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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AMERICAN FINANCIAL BENEFITS CENTER, a corporation, also d/b/a AFB and AF STUDENT SERVICES;

AMERITECH FINANCIAL, a corporation;

FINANCIAL EDUCATION BENEFITS CENTER, a corporation; and

BRANDON DEMOND FRERE, individually and as an officer of AMERICAN FINANCIAL BENEFITS CENTER, AMERITECH FINANCIAL, and FINANCIAL EDUCATION BENEFITS CENTER,

Defendants.

Case No. 18-cv-00806-SBA

FEDERAL TRADE COMMISSION'S ADMINISTRATIVE MOTION TO SCHEDULE A CASE MANAGEMENT CONFERENCE

Judge: Hon. Saundra Brown Armstrong

Pursuant to Civil Local Rule 7-11, the Federal Trade Commission ("FTC") respectfully requests that the Court hold a case management conference in this matter as soon as possible. The FTC submits this motion following communications between counsel for all parties.

I. Procedural Background

The FTC filed the Complaint against American Financial Benefits Center ("AFBC"), Ameritech Financial ("Ameritech"), Financial Education Benefits Center ("FEBC"), and Brandon Frere (collectively "Defendants") on February 7, 2018 (Dkt. No. 1). On March 2, 2018, the FTC filed a motion for a preliminary injunction, which the Court took under submission (Dkt. No. 22). On April 23, 2018, the Defendants filed a motion to dismiss the FTC's complaint (Dkt. No. 117). On August 8, 2018, the Court denied the Defendants' motion to dismiss (Dkt. No. 157).

The Court set an initial case management conference for May 10, 2018 (Dkt. No. 11). On July 5, 2018, the Court vacated the case management conference due to the parties' settlement discussions and pending motions (Dkt. No. 150). The parties held settlement discussions facilitated by Judge Beeler in July 2018, but did not reach an agreement (Dkt. No. 151). The parties are not currently engaged in settlement negotiations.

II. Ongoing Consumer Harm Demonstrates the Need for a Scheduling Order

A case management conference is necessary so the Court can set a discovery schedule and address other important issues in this consumer protection matter. On June 28, 2018, the FTC sent letters to approximately 28,000 Ameritech/FEBC clients notifying them of this lawsuit. In mid-August 2018, the parties sent a joint notice letter to approximately 16,500 AFBC clients and a few Ameritech clients who did not receive the FTC's notice letter. The response to the lawsuit notifications has been overwhelming. Since July 2, 2018, the FTC has received 2,030 reports from consumers about Defendants' practices. Declaration of Kelly Ortiz ("Ortiz Decl.") ¶ 5. These complaints have a common theme – consumers thought their monthly payments to Defendants were going towards their student loans, not a "financial education" membership.[1] In

[1] *See, e.g.*, Ortiz Att. A-276, Row 1275 ("I am a disabled veteran and was contacted by Ameritech to assist with my loan payments. They requested $290 up front to enroll and then

addition, consumers report that Defendants are refusing to provide refunds and making it difficult to cancel the financial education membership.[2]

Many of Defendants' clients are still confused about their payments to Defendants. Defendants sow this confusion by continuing to make misleading statements to consumers. For example, Defendants are falsely telling consumers that their dismissed lawsuit against the FTC is still pending.[3] In addition, on August 10, 2018, Defendant AFBC (a company that Defendants assured the Court was no longer enrolling new clients)[4] sent a letter to consumers about their

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$173 per month. I was told this money would be transferred to my loans and . . . it has not. . . . As a single parent, with a low income, the money that has been taken already and not applied to my loans is crippling to have to pay again."); Ortiz Att. A-220, Row 1035 ("I pa[id] a large fee up front to Ameritech Financial in March of 2016 and have been paying $99 a month since. . . . I am a single mother just off disability with a special needs child. This money did not come easy to me. Also, all my payments (around $3000) should have gone towards my student loans. They did not.").

[2] White Att. A (Defendants' 8/9/18 email to consumers: "100% Client Satisfaction."); Ortiz Att. A-196, Row 930 ("I contact[ed] Ameritech to cancel my membership and ask for a refund, [I] was told no refund."); Ortiz Att. A-347, Row 1509 ("When I finally was able to speak to customer service they told me the entire lawsuit was wrong . . . [and] they would not refund my money until they were found guilty. I asked for the customer service representative to cancel my membership on two different occasions and each time they wanted to argue about me doing so. I am furious that I was scammed out of over $3300 and want my money back; however, Ameritech says they did not scam anyone and they are a great business.").

[3] *See, e.g.*, Ortiz Atts. B-C (showing a call where a consumer attempts to cancel her enrollment with Defendants and, despite Defendants' knowing they never enrolled the client in an income-based repayment program over a period of years, Defendants repeatedly attempt to convince the consumer to continue her enrollment, including misrepresenting to the consumer that the FTC has "refused to defend" a case filed by Defendants "[which] remains open in the northern district of California"); Ortiz Att. A-320, Row 1411 ("I called [Ameritech] several times and would either be hung up on or put on hold with no one ever answering. I put a stop on any withdrawals through my bank so Ameritech could not take anymore payments out. When I finally got a customer service rep on the line I told them that I wanted my membership cancelled and my money refunded. The response I got was that Ameritech had in turn sued the FTC and no refunds would be given out at this time. I paid them over $3,000 in a two year period.").

[4] Declaration of Brandon Frere at 2 (Dkt. No. 79-71) ("AFBC no longer sells these services to new consumers, and has not enrolled any new customers for over two years.").

student loan and offered to "reinstate" their "file" and "account." White Decl. ¶ 2, Att. A. The email does not include any information about a financial education membership.

Defendants' ongoing deceptive practices demonstrate the need for judicial intervention. Having a discovery framework and trial date will provide necessary structure for this litigation.

Respectfully submitted,

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General Counsel

Dated: September 7, 2018

/s/ Sarah Schroeder
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FEDERAL TRADE COMMISSION