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U.S. DISTRICT COURT
DISTRICT OF MASS.

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FEDERAL TRADE COMMISSION,
_____)

Plaintiff,)

v.)

BETTER BUDGET FINANCIAL SERVICES, INC.,)
JOHN COLON, JR., and JULIE FABRIZIO-COLON,)

Defendants.)
_____)

Civ No. 04-12326 (WG4)

**(Proposed) EX PARTE TEMPORARY RESTRAINING ORDER
WITH ASSET FREEZE, APPOINTMENT OF RECEIVER,
IMMEDIATE ACCESS TO DEFENDANTS' BUSINESS PREMISES,
EXPEDITED DISCOVERY, AND ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), having filed its
Complaint for a permanent injunction and other relief in this matter, pursuant to Section 13(b) of
the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b); and having moved *ex parte*

for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the pleadings, declarations, exhibits, and memorandum of law filed in support of Plaintiff's application, makes the following findings of fact:

1. This Court has jurisdiction of the subject matter of this case, and there is good cause to believe it will have jurisdiction over all parties.
2. There is good cause to believe that the Defendants Better Budget Financial Services, Inc., John Colon Jr. and Julie Fabrizio-Colon have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the Commission is therefore likely to prevail on the merits of this action.
3. There is good cause to believe that immediate and irreparable damage to the FTC's ability to secure effective final relief for consumers in the form of monetary redress will occur, from the sale, transfer, or other disposition or concealment by the Defendants of assets or records, before said Defendants can be heard in opposition. There is thus good cause for issuing this Order pursuant to Fed. R. Civ. P. 65(b) and for relieving the Plaintiff of the duty to provide the Defendants with prior notice of the Plaintiff's motion.
4. There is good cause to order an asset freeze and appoint a Temporary Receiver.
5. Weighing the equities and considering the Plaintiff's likelihood of ultimate success in its cause of action, this temporary restraining order with asset freeze and other equitable relief is in the public interest.

6. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

DEFINITIONS

For purposes of this temporary restraining order, the following definitions shall apply:

1. **“Asset”** means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.
2. **“Assisting others”** means knowingly providing any of the following goods or services to another person or entity:
 - a. performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; or
 - b. formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; or
 - c. providing names of, or assisting in the generation of, potential customers; or
 - d. performing marketing services of any kind.
3. **“Consumer”** means any person, including any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
4. **“Debtor”** means any consumer indebted to a creditor or creditors
5. **“Debt negotiation”** means

- a. the business or practice of receiving, in return for consideration, the scheduled receipt of a debtor's monies, or evidences thereof, for the purpose of distribution among certain specified creditors in payment, or partial payment, of the debtor's obligations; or
 - b. the business or practice of acting or offering or attempting to act as an intermediary between a debtor and his creditors for the purpose of settling, negotiating, or in any way altering the terms of payment of any debt of a debtor.
6. **"Defendants"** means Better Budget Financial Services, Inc., John Colon, Jr., and Julie Fabrizio-Colon, and each of them, by whatever names each might be known, as well as their successors, assigns, officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, divisions, sales entities, related entities, and all other persons or entities directly or indirectly under their control or under common control with them.
7. **"Document"** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term "document."
8. **"Internet"** means a worldwide system of linked computer networks that use a common protocol to deliver and receive information. The "Internet" includes, but is not limited to, the following forms of electronic communication: electronic mail and mailing lists, the

World Wide Web ("Web"), bulletin boards and newsgroups, chat groups, remote computer access (telnet), and file transfer protocol (ftp).

9. **“Receivership Defendants”** means Better Budget Financial Services, Inc., and whatever names it might otherwise be known, as well as its parents, subsidiaries, affiliates, successors, assigns, officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, divisions, sales entities, related entities, and all other persons or entities directly or indirectly under their control or under common control with them.
10. **“URL”** is an abbreviation for Uniform Resource Locator. Each Web page and Web site has a distinct URL, such as www.betterbudgetservices.net or www.termidebt.com, that serves as a unique Internet address for that Web site or Web page.
11. A **“Web page”** is a single electronic document within a Web site, readily viewable on a computer by anyone with access to the Internet, standard software, and knowledge of the Web page or Web site's URL. Web site visitors generally first link to its "home page," which is a Web page that serves as an index, or gateway, to the rest of the Web site's contents.
12. A **“Web site”** is a set of electronic documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Internet, standard software, and knowledge of the Web site's URL.
13. The terms **“and”** and **“or”** shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

I. PROHIBITED MISREPRESENTATIONS

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering, or sale of any services providing debt consolidation, debt reduction, debt negotiation, or credit repair by telephone, on or through the Internet, the World Wide Web, any web site, or otherwise in commerce, the Defendants, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names, are hereby temporarily restrained and enjoined from:

1. Making, or assisting in the making of, expressly or by implication, orally or in writing, any statement or representation of material fact that is false or misleading, including but not limited to, any misrepresentation that:
 - a. a consumer who purchases Defendants' service will be able to pay off unsecured debts for a reduced amount;
 - b. Defendants will settle each creditor's account once the consumer accumulates one-half of the amount owed to the creditor;
 - c. Defendants will ensure that creditors do not call or harass consumers about payments on the consumer's debts that may be overdue; and
2. Making, or assisting in the making of, expressly or by implication, orally or in writing, any statement or representation of material fact that is false or misleading, including but not limited to, any misrepresentation about any other fact material to

a consumer's decision to purchase any service providing debt consolidation, debt reduction, debt negotiation, or credit repair.

