

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION**

In re SANCTUARY BELIZE LITIGATION
(proposed)

No: _____¹

FEDERAL TRADE COMMISSION

[UNDER SEAL]

Plaintiff,

**DO NOT DOCKET/
MOTION TO DELAY ECF PENDING**

v.

AMERIDEBT, INC. et al.

No: 03-cv-3317-PJM

Defendants.

**FEDERAL TRADE COMMISSION’S MEMORANDUM IN SUPPORT OF MOTION TO
HOLD DEFENDANTS JOHN VIPULIS AND ANDRIS PUKKE IN CONTEMPT FOR
VIOLATING THE ORDER APPROVING STIPULATION FOR CONDITIONAL
RELEASE OF ANDRIS PUKKE FROM INCARCERATION SUBJECT TO
COMPLIANCE WITH COURT ORDERS**

Pukke and his childhood friend, John Vipulis, blatantly violated this Court’s 2007 Order prohibiting Pukke from repaying a loan from Vipulis before satisfying the FTC’s judgment. DE 625 (the “Release Order”).² The FTC originally sued Pukke for operating the deceptive debt settlement scheme alleged in the original complaint in *FTC v. AmeriDebt*. In 2006, the FTC and Pukke resolved their dispute and the Court entered a \$172 million judgment against Pukke. DE

¹ Currently pending before the Court is a motion to consolidate this matter with the related *FTC v. Ecological Fox LLC* (“*Ecological Fox*”) matter, pursuant to Rule 42, under the joint case name *In re Sanctuary Belize Litigation*.

² These same payments are the subject of the FTC’s relief defendant claim against Vipulis in the related *Ecological Fox* matter.

473 (the “Final Order”). The Final Order also empowered the Receiver to marshal Pukke’s assets and obligated Pukke to cooperate with the FTC and the Receiver.

Pukke failed to cooperate and, in response, this Court civilly incarcerated him to coerce his cooperation in 2007. DE 604. This Court released Pukke because, among other things, Vipulis paid the Receiver \$4.5 million, \$3.25 million of which the Court characterized as a “loan” from Vipulis to Pukke. The Court’s Release Order specified that Pukke could not “repay all or any portion of the Vipulis Loan to Vipulis until such time as the FTC judgment is satisfied in full. . .” DE 625-1 at 4. Pukke has not satisfied the FTC’s judgment; nonetheless, he repaid Vipulis over \$3.25 million.

I. Statement of Facts

In 2003, the FTC sued Pukke and companies he controlled (AmeriDebt and DebtWorks) under Section 5 of the FTC Act and the Gramm-Leach-Bliley Act for deceptively marketing a debt settlement scheme. DE 1. Pukke resolved this matter by stipulating to the Final Order, on May 16, 2006. DE 473.

That Order includes a \$172 million judgment, \$137 million of which would be suspended if Pukke met certain conditions, including the requirement that he cooperate with the FTC and Receiver in their collection efforts. DE 473, Section III.B and XI. Despite this clear edict, Pukke failed to cooperate with the Receiver and FTC by hiding assets and actively preventing the Receiver from marshalling them. DE 525 (Receiver’s motion to have Pukke held in contempt); DE 531 (FTC’s joinder in the motion, because Pukke had “lied repeatedly to the Receiver, the FTC, and this Court by engaging in a long line of ongoing and deliberate efforts to hide his assets”).³ Based on these actions, the Court held Pukke in contempt. DE 571.

³ The FTC is simultaneously moving the Court for an order directing Pukke to pay the remainder of the judgment because of Pukke’s lack of cooperation.

Undeterred, Pukke continued his contumacious conduct. Both the Receiver and the FTC then moved the Court to incarcerate Pukke until he cooperated. DE 596 (Receiver's Motion); DE 597 (FTC's Motion). Based on these motions the Court civilly incarcerated Pukke in 2007. DE 604.

