

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

CONSUMER FINANCIAL
PROTECTION BUREAU,

Plaintiff,

v.

UNIVERSAL DEBT & PAYMENT
SOLUTIONS, LLC, *et al.*,

Defendants.

Civil Action No.
1:15-cv-00859-RWS

**EXPEDITED TREATMENT
REQUESTED**

**PLAINTIFF'S EMERGENCY MOTION FOR AN ORDER DIRECTING
THAT MARCUS BROWN AND SARITA BROWN APPEAR
AND SHOW CAUSE WHY THEY SHOULD NOT
BE HELD IN CONTEMPT AND FOR SANCTIONS**

PLEASE TAKE NOTICE that Plaintiff, the Consumer Financial Protection Bureau ("Bureau"), hereby moves for an order for Marcus Brown and Sarita Brown to appear and show cause why they should not be held in contempt for violating the Court's October 20, 2021 Order Granting Plaintiff's Motion for Permanent Injunction, Consumer Redress, and Civil Money Penalties against Marcus Brown, Sarita Brown, and WNY Account Solutions, LLC and Entering Final Judgment Against Them (ECF No. 717). The Bureau further requests that the Court find them in contempt and grant the

relief requested herein. Plaintiff avers that good cause exists for expedited treatment under Local Rule 7(B), as set forth in detail in the attached brief in support of this Motion.

Dated: January 27, 2022

Respectfully Submitted,

Attorneys for Plaintiff
Consumer Financial Protection Bureau:

ERIC HALPERIN
Enforcement Director

DAVID RUBENSTEIN
Deputy Enforcement Director

THOMAS KIM
Assistant Deputy Enforcement Director

/s/ Mary K. Warren

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CERTIFICATE OF COMPLIANCE

The undersigned attorney hereby certifies, pursuant to LR 7.1.D, that the foregoing document was prepared in Century Schoolbook 13 point font.

/s/ Mary K. Warren

Dated: January 27, 2022

Mary K. Warren
Senior Litigation Counsel

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on this day a true and correct copy of the foregoing document was filed with the clerk of court using the CM/ECF system, which will automatically send email notification of the filing to all attorneys of record, and was mailed by United Parcel Service to the following defendants that do not have access to the CM/ECF system:

Marcus Brown
142 Stratford Road
Buffalo, NY 14202

Alan Hoffman, Esq.
460 Franklin Street
Buffalo, NY 14216

Sarita Brown
574 W. Utica Street
Buffalo, NY 14213

/s/ Mary K. Warren

Dated: January 27, 2022

Mary K. Warren
Senior Litigation Counsel

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CONSUMER FINANCIAL
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1:15-cv-00859-RWS

**EXPEDITED TREATMENT
REQUESTED**

**PLAINTIFF’S BRIEF IN SUPPORT OF ITS EMERGENCY MOTION
FOR AN ORDER DIRECTING THAT MARCUS BROWN AND SARITA
BROWN APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT
BE HELD IN CONTEMPT AND FOR SANCTIONS**

Pursuant to Paragraph 99 of the Court’s October 20, 2021 Order Granting Plaintiff’s Motion for Permanent Injunction, Consumer Redress, and Civil Money Penalties against Marcus Brown, Sarita Brown, and WNY Account Solutions, LLC and Entering Final Judgment Against Them (ECF No. 717, “Permanent Injunction Order” or “Order”), Plaintiff, the Consumer Financial Protection Bureau (“Bureau”), moves for an order to show cause why Defendants Marcus Brown and Sarita Brown should not be held in contempt for violating the Permanent Injunction Order.

Pursuant to Local Rule 7.2(B), the Bureau requests expedited treatment because more than 90 days have passed since entry of the Order without any reporting from these Defendants to the Bureau as required by the Order. The Court found that “[a]bsent a permanent injunction, there is a reasonable likelihood that the Non-Defaulted Defendants will continue to engage in the unlawful conduct alleged in the Complaint or similar misconduct.” Permanent Injunction Order ¶ 24. As described below, Marcus and Sarita Brown’s noncompliance with certain reporting and acknowledgment requirements in the Order substantially impedes the Bureau’s ability to monitor their financial and business activities to reduce the likelihood that they will continue to victimize consumers through fraudulent schemes of the sort that gave rise to this enforcement action. Therefore, immediate action is needed to compel compliance with the Order.

