Defendants' Rule 12(e) motion should be denied.[3] The Goodman Defendants—and all other Defendants—should be required to promptly answer the FTC's Complaint.

Respectfully submitted,

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[3] If the Court were to grant relief under Rule 12(e), the relief requested in the Goodman Defendants' motion is improper. A successful Rule 12(e) motion results in a court "order[ing] a more definite statement," not immediately proceeding to "strike the pleading," Fed. R. Civ. P. 12(e), as the Goodman Defendants' motion repeatedly requests, *see* (Doc. 51 at 1–2, 5–6, 11); *cf. Barmapov v. Amuial*, 986 F.3d 1321, 1329–30 (11th Cir. 2021) (Tjoflat, J., concurring) (contrasting relief under Rule 12(e) with a dismissal without prejudice).