To obtain Pukke's release, both he and Vipulis, a childhood friend, stipulated to a court order ("Release Order") pursuant to which Vipulis paid the Receiver \$4.5 million, \$3.25 million of which Pukke and Vipulis characterized as a loan. DE 622; DE 625. The Release Order included two limitations. First, the Court explained that the \$4.5 million payment shall be applied against the overall \$172,000,000 judgment in favor of the FTC pursuant to the Stipulated Final Judgment. The Vipulis Payment could not be applied against the \$35,000,000 unsuspended portion of the judgment. DE 625-1 at 4. Second, the Court specified that Pukke could not repay Vipulis' \$3.25 million loan before the FTC or Court agreed Pukke had satisfied the judgment he owed (*i.e.*, \$35 million or \$172 million depending on whether Pukke cooperated with the FTC and Receiver's collection efforts). Specifically, the Court stated, "Pukke shall not repay all or any portion of the Vipulis Loan to Vipulis until such time as the FTC judgment is satisfied in full . . . as such terms and satisfaction shall be agreed to by the FTC and Pukke or determined by the Court." DE 625-1 at 5. *Id.* The judgment is still not satisfied, and neither the FTC nor the Court have determined otherwise.

Vipulis later moved to hold Pukke and Pukke's father, Janis Pukke ("Janis"), in contempt of the Release Order for failing to transfer certain Latvian farmland to Vipulis. DE 773. At roughly the same time, the Receiver moved to hold Janis in contempt related to his failure to turn over additional Latvian land that belonged to Pukke. As part of a settlement resolving both contempt motions, Vipulis paid the Receiver \$1.5 million dollars in exchange for the disputed Latvian land. DE 786 at 12-16; DE 792.

a. Pukke and Vipulis Violated the Release Order.

i. The FTC Judgment Is Not Satisfied in Full.

Because the Court ordered Pukke not to repay Vipulis until he satisfied his judgment to the FTC, the Court must first determine how much Pukke owes the Commission. Specifically, did Pukke cooperate with the FTC and Receiver in recovering assets—in which case he owes \$35 million minus the amount paid to the FTC plus interest on the remaining balance—or did he fail to cooperate—in which case he owes the full \$172 million minus amounts paid plus interest? Based on the facts recited above, Pukke not only failed to cooperate in the collection of his assets, but actually interfered in the process. Therefore, he owes the full \$172 million (minus the monies Pukke paid toward the unsuspended judgment).⁴

Therefore, Pukke's judgment was never suspended. As explained in the Declaration of Nicole Vincent-Christ (PXOO), despite Pukke's resistance, the Receiver collected and distributed to the FTC \$26,128,641.45. PXOO ¶¶ 5-6; DE 828 at 6 (Receiver explaining that nearly half of the funds collected by the Receiver were not disclosed by Pukke to the Receiver or the FTC). Taking these payments and interest into account, as of August 23, 2018, Pukke owed the FTC \$270,859,784.38. PXOO ¶ 7.⁵

ii. Pukke is Repaying Vipulis.

Because Pukke has yet to fully repay the FTC, the second question is whether he has repaid any portion of his \$3.25 million to Vipulis. The documents filed with the FTC's request for a temporary restraining order, in *FTC v. Ecological Fox*, show that Pukke has unquestionably made payments on those loans. Specifically, he has operated a multi-year deceptive scheme

⁴ Even if the court determines that Pukke cooperated and therefore only owes the FTC the remaining portion of the \$35 million judgment, Pukke still owes the FTC \$8,871,358.55 plus interest. PXOO ¶ 6.

⁵ Suffice it to say, Pukke has not paid the FTC this amount, or any amount, since August 23.

marketing and selling lots of land in a real estate development called “Sanctuary Belize,” “Sanctuary Bay,” or “The Reserve” (for ease, “Sanctuary Belize”). Through Sanctuary Belize companies Pukke owns or controls, he has repaid Vipulis more than \$4.1 million.⁶ As a former insider testified, these payments are “to repay a loan” Vipulis made. PXEE ¶ 10. Internal documents corroborate that these payments are for loan repayment. PXQQ ¶ 311:335.

