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11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14
15 FEDERAL TRADE COMMISSION,
16 Plaintiff,

17 v.

18 GOOD EBUSINESS, LLC, also d/b/a
AAP Firm, Student Loan Help Direct,
19 Select Student Loan; SELECT
STUDENT LOAN HELP, LLC;
20 SELECT DOCUMENT
PREPARATION, INC.; TOBIAS
21 WEST aka Tobey West, Toby West,
and Eric West; and KOMAL WEST,

22 Defendants.
23

Case No. LACV16-01048 ODW (JPRx)

**PRELIMINARY REPORT OF
TEMPORARY RECEIVER;
NOTICE OF WITHDRAWAL**

JUDGE: Hon. Otis D. Wright II
CTRM: 11

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1 **PRELIMINARY REPORT OF TEMPORARY RECEIVER**

2 **I.**

3 **INTRODUCTION**

4 On February 16, 2016, this Court entered a Temporary Restraining Order
5 (“TRO”) appointing me as Temporary Receiver for Receivership Defendants.¹ I
6 respectfully submit this Preliminary Report to advise the Court of my initial
7 actions and preliminary observations.

8 As detailed below, on February 19, 2016, we took control of the
9 Receivership Defendants, collected their assets and documents, and implemented
10 the terms of the TRO. It was readily apparent shortly after entering the business
11 premises that the Defendants were currently engaged in business practices
12 prohibited by federal law and the TRO (deceptive marketing and the collection of
13 advance fees in connection with student loan modification, among other activities).
14 I therefore ceased the businesses’ operations as directed by the TRO and have
15 taken steps to protect consumers from future harm by taking control of the business
16 location and records.

17 Obtaining control of the business operations and taking steps to protect
18 against further harm to consumers was a fairly simple matter. If the Court enters a
19 Preliminary Injunction, I will be able to take appropriate steps to protect all
20 sensitive consumer information by either storing the materials as directed by the
21 Court or turning them over to the FTC. There are minimal physical assets at the
22 business location and any liquidation of them will be a break even proposition at
23 best.

24 The active business we found onsite was limited, with just five employees,
25 and there are nominal funds in bank accounts. The funds available to the
26

27 ¹ Good EBusiness, LLC, also d/b/a AAP Firm, Student Loan Help Direct,
28 Select Student Loan; Select Student Loan Help, LLC; and Select Document
Preparation, Inc.

1 receivership are not adequate to finance a go-forward receivership or perhaps even
2 cover out-of-pocket expenses incurred by the receivership to date. Therefore, as
3 permitted by the TRO, and consistent with any requirements in a preliminary
4 injunction the Court may issue, I intend to withdraw as Receiver seven days after
5 the hearing on the Preliminary Injunction. (*See* TRO Section XXII).

6 **II.**

7 **RECEIVERSHIP ACTIVITIES**

8 **A. Immediate Access – 3530 Wilshire Boulevard,**
9 **Suites 699 and 699A**

10 The TRO (Section XXIII, page 28) identifies one office site at 3350 [sic
11 3530] Wilshire Boulevard, Los Angeles. We secured that site at 10:30 a.m. on
12 Friday, February 19, 2016 with initial support of two uniformed officers from the
13 Los Angeles Police Department.

14 We first entered Suite 699 (identified by a sign on the door as “Law
15 Offices/Operations Department”), where we encountered Defendants Tobias West
16 and Komal West, and five employees. The suite is approximately 1,250 square
17 feet with one enclosed office (which housed the Wests and one administrator) and
18 eight telemarketer carrels, only four of which were occupied.

19 The Wests, particularly Komal, were agitated and uncooperative. Although
20 the Wests remained at the site for more than two hours while their smartphones
21 were imaged and returned to them, they refused to be interviewed by the
22 receivership team, even after being informed of the requirement in the TRO that
23 they cooperate with the receiver. *See* below at Section II (F).

24 All five employees completed a questionnaire and three sat for brief
25 interviews with my staff. These cooperative employees were, however, involved
26 solely with the telemarketing. Along with the Wests, who handled administrative
27 duties and closing/processing customers, the primary administrator (the number
28

1 three in charge at the office) also refused to speak with us, further hindering our
2 efforts to identify documents and assets.