I. PRELIMINARY STATEMENT AND REQUEST FOR RELIEF

Defendants Marcus Brown and Sarita Brown are in violation of the Permanent Injunction Order because they have failed to comply with all of its reporting obligations. Specifically, Marcus Brown and Sarita Brown have:

- failed to submit to the Bureau the information required by Paragraph 76;
- failed to submit to the Bureau the written Compliance Report required by Paragraph 78;

- failed to submit to the Bureau a sworn acknowledgement of receipt of the Order, per Paragraph 79;
- failed to comply with the obligation to provide information or produce documents under Paragraph 88; and
- failed to make any of the payments required by Sections VIII and IX of the Permanent Injunction Order, which impose restitution and civil money penalties.

The Bureau will address the failure to make payment by means of judgment enforcement pursuant to the Federal Debt Collection Procedures Act, but the Bureau asks the Court to enforce compliance with the other obligations imposed by the Permanent Injunction Order. The disregard of Marcus Brown and Sarita Brown for orders of the Court has been a recurring theme of this case. Allowing them to continue to flout the Permanent Injunction Order not only threatens to make a mockery of that Order, but would permit these two Defendants to escape the compliance monitoring by the Bureau that is critical to reducing the likelihood that they will commit new frauds on consumers.

Accordingly, the Bureau moves this Court for an order to show cause why Marcus Brown and Sarita Brown should not be held in contempt. Pursuant to the Permanent Injunction Order and the Court's inherent authority to enforce its orders, the Bureau seeks an order holding Marcus

Brown and Sarita Brown in contempt and requiring them, within seven days of any order granting this Motion:

- to comply with Paragraphs 76, 78, and 79 of the Permanent Injunction Order;
- to submit updated financial disclosure statements to the Bureau in accordance with the Bureau's December 9, 2021 request under Paragraph 88 of the Permanent Injunction Order; and
- to file a certification with the Court, within 10 days of any order granting this Motion, attesting that they have complied with Paragraphs 76, 78, and 79 of the Permanent Injunction Order and submitted updated financial disclosure statements to the Bureau.

Given these Defendants' history of contempt, the Bureau asks that the sanction for any continued non-compliance be arrest and incarceration.

II. RELEVANT PROCEDURAL HISTORY

On March 26, 2015, the Bureau filed a complaint alleging that Defendants were engaged in a scheme to defraud consumers by using threats, intimidation, and harassment to collect "phantom" debts that were not owed to the collectors, in violation of the Consumer Financial Protection Act of 2010 ("CFPA") and the Fair Debt Collection Practices Act ("FDCPA"). The same day, the Court entered an *Ex Parte* Temporary Restraining Order with Asset Freeze and Other Equitable Relief (ECF No. 5, "TRO"), which froze the assets of the Debt Collectors — the Individual Defendants and the Debt Collector LLCs — as defined in the TRO. On April 7, 2015, the Court entered

the Preliminary Injunction with Asset Freeze, Expedited Discovery, and Other Equitable Relief (ECF No. 16, “Preliminary Injunction”), which extended the asset freeze implemented under the TRO pending resolution of the case on the merits. Preliminary Injunction 10-11.

On March 21, 2019, in ruling on the Bureau’s motion for summary judgment against Marcus Brown, Sarita Brown, and certain other Defendants, the Court found for the Bureau on nearly all of its claims against those Defendants. ECF No. 576, Mar. 21, 2019 Order (“Summary Judgment Order”). Among other things, the Court found that Marcus Brown violated both the FDCPA and the CFPA in orchestrating and managing a phantom debt collection scheme that took more than \$5 million from consumers, and that Sarita Brown substantially assisted him and certain other Defendants involved in the scheme. *Id.* at 5-7, 9-11, 27-30.

On November 20, 2019, the Court held a scheduling conference in this case which all parties were required to attend in person. ECF No. 592, Oct. 2, 2019 Order; ECF No. 608, Nov. 20, 2019 Hr’g Tr. Sarita Brown did not attend the conference. ECF No. 608, at 1.

During the course of the litigation, the Bureau discovered that Marcus Brown and Sarita Brown had violated the Preliminary Injunction over several years by transferring assets subject to the Preliminary Injunction and

concealing properties that they owned from the Bureau and the Court. When the Bureau attempted to seek discovery from them about these assets, Marcus Brown and Sarita Brown failed to show up for their noticed depositions and refused to produce documents. Upon motions by the Bureau, the Court held both Defendants in contempt. ECF No. 624, Feb. 19, 2020 Order on Pending Motions (“Contempt and Receivership Order”) 12-16. In its discussion of sanctions and the discovery that these Defendants failed to provide, the Court noted their recidivism:

Because they have failed to respond in the past, Marcus Brown and Sarita Brown’s compliance with the document requests will be required upon pain of incarceration. If they fail to meet their deadline to produce the documents, upon notice by the CFPB, the Court will issue a warrant for their arrest. They would then remain incarcerated until they comply with the discovery requests.