Each of the companies paying Vipulis are a part of the common enterprise at the heart of the deceptive Sanctuary Belize real estate scheme. All of the entities Pukke controls in the common enterprise (“SBE”) operate from, or are associated with, the same location at 3333 Michelson Drive, Suite 500, Newport Beach California. PXQQ ¶ 216. The same employees work for the various SBE entities and, on paper, many of them are directors, officers, owners, or bank signatories for other SBE entities. PXQQ ¶ 217. Over half of the SBE entities have joint communication and marketing. PXQQ ¶ 228:247-248. Finally, the corporate funds and receivables are comingled with other enterprise accounts. PXNN ¶ 15.

Pukke, of course, controls the common enterprise.⁷ Among other evidence, previous employees and third parties who have worked for or with SBE report that Pukke was in charge of all the major decisions of SBE. PXBB ¶¶ 3-6; PXZ ¶¶ 3-5; PXEE ¶¶ 5-6; PXFF ¶ 9; PXGG ¶ 31; PXHH ¶ 19. Further, emails show Pukke makes decisions on salaries, employment,

⁶ Pukke made these payments to Vipulis through accounts held in the name of common enterprise entities, including “Global Property Alliance Inc. DBA Eco-Futures Belize,” “Eco Futures Development,” and “Foundation Development Management Inc. DBA Silver Creek Properties.” PXNN ¶ 8(r).

⁷ As this Court heard during the original proceeding, Pukke and Vipulis have a habit of making payments to one another through shell companies and companies they otherwise control. *See, e.g.*, DE 31 at 15 (explaining that Pukke previously made loans to Vipulis through a business he owned, Debtworks), *FTC v. AmeriDebt*, 06-mc-12-PJM (excerpts of Pukke’s deposition transcripts, January 17, 2006); *id.* at 19 (Pukke explaining that he does not create documentation for loans with Vipulis).

development and design matters, marketing strategy, lot contract terms, and payments to third parties for years—including while he was in prison for obstruction of justice. PXQQ ¶ 155-167:207.

II. Argument

Pukke and Vipulis violated this Court’s Release Order by absconding with funds that should have been paid to the FTC. As a result, they should be forced to pay \$3.25 million plus interest to the FTC as a compensatory contempt remedy. The Court has broad authority to impose sanctions for these violations, including requiring compensation for the FTC’s losses. *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947); *In re Gen. Motors Corp.*, 61 F.3d 256, 259 (4th Cir. 1995) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193-94 (1949)). The FTC is entitled to “full remedial relief.” *McComb*, 336 U.S. at 193.

The evidence establishes each of the elements of contempt by clear and convincing evidence: “(1) The existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) that the decree was in the movant’s ‘favor’; (3) that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and (4) that the movant suffered harm as a result.” *Schwartz v. Rent-A-Wreck of America*, 261 F. Supp. 3d 607, 612 (D. Md. 2017) (J. Messitte) (citing *Ashraft v. Conoco, Inc.*, 218 F.3d 288, 301 (4th Cir. 2000)); *United v. Ali*, 874 F.3d 825, 831 (4th Cir. 2017). Although the FTC must prove “knowledge,” “[w]illfulness is not an element of civil contempt.” *Schwartz*, 261 F. Supp. 3d at 612-13 (quoting *Redner’s Markets, Inc. v. Joppatown G.P. Ltd. P’ship*, 608 Fed. Appx. 130, 131 (4th Cir. 2015)).

a. Pukke and Vipulis Have Knowledge of the Valid Release Order.

This Court entered a valid decree allowing Pukke out of prison based on certain conditions. Both Pukke and Vipulis have knowledge of that Order. First, both are parties to that Order, which they stipulated to through counsel. *Link v. Wabash R.R. Co.*, 370 U.S. 626,

634 (1962) (finding a party is considered to have notice of all the facts of which his attorney had notice) (quoting *Smith v. Ayer*, 101 U.S. 320, 326 (1879)). Vipulis submitted to the jurisdiction of this Court by both stipulating to the Release Order and then seeking to enforce provisions of it himself.

b. The Release Order Was in the FTC's Favor.