3 Mr. West did unlock the adjoining suite for us – suite 699A (identified by a
4 sign reading “Law Offices/Marketing Department”). It is a much larger space of
5 approximately 2,200 square feet with three separate enclosed offices and 24 fully-
6 equipped telemarketer carrels. Although this suite was fully-equipped with
7 furniture, computers and equipment and housed substantial paper files and
8 documents, it was unoccupied. We learned later that this had been the primary
9 office for Defendants until mid-January, 2016, when the employees revolted
10 because they had not been paid. After a group of current and former employees
11 demanded immediate payment and refused to leave the offices, building security
12 and then the police were called to remove them. This mass exodus of employees
13 left just the Wests and two staffers in the business. They then moved across the
14 hall to the smaller suite 699 where they were housed at our arrival. The Wests
15 were in a rebuilding mode, as upon our arrival we encountered several candidates
16 who were awaiting interviews for sales positions.

17 We retained a locksmith who changed the locks to both suites in order to
18 ensure receivership control of the premises.

19 We also found documents in both suites that relate to businesses not named
20 in the Complaint or directly involved in mortgage loan modifications or student
21 loan relief – Kande Corporation and Beverly Hills Tax Group. Mr. West denied
22 any knowledge of Kande Corporation, even though there was a banker’s box of
23 Kande Corporation documents in his old office. Beverly Hills Tax Group is
24 similar to, and perhaps a spin-off of, the student loan operations, but one which
25 pitches tax relief. Notably, Beverly Hills Tax Group appears to be operated as a
26 common enterprise financially with the student loan relief operations; we
27 discovered a \$20,000 bank transfer on February 19 (the day we took over the
28 businesses) from Receivership Defendant Select Document Preparation’s bank

1 account to that of Beverly Hills Tax Group. It also appears the businesses are
 2 accounted for together in QuickBooks.

3 Exhibit 1 is a preliminary inventory and schematic of the two suites.

4 **B. Bank Accounts**

5 Immediately after receiving the TRO, the FTC and the Receiver served the
 6 asset freeze notice on banks at which Defendants were known to have accounts.
 7 The FTC has advised us that total funds frozen pursuant to the TRO are \$42,112.90
 8 in the following accounts.²

Account Name	Financial Institution	Account No. Ending	Balance Frozen
Beverly Hills Tax Group LLC	Wells Fargo	8144	\$32.00
Beverly Hills Tax Group LLC	Wells Fargo	0478	\$23,592.88
Select Document Preparation, Inc.	Wells Fargo	2670	\$994.61
Select Document Preparation, Inc.	Wells Fargo	0499	\$3,011.93
Select Document Preparation, Inc.	Electronic Merchant Systems	8102	\$14,481.48
TOTAL			\$42,112.90

19 **C. Documents/Information/Electronic Data**

20 Upon taking possession, we confirmed that all hard copy documents were
 21 secure. We retained a forensic computer firm to supervise the FTC’s forensic team
 22 in making images of the server, selected desktop computers, and the smartphones
 23 used by Tobias West and Komal West, after confirming that these phones were
 24 business-related.

25 ///

26 ///

27 _____
 28 ² We are awaiting additional information from at least one merchant processor.

1 **D. Compliance with TRO**

2 We took immediate steps to insure compliance with the TRO by suspending
3 all sales activities, excusing the few sales personnel present and changing the locks
4 so as to prevent further access by Defendants or their employees.

5 **E. Accounting**

6 We found no formal accounting, and only limited bank records on site,
7 although Defendants did utilize QuickBooks on-line for internal accounting. Based
8 on the limited information available, it appears that active operations were limited.
9 Other than the limited frozen funds described in Section II(B) above, the only
10 assets appear to be non-leased furniture and equipment in suites 699 and 699A
11 which, at best, have negligible liquidation value.