II. PROHIBITED BUSINESS PRACTICES

IT IS THEREFORE ORDERED that the Defendants, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names, must immediately take whatever steps may be necessary to ensure that Web pages or Web sites operated, in whole or in part, under the names www.betterbudgetservices.net and www.termidebt.com cannot be accessed by the public; and

IT IS FURTHER ORDERED that the Defendants, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names, are hereby temporarily restrained and enjoined from:

- A. Owning, operating, managing, and editing a debt negotiation Web site or Web page;
- B. Inserting any type of code or command in any Web page or on any Web site that automatically redirects a consumer to any other Web page or Web site;
- C. Advertising or promoting debt negotiation services on any Web page or Web site;
- D. Misrepresenting the contents of their Web pages or Web sites through the use of meta tags, or by any other means;

- E. Overriding the normal functioning of a consumer's Internet browser; and
- F. Registering any new domain names, either directly or through any third party, without notifying counsel for the FTC within 24 hours of such action. Such notice shall include the true identity of the domain name registrant, his or her mailing address, e-mail address, and telephone number.

III. WEB HOSTING

IT IS FURTHER ORDERED that, pending final resolution of this matter, any party hosting any Web pages or Web sites for Defendants, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names, shall:

- A. Immediately take whatever steps may be necessary to ensure that Web pages or Web sites operated, in whole or in part, under the names www.betterbudgetservices.net and www.termidebt.com, cannot be accessed by the public;
- B. Prevent the destruction, or erasure of Web pages or Web sites operated, in whole or in part, under the names www.betterbudgetservices.net and www.termidebt.com by preserving such documents in the format in which they are currently maintained; and
- C. Immediately notify counsel for the FTC of any other Web page or Web site operated or controlled by any defendant.

IV. ASSET FREEZE

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from:

- A. Transferring, liquidating, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, pledging or otherwise disposing of any funds, credit instruments, real or personal property, accounts, contracts, lists of consumer names, shares of stock or other assets, wherever located, including outside the United States, other than to make transfers to any Temporary Receiver appointed herein, that are:
1. Owned or controlled by the Defendants, in whole or in part, including but not limited to any assets held by, for, or under the name of the Defendants at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution, depository of any kind, or business entity, including but not limited to the following:
 - (a) any and all bank accounts maintained at Century Bank, located at 428 Rantoul Street, Beverly MA 01915, including but not limited to account numbers: 66352789, 5639093, 5639107, 5634148, 5634121, and 5647371; and
 - (b) any and all bank accounts maintained at St. Jean's Credit Union, located at 527 Western Avenue, Lynn, MA 01904, including but not limited to account number: 50308127;

2. In the actual or constructive possession of Defendants; or
 3. Owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by or under common control with Defendants.
- B. Opening or causing to be opened any safe deposit boxes, titled, singly or jointly, in the name of any Defendant, or subject to access by any of these Defendant.
- C. Incurring charges on any credit card issued in the name, singly or jointly of any Defendant.
- D. Collecting, opening, or causing to be collected or opened, any mail, received by or on behalf of the Receivership Defendant, at any address, including but not limited to the following: 800 Cummings Center, Suites 152R and 260T, Beverly MA, 01915, and failing to turn over any such mail to the Temporary Receiver.
- E. Obtaining a personal or secured loan; and
- F. Incurring liens or other encumbrances on real property, personal property or other assets of the Defendants in the name of Defendants, singly or jointly.

IT IS FURTHER ORDERED that:

- G. The assets affected by this Paragraph shall include both existing assets and assets acquired after the effective date of this Order.
- H. Notwithstanding the provisions of this Paragraph, the Defendants may make transfers as directed by the Temporary Receiver appointed by this Court, or as otherwise ordered by this Court upon proper showing and after notice to counsel for the Commission.

V. CUSTOMER LISTS

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant, at any time prior to entry of this Order, in connection with the telemarketing, advertising, promoting, offering for sale, and selling of debt negotiation services. Provided, however, that the Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order. The Defendants are also hereby temporarily restrained and enjoined from making any use of their own customer lists in any business, whether or not related to the present action.

VI. RETENTION OF ASSETS AND RECORDS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a Preliminary Injunction, any financial or brokerage institution, business entity, or person served with a copy of this Order, that holds, controls or maintains custody of any account or asset of any Defendant, or has held, controlled or maintained custody of any such account or asset at any time since January 1, 2001 shall:

- A. Prohibit the Defendants from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such account or asset except as directed by further order of the Court;