The Release Order was in the FTC's favor because it required payments to the Receiver for the FTC's benefit and precluded Pukke from repaying Vipulis prior to satisfying the FTC's judgment against him. *JTH Tax, Inc. v. Lee*, 540 F. Supp. 2d 642, 645 (E.D. Va. 2007) (finding the judgment was in the plaintiffs' favor because the court granted the Plaintiff's requested relief, including a permanent injunction); *Colonial Williamsburg Found. v. The Kittinger Co.*, 792 F. Supp. 1397, 1406 (E.D. Va. 1992) (same), *aff'd*, 38 F.3d 133 (4th Cir. 1994).

c. Pukke and Vipulis Violated the Release Order and Had Knowledge of Their Violations.

As detailed above, Pukke paid, and Vipulis accepted, more than \$3.25 million in violation of the Release Order. The Release Order binds both Pukke and Vipulis. Both are parties to the Order, which they signed through counsel. DE622 at 7. Moreover, even if Vipulis were not a party in *AmeriDebt*, he acted in "active concert or participation" with Pukke. The Court may hold nonparties with actual notice of an order in contempt of the Order when they "act in concert with named parties to frustrate an injunctive decree or to avoid compliance with it." *EEOC v. Int'l Longshoremen's Ass'n*, 541 F.2d 1062, 1063-64 (4th Cir. 1976). Vipulis accepted payment from Pukke with knowledge of the Order as a signatory and as a party to previous litigation involving that Order. He, therefore, at the very least was acting in concert with Pukke, a named party. *Id.* By accepting payments, Vipulis knowingly failed to subordinate his payments to Vipulis until the FTC's judgment was satisfied in full. Knowledge does not require a showing of willfulness or intent. *In re General Motors*, 61 F.3d at 258;

Schwartz, 261 F. Supp. 3d at 612-13 (quoting *Redner’s Markets, Inc. v. Joppatown G.P. Ltd. P’ship*, 608 Fed. Appx. 130, 131 (4th Cir. 2015)). When a third party accepts a transfer of money from someone he knew had been enjoined from transferring those funds, that third-party is deemed to have knowledge of the order violation. *Capital Source Fin., LLC v. Delco Oil, Inc.*, 520 F. Supp. 2d 684, 688 (D. Md. 2007) (adopting *Waffenschmidt v. MacKay*, 763 F.2d 711, 723 (5th Cir. 1985)). Further, the Court can consider “actual or constructive knowledge” of the violation, including the past conduct and relationships of the parties. *Schwartz*, 261 F. Supp. 3d at 614; *Colonial Williamsburg Found.*, 38 F. 3d at 136-37 (one with knowledge of an order cannot defeat contempt by stating they did not know the terms of the order or otherwise take steps to confirm they are acting in compliance with the order). Vipulis’s acceptance of the payments under these circumstances shows that he did so with the required knowledge.

d. Pukke and Vipulis’s Contumacious Conduct Harmed the FTC and Consumers.

The FTC brought *AmeriDebt* to, at least in part, obtain financial recovery for Pukke’s victims. *FTC v. Kuykendall*, 371 F.3d 745, 753 (10th Cir. 2004) (quoting *FTC v. Febre*, 128 F.3d 530, 536 (7th Cir. 1997) (“Congress established the FTC at least in part ‘to protect consumers from economic injuries.’”)). Pukke’s payments to Vipulis harmed consumers by denying the FTC funds it could have used to provide redress to Pukke’s victims. In fact, the FTC has provided multiple rounds of partial redress to *AmeriDebt* consumers, and so could have and would have distributed these funds to the harmed consumers.⁸ The Commission is therefore justified in seeking civil contempt for violation of an order that provided for consumer redress. *Id.* at 753-54.

⁸ The FTC’s website documents its recoveries and redress to consumers. See <https://www.ftc.gov/enforcement/cases-proceedings/0223171/ameridebt-inc>.

Because of Pukke and Vipulis's contumacious activity, consumers were deprived of redress. Both Pukke and Vipulis should, therefore, be ordered to pay the full amount of the payments made to Vipulis to satisfy the loan.

Respectfully submitted,

Dated: October 31, 2018



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