12 **F. Cooperation**

13 To date, Individual Defendants Tobias West and Komal West have not
14 cooperated, except to provide some computer passwords and to unlock Suite 699A.
15 At the time we entered the offices, both refused to be interviewed without counsel.
16 They did have several calls with potential counsel, but the Wests and that potential
17 counsel stated they would not agree to an interview that day, with or without
18 counsel present. This was on a Friday, and by the start of the next week, the
19 Wests' potential counsel informed us that they were only retained for purposes of
20 any criminal issues, and specifically stated they were not retained in this civil
21 matter. Counsel further informed us that the Wests would be invoking their Fifth
22 Amendment rights.

23 The following day, my counsel received a call from Toby West. In that call,
24 Mr. West stated he would be invoking his Fifth Amendment rights as to any
25 questions regarding the businesses' operations. My counsel stated that we still
26 needed Mr. West to identify the location of the businesses' assets and documents
27 so we could confirm we had control of documents and assets as required by the
28

1 TRO. Mr. West stated he understood and agreed to discuss this issue further the
2 next day.

3 The following day, my counsel received a second call from Mr. West, but
4 Mr. West had returned to a combative posture, stating he was taking the Fifth
5 Amendment even as to questions as to where business documents and assets were
6 located. He refused to provide the name of the company's accountant, even after
7 being told it was crucial that we give the accountant notice of the TRO. We were
8 later able to identify the accountant, but only after significant delay and effort once
9 we obtained access to the QuickBooks software.

10 During the second call, Mr. West stated he and his wife would send the
11 required personal and business financial disclosure forms to us that day, which
12 would contain information regarding all assets. We still have yet to receive those
13 forms.

14 A day after his second call with my counsel, I left a message on Mr. West's
15 voicemail explaining we had located the company's online QuickBooks account
16 (to which he had provided a password the day before), but noting that QuickBooks
17 would be sending an email message to his personal email with a verification code.
18 We asked that he forward that verification code. He never responded. We later
19 used a work-around which gave us access to QuickBooks, but again only after
20 significant delay and effort.

21 Mr. West also appeared to take affirmative steps to destroy evidence.
22 Within the first hour or two of our arrival at the business offices, it appeared he
23 activated the recycle/delete function on his computer; fortunately, my forensics
24 team was able to intervene before any deletions were completed. Mr. West also
25 attempted to secret out of the office an external hard drive with business
26 information on it. We were able to stop him.

27 To date, we have received none of the financial statements or other
28 documents required to be delivered to the FTC and the Receiver within seven

1 business days of service of the TRO (*i.e.*, that were due on or before February 26,
2 2016).

3 **III.**

4 **DEFENDANTS' BUSINESS OPERATIONS**

5 We have not undertaken an audit of the FTC's specific allegations, but we
6 certainly found ample evidence onsite that the prohibited practices alleged by the
7 FTC were occurring and, indeed, were ingrained in the business, including the
8 prior business (loan modifications); the current active business (student loan
9 relief); and an early stage new business (tax debt relief under the name Beverly
10 Hills Tax Solutions). We found no evidence that the loan modification business
11 was ongoing. The nascent tax relief business is not the subject of the FTC's
12 Complaint. Hence, our discussion here is limited to the small student loan relief
13 operations we found onsite.

14 The practices prohibited by the TRO are not just ingrained in Defendants'
15 student loan business, they are the *raison d'être* of that business. As alleged by the
16 FTC, the business preyed on consumers struggling with student debt – the sales
17 team solicited and consumers paid unlawful advance fees based on false promises
18 as to the reduction or elimination of student loan payments, all in violation of
19 Section 5 of the FTC Act and the Telemarketing Sales Rule (“TSR”).