Contempt and Receivership Order 22-23.

On February 19, 2020, the Court appointed a Receiver in this case to conserve assets subject to the Preliminary Injunction for the benefit of consumers victimized by the Defendants, among other things. Contempt and Receivership Order 16-18. Marcus Brown promptly violated that order, too. The Receiver was forced to move to compel Marcus Brown’s compliance with the Court’s Contempt and Receivership Order due to Mr. Brown’s failure to

turn over rents subject to the Preliminary Injunction and otherwise to cooperate with the Receiver. ECF No. 660, Receiver's Emergency Motion for an Order Directing Marcus Brown to Appear and Show Cause Why He Should Not Be Subject to More Severe Contempt Sanctions; ECF No. 661, Aug. 11, 2020 Order; ECF No. 666, Aug. 19, 2020 Order. During the hearing on the Court's order to show cause, the Court cautioned Marcus Brown as follows:

I will order, Mr. Brown, that you cooperate, that you provide all documents requested by the receiver. I've already ordered that. And so my practice is that I will not hold someone in contempt such that I require their incarceration until I've warned them twice. I've now warned you twice. So at this point let's get it done.

ECF No. 670, Aug. 19, 2020 Hr'g Tr., at 14-15.

On October 20, 2021, on motions filed by the Bureau, the Court entered final orders and a final judgment against the remaining Defendants, including Marcus Brown and Sarita Brown. ECF Nos. 717-19. On October 21, 2021, the Bureau served, by email and by UPS, Alan Hoffman, Esq. (counsel to Marcus Brown), Marcus Brown, and Sarita Brown with the Permanent Injunction Order and the Judgment (ECF Nos. 717 and 719). The UPS mailing to Sarita Brown could not be completed, as she was found not to reside at the address used. The Bureau conducted an investigation, found

another address for her, and served her by UPS at that address.

After several weeks had elapsed after the entry of the Permanent Injunction Order, and having received no compliance from these Defendants as to the initial obligations under the Order, the Bureau contacted Marcus Brown, through his counsel, Mr. Hoffman, and Sarita Brown, to remind them of the Defendants' obligations under the Permanent Injunction Order.

Bureau counsel sent emails to each of them. No response was received.

On December 13, 2021, the Bureau sent a letter by email and U.S. mail to Marcus Brown, Mr. Hoffman, and Sarita Brown which set forth the specific provisions and requirements of the Permanent Injunction Order that the Defendants were delinquent in fulfilling and sought compliance. In the letter, the Bureau also requested, pursuant to Paragraph 88 of the Order, that the Defendants submit updated financial disclosure statements to the Bureau within 14 days of the date of the request. The letter enclosed the relevant forms for the financial disclosure statements. In addition, the Bureau contacted Mr. Hoffman again on December 15, 2021, asking whether he was still representing Marcus Brown. Mr. Hoffman responded on December 22, 2021, requesting an extension until January 17, 2022 for Mr. Brown to comply with the Order and the Bureau's request for financial disclosure statements. The Bureau agreed to the extension. Marcus Brown

did not comply with the Order by the extended deadline, nor have either Marcus Brown or Sarita Brown complied as of the date of this filing.

The Order requires additional compliance and reporting from the Defendants 90 days after entry of the Order. As the Order was entered on October 20, 2021, the deadline for the 90-day requirements was January 18, 2022. Neither Marcus Brown nor Sarita Brown has complied.

III. LEGAL ARGUMENT

“Courts have inherent power to enforce compliance with their lawful orders through civil contempt.” *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991). To establish a defendant’s liability for civil contempt, the plaintiff must show, by clear and convincing evidence, that a valid court order exists, that the order was clear and unambiguous, and that the alleged violator had the ability to comply with the order. *F.T.C. v. Leshin*, 618 F.3d 1221, 1212 (11th Cir. 2010); *Commodity Futures Trading Comm’n v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1529 (11th Cir. 1992) (same).

After this prima facie showing is made, “the burden of production shifts to the alleged contemnor to show a present inability to comply that goes beyond a mere assertion of inability.” *Howard Johnson Co., Inc. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990) (internal quotations omitted). “Parties

subject to a court's order demonstrate an inability to comply only by showing that they have made 'in good faith all reasonable efforts to comply.'"