20 Our review of hard copy documents on site confirmed that these prohibited
21 practices were ingrained:

- 22 • For employees and any consumer visitors to the Wilshire Boulevard
23 offices, deception was immediate – entrance signs for Suites 699 and
24 699A described them as “Law Offices/Marketing Department” and
25 “Law Offices/Operations Department”;
- 26 • “Dangers of Default” scripts pinned to sales carrels equipped
27 telemarketers with bullet points to manufacture fear of DOE
28 draconian practices invented by Defendants (including referral to the

1 Department of Justice for litigation) as lead-ins to deceptive
2 descriptions of Defendants' supposedly benign and consumer-friendly
3 "services", including removal of tax liens and garnishments,
4 thousands in annual savings, and credit score improvement. (*See*
5 Appendix, Exhibit 2);

- 6 • "Rebuttals/Objections" scripts provided telemarketers ready-made
7 glib and deceptive responses to defuse concerns of reluctant or
8 suspicious consumers, including: "I Don't Have Any Money!!"
9 (Rebuttal: "...Your situation will only get worse unless we do
10 something about it today. I will work with you on the fees...my main
11 goal is to get you the help you need so you will never have to worry
12 about your student loan anymore. Fair Enough? Did you want to put
13 that on a Visa or MC?"); "My Lender Said that I don't qualify or I've
14 already spoken with my lender" (Rebuttal: "...90% of the applications
15 submitted directly to the lender get denied...we are here to help...We
16 are one of the leading loan consolidators in the nation. We have
17 underwriters on staff that work directly with the Dept of Education to
18 get you approved quickly, with the lowest payment for your
19 situation"); "Can I Be Denied for This Program" (Rebuttal: "You are
20 not paying for a possibly or a maybe, if all the information you have
21 provided about your income is correct then we can get you approved
22 for this program"; and a final "Salesperson-Confidence Builder Tout"
23 about refunds ("Customer Service is our top priority, we guarantee
24 our services. If you do not get approved, we will refund your
25 enrollment fee in full"). (*See* Appendix, Exhibit 3);
- 26 • Telemarketers were provided comprehensive scripts for Inbound Calls
27 that walked consumers through the process, with specific details as to
28 the required advance fees and "congratulations" once they are

1 “approved” to become a client and be escalated to a “senior case
2 manager.” The basic script – “Student Loan Pitch – Inbound Calls”
3 (*see* Appendix, Exhibit 4) was replete with the deceptions and
4 unlawful practices alleged by the FTC and prohibited by the TRO,
5 including: advance fees tied to student loan amounts with fees from
6 \$459 to \$959 with escalators if the two payments option was selected;
7 instructions to consumers that they “DO NOT TALK TO THEM” if
8 they are contacted by their actual lenders; representations that
9 processing fees can only be used to pay off the loans or interest; and
10 overt suggestions that Defendants provide the relief, not the DOE;

- 11 • A more recent script – “SL Pitch New – Inbound Calls” (*see*
12 Appendix, Exhibit 5) indicated an effort by Defendants to portray the
13 business more as just a paper work processing company, but these
14 scripts included most of the same prohibited practices, particularly the
15 illegal advance fees;
- 16 • Defendants were vigilant in collecting their illegal advance fees from
17 consumers. Dunning scripts walked telemarketers through these
18 “friendly reminders” (*see* Appendix, Exhibit 6);
- 19 • Like nearly all telemarketing operations, the goal in this business was
20 to sell, not to provide useful assistance to consumers buried by student
21 loan debt. Both suites abounded in evidence of this “sell or else”
22 mentality. Sales personnel were broken down by function – App
23 Takers (Tier #1 and Tier #2) and Closers (Tier #1 and Tier #2) and
24 incentivized by bonuses (\$10-\$15/deal or 15%-20% commission) to
25 the extent they exceeded their Quota, plus daily bonuses for full
26 consumer payment that escalated from \$25 to \$100 based on the
27 amount of payment, ranging from \$499 to \$999. (*See* Appendix,
28 Exhibit 7);

- 1 • Flyers were posted to acknowledge cash bonuses paid to the “Top
2 Salesperson”, “Top Closer”, and “Top App-Taker” and Sales Teams
3 were broken up into categories to track results (*see* Appendix, Exhibit
4 8);
- 5 • Telemarketers were equipped with glib rebuttals for consumers
6 concerned about negative reviews on social media – “You Can’t
7 Satisfy 100% of the People 100% of the Time” (*see* Appendix,
8 Exhibit 9); and .
- 9 • Telemarketers were provided regular doses of sales wisdom from Mr.
10 West – e.g. “What is Rapport?” and “The Secret to Get 6 Deals a
11 Day” (*see* Appendix, Exhibit 10).