Citronelle-Mobile, 943 F.2d at 1301 (quoting *United States v. Ryan*, 402 U.S. 530, 534 (1971)). The court's focus in this inquiry "is not on the subjective beliefs or intent of the alleged contemnors in complying with the order, but whether in fact their conduct complied with the order at issue." *Howard Johnson*, 892 F.2d at 1516.

If, and only if, the alleged contemnor makes a sufficient evidentiary showing, then the burden shifts back to the party seeking contempt to prove the ability to comply. *Wellington Precious Metals*, 950 F.2d at 1529.

A. The Permanent Injunction Order Is a Valid Court Order

The Permanent Injunction Order entered by the Court fully satisfied the requirements of Rules 54 and 65 and has not been stayed or appealed. In the Order, the Court detailed the acts and practices of Marcus Brown and Sarita Brown that violated the CFPA and the FDCPA. Permanent Injunction Order ¶¶ 10, 12-21. The Court further found that there was reason to believe that absent a permanent injunction, these two Defendants would continue to violate the law as alleged in the Complaint. *Id.* ¶ 24. The Court further

found that the entry of the Permanent Injunction Order was in the public interest. *Id.* ¶ 11.¹ Thus, the Order is factually supported, lawful, and valid.

B. The Permanent Injunction Order Is Clear and Unambiguous

The Permanent Injunction Order makes very clear what conduct is prohibited and what conduct is required of Marcus Brown and Sarita Brown. In particular, the Compliance Provisions section of the Order (Section XII) contains clear and simple reporting and acknowledgment requirements. Particularly as these Defendants have previously submitted financial disclosures to the Bureau as required by a previous order of this Court, it is highly unlikely that they did not understand what these provisions required them to do.

C. Marcus Brown and Sarita Brown Had the Ability to Comply with the Permanent Injunction Order

Compliance with the Permanent Injunction Order's compliance-related reporting and acknowledgment requirements required relatively little of Marcus Brown and Sarita Brown. First, they required those Defendants, within 7 days of October 20, 2021, to do the following:

- a. Identify each Non-Defaulted Individual Defendant's telephone numbers and all email,

¹ In addition, the Court made detailed findings as to the judgment amount and civil money penalties imposed on Marcus Brown and Sarita Brown. *Id.* ¶¶ 25-26, 56-58, 62-63.

Internet, physical, and postal addresses, including all residences;

- b. Designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with each;
- c. Identify all businesses for which each Non-Defaulted Individual Defendant is the majority owner, or that each Non-Defaulted Individual Defendant directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; and
- d. Describe in detail each Non-Defaulted Individual Defendant's involvement in any business for which he performs services in any capacity or which he wholly or partially owns, including each Non-Defaulted Individual Defendant's title, role, responsibilities, participation, authority, control, and ownership.

Permanent Injunction Order ¶ 76. This information was readily available to these Defendants and could have easily been supplied within the time period specified, or any time before this filing. Nor did the Order leave the Defendants in any doubt as to how the information should be submitted; its “Notices” section provides the mailing and email addresses at the Bureau to which all information and notices required by the Order should be sent.

Permanent Injunction Order ¶ 85.

The Order's acknowledgement requirement is even simpler: the Defendants must, within 7 days of October 20, 2021, "submit to the Enforcement Director an acknowledgment of receipt of this Order, sworn under penalty of perjury." Permanent Injunction Order ¶ 79.

Paragraph 78 of the Permanent Injunction Order requires certain reporting that Defendants must provide 90 days after the Effective Date of the Order, in other words, on or before January 18, 2022. Again, the requirements are clear and straightforward. There is no reason the Defendants could not have complied with the Order.

Finally, the Bureau's request that Marcus Brown and Sarita Brown provide updated financial disclosure statements to the Bureau was properly made under Paragraph 88 of the Permanent Injunction Order. That paragraph states: "Within 14 days of receiving a written request from the Bureau, each Non-Defaulted Defendant must submit additional Compliance Reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents." The Bureau made the request in a December 13, 2021 letter sent to the Defendants and to Mr. Hoffman, which letter also provided the email address at the Bureau to which the statements should be sent (the same email address as stated in the Permanent Injunction Order). Again, Marcus Brown and Sarita Brown

needed only to consult their own financial records to provide the information required by the financial disclosure statements. Indeed, each of them have previously completed and returned financial disclosure statements to the Bureau when required to do so by the Preliminary Injunction.

D. Marcus Brown and Sarita Brown Must Be Compelled to Comply with the Permanent Injunction Order on Pain of Incarceration

Marcus Brown and Sarita Brown have provided no cause for comfort that they will respect rulings of the Court or that they will comply with the law unless the Permanent Injunction Order is enforced. These Defendants have spent much of this years-long litigation in active contempt of the Court. This cannot continue.

The Court has found Marcus Brown to be the “ringleader” of the phantom debt collection scheme that resulted in the Permanent Injunction Order and Judgment. Summ. J. Order 27. The Court has found that Marcus Brown stole from consumers and used their payments to purchase real properties, among other things. *Id.* at 11, 27-28. The Court has found that Marcus Brown has persistently hidden assets from the Bureau, and used assets subject to the Preliminary Injunction for his benefit. Contempt and Receivership Order 13-14; Summ. J. Order 4, 11. The Court has also found that Marcus Brown violated the Contempt and Receivership Order by, among

other things, failing to turn over rents to the Receiver and failing to provide the Receiver with information about Receivership Assets. ECF No. 661, Aug. 11, 2020 Order; ECF No. 666, Aug. 19, 2020 Order. And now, rather than complying with the simple compliance and monitoring requirements of the Permanent Injunction Order, Marcus Brown has chosen to ignore them. It is vital that the Bureau be able to monitor the employment, financial status and business activities of Mr. Brown, as set forth in the Permanent Injunction Order, to reduce the likelihood that he will persist in engaging in fraudulent activities that harm consumers.

The Court has found that Sarita Brown substantially assisted her brother and other Defendants involved in the phantom debt collection scheme. Summ. J. Order 29-30. The Court has found that Sarita Brown participated in hiding assets from the Bureau and violating the Preliminary Injunction. Contempt and Receivership Order 13-14. In addition to her contempt, Sarita Brown has shown a persistent disregard for the most basic requirements of parties to litigation. Most notably, she failed, without any excuse, to attend the Court's mandatory status conference held on November 20, 2019. ECF No. 608, Nov. 20, 2019 Hr'g Tr., at 1. For a period of years in this case, she has failed to update her mailing address with the Court, resulting in repeated returned mail to the Clerk of Court and necessitating

that the Bureau expend investigative resources to find her in order to serve her with papers. *See* LR 41.2(B). This has remained the case even after the Court instructed, “You are *pro se* litigants and you’ve got a duty to make sure the clerk has the correct mailing address for you.” Nov. 20, 2019 Hr’g Tr. at 23. Now, like Mr. Brown, Sarita Brown has completely flouted the compliance and monitoring requirements of the Permanent Injunction Order. It is therefore important that the Bureau be able to monitor her employment, financial status and business activities as set forth in the Permanent Injunction Order to reduce the likelihood that she will continue to evade accountability and to assist her brother in future fraudulent schemes.

The Court should order that Marcus Brown and Sarita Brown immediately comply with Paragraphs 76, 78, and 79 and provide the Financial Disclosure Statements that the Bureau requested under Paragraph 88 of the Permanent Injunction Order. If Marcus Brown and Sarita Brown do not comply, the Court should issue a warrant for their arrest.

IV. CONCLUSION

For the reasons stated above, the Bureau requests that the Court issue an order to show cause why Defendants Marcus Brown and Sarita Brown should not be held in contempt. The Bureau further requests that the Court

find them in contempt and grant the relief requested herein.

Dated: January 27, 2022

Respectfully Submitted,

Attorneys for Plaintiff
Consumer Financial Protection Bureau:

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Enforcement Director

DAVID RUBENSTEIN
Deputy Enforcement Director

THOMAS KIM
Assistant Deputy Enforcement Director

/s/ Mary K. Warren

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/s/ Mary K. Warren

Dated: January 27, 2022

Mary K. Warren
Senior Litigation Counsel

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[PROPOSED] ORDER

This case comes before the Court on Plaintiff's Emergency Motion for an Order to Show Cause and for Sanctions [Dkt. ____]. The Court has reviewed the record, and the Motion is **GRANTED**.

Marcus Brown and Sarita Brown are hereby **ORDERED** to appear by telephone or videoconference for a **HEARING to SHOW CAUSE**, if any they can, why they should not be sanctioned for contempt for failing to comply with this Court's permanent injunction order [Dkt. 717]. Such sanctions may include incarceration to compel compliance.

The hearing is set down for _____, at __:00 **ET** and will be conducted via **ZOOM**. The Clerk will provide the login information for the hearing to the parties and counsel.

SO ORDERED this ____ day of _____, 2022.

The Honorable Richard W. Story
United States District Judge