12 **IV.**

13 **CAN THE BUSINESSES BE OPERATED**

14 **LAWFULLY AND PROFITABLY?**

15 Section XVI(N) (at page 23) of the TRO authorizes the Temporary Receiver
16 to continue the business of the Receivership Defendant, but with a significant
17 proviso: – “[P]rovided, however, that the continuation and conduct of the business
18 shall be conditioned upon the Temporary Receiver’s good faith determination that
19 the businesses can be lawfully operated at a profit using the Assets of the
20 receivership estate.”

21 As noted above at Section III, this business is based on implementation of
22 the sales practices prohibited by the TRO and appears to be unprofitable even with
23 those practices. As such, it cannot be operated lawfully at a profit within the
24 context of the receivership. The issue may, however, be largely moot as
25 Defendants and their criminal counsel have both advised that they will concede as
26 to the FTC’s allegations and do not intend to continue the business.

27 ///

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V.

WITHDRAWAL OF TEMPORARY RECEIVER

Section XXII of the TRO expressly authorizes the Receiver and his professionals to withdraw “for any reason in their sole discretion,” by sending written notice to the Court and the parties seven (7) days prior to the date of the intended withdrawal, along with a written report reflecting his work, findings, and recommendations, as well an accounting for all funds and assets in the possession or control of the Temporary Receiver.³

Based on the facts I have identified, I regrettably must provide the Court notice of my withdrawal pursuant to Section XXII of the TRO. This receivership presents the combination of a business with nominal current operations, minimal cash balances, unpaid bills and significant debt, and principals who are uncooperative, even combative.

Given the facts, an ongoing receivership is not viable or advisable. Total cash identified thus far in frozen accounts is \$42,112.90 and we have not located any additional assets of Defendants, but are waiting to hear from some additional vendors.

Given the known risk that this business could possibly have nominal current operations or assets, we approached this receivership with the minimal staff necessary. In order to minimize the administrative impact of this withdrawal and to

³ The provision reads: “IT IS FURTHER ORDERED that the Temporary Receiver and professional retained by the Temporary Receiver, including but not limited to, his attorneys and accountants, be are hereby authorized to withdraw from his or her respective appointments or representations and apply for payment of their professional fees and costs at any time after the date of this Order, for any reason in their sole discretion, by sending written notice seven (7) days prior to the date of the intended withdrawal to the Court and to the parties along with a written report reflecting the Temporary Receiver's work, findings, and recommendations, as well as an accounting for all funds and assets in the possession or control of the Temporary Receiver. The Temporary Receiver shall be relived of all liabilities and responsibilities, and the Temporary Receiver shall be exonerated and the receivership deemed closed seven (7) days from the date of mailing of such notice of withdrawal. The Court will retain jurisdiction to consider the fee applications, report, and accounting submitted by the Temporary Receiver.” (TRO, Section XXII.)

1 provide a means to protect confidential consumer information in Defendants’
2 records, I have agreed to undertake to vacate the office spaces, return possession of
3 the premises to the landlord, liquidate furniture and equipment, including CPUs
4 (after hard drives with consumer information are removed), and put paper records
5 and the hard drives in storage or turn them over to the FTC. I am advised that
6 these provisions will be included in a form of Preliminary Injunction to be
7 submitted by the FTC.

8 For the reasons stated above, I must, therefore, provide this notice of
9 withdrawal. I will file a formal Fee Application once a Preliminary Injunction is
10 entered.

11 Dated: February 29, 2016

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13 By: S/ Thomas W. McNamara
14 Thomas W. McNamara
15 Temporary Receiver
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CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2016, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all participants in the case who are registered CM/ECF users.

I further certify that I have caused the foregoing to be mailed by U.S. First Class Mail, postage paid, as well as by email, with consent, to the following non-CM/ECF participants:

Defendants
Tobias West and Komal West
858 South Bedford Street, Unit 204
Los Angeles, CA 90035
ericgavinwest@gmail.com

S/ Andrew W. Robertson
Andrew W. Robertson