

**ROBB EVANS & ASSOCIATES LLC**

**Receiver of**

**The Rodis Law Group, Inc.**

**America's Law Group**

**The Financial Group, Inc. dba Tax Relief ASAP**

**Federal Trade Commission v. Data Medical Capital, Inc, et al.**

**CASE No. SA-CV-99-1266 AHS (EEx)**

**Order Assessing Civil Contempt Sanctions Against Contempt  
Defendants**

**Filed March 16, 2010**

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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 SOUTHERN DIVISION

11 FEDERAL TRADE COMMISSION, ) SACV 99-1266 AHS (EEx)  
12 )  
13 Plaintiff, )  
14 v. ) ORDER ASSESSING CIVIL  
15 ) CONTEMPT SANCTIONS AGAINST  
16 DATA MEDICAL CAPITAL, INC., ) CONTEMPT DEFENDANTS  
17 et al., )  
18 )  
19 Defendants. )  
20 \_\_\_\_\_ )

21 I.

22 PROCEDURAL HISTORY

23 On January 15, 2010, the Court issued its Order  
24 Adjudicating Contempt Defendants in Contempt of Court and Finding  
25 of Fact and Conclusions of Law in Support Thereof,<sup>1</sup> which found  
26 Contempt Defendants Bryan D'Antonio, The Rodis Law Group, Inc.  
27 ("RLG"), America's Law Group ("ALG"), and The Financial Group  
28 ("TFG") dba Tax Relief ASAP (collectively, "Contempt Defendants")

29 \_\_\_\_\_  
30 <sup>1</sup> Hereafter, "Court's FOF" designates the Court's "Findings  
31 of Fact" section of the order, and "Court's COL" designates the  
32 "Conclusions of Law" section.

1 in contempt of the Stipulated Final Judgment entered by this  
2 Court on July 13, 2001.<sup>2</sup> On January 29, 2010, Mr. D'Antonio  
3 filed supplemental opposition to the Federal Trade Commission's  
4 ("FTC") request for sanctions. The FTC filed a reply to Mr.  
5 D'Antonio's supplemental opposition on February 19, 2010. The  
6 matter came on for hearing on March 1, 2010, at the conclusion of  
7 which the Court took the matter under submission.

8 II.

9 DISCUSSION

10 Courts have authority to assess compensatory sanctions  
11 for violation of their orders. United States v. United Mine  
12 Workers of Am., 330 U.S. 258, 303-04 (1947). Consumer loss is a  
13 common measure for compensatory sanctions in civil contempt  
14 proceedings. FTC v. Trudeau, 579 F.3d 754, 771 (7th Cir. 2009);  
15 see also FTC v. Stefanichik, 559 F.3d 924, 931-32 (9th Cir. 2009)  
16 (stating that "courts have often awarded the full amount lost by  
17 consumers rather than limiting damages to a defendant's  
18 profits"); FTC v. Figgie Int'l, 994 F.2d 595, 606 (9th Cir. 1993)  
19 (stating that the "fraud in the selling, not the value of the  
20 thing sold, is what entitles consumers . . . to full refunds").  
21 The FTC bears the initial burden of establishing a baseline  
22 figure through a reasonable approximation of consumer loss.  
23 Trudeau, 579 F.3d at 773. This figure may include costs  
24 associated with locating and reimbursing defrauded purchasers.  
25 Id. at 774. It may also include reasonable attorneys' fees,  
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27 <sup>2</sup> Because the parties are familiar with the procedural  
28 history, facts, and parties' positions, they are not restated  
here except as necessary to explain the Court's decision.

1 costs, and expenses. See Whittaker Corp. v. Execuair Corp., 953  
2 F.2d 510, 517 (9th Cir. 1992) (affirming district court's order  
3 to pay contempt sanctions, including \$600,000 in attorneys' fees,  
4 costs, and expenses). Once the baseline figure is established,  
5 the burden shifts to defendant to show that the figure is  
6 inaccurate or that defendant is entitled to an offset. Trudeau,  
7 579 F.3d at 773.

8 Here, consumers paid \$12,116,252 to Contempt Defendants  
9 and were refunded \$1,483,469. (Court's FOF ¶ 106.) These  
10 amounts have been cited or relied on by various parties, and, in  
11 any event, stand uncontroverted. (Court's COL ¶ 59.) The FTC  
12 seeks initial compensatory contempt sanctions in the amount of  
13 \$11,406,681, which includes \$10,632,783 in consumer loss and  
14 \$773,899.62 in costs incurred by the Receivership Estate  
15 (\$445,005.94 for operating expenses of the Receivership entities  
16 and \$328,893.68 for fees and expenses of the Receivership and the  
17 Receiver's attorneys).<sup>3</sup> Thus, the baseline figure is  
18 \$11,406,681.<sup>4</sup>

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21 <sup>3</sup> In the FTC's Supplemental Reply to Bryan D'Antonio, it  
22 seeks initial compensatory contempt sanctions of \$11,272,012.  
23 (See Doc. No. 328.) Because of the Court's order approving fees  
24 and expenses for the Receivership and the Receiver's attorneys on  
25 March 8, 2010 (see Doc. No. 333), the Court has added \$134,669 to  
26 this figure.

27 <sup>4</sup> The FTC suggests leaving the record open to augment the  
28 sanctions judgment with future costs associated with locating and  
reimbursing defrauded consumers, plus other costs incurred by the  
Receivership Estate when they are known. The Court has included  
Receivership costs, fees, and expenses disclosed to all parties  
before issuance of this order. However, the Court declines to  
entertain future requests to add costs associated with locating  
defrauded consumers, or any other Receivership fees, costs, and  
expenses, in the contempt sanctions judgment.

1 **A. Bryan D'Antonio**

2 Defendant D'Antonio urges that sanctions be denied, or  
3 alternatively that they be assessed at no more than \$2 million.  
4 Mr. D'Antonio argues that \$2 million is appropriate for the  
5 following reasons: (1) the consumer-loss baseline figure  
6 improperly includes \$3,369,521 from TFG because TFG had its own  
7 separate consumer base and there are no findings that payments to  
8 TFG related to loan-modifications; (2) the figure improperly  
9 includes \$920,409 in net payments to ALG because ALG did not have  
10 a fair opportunity to satisfy its clients before the Receiver  
11 took over; (3) the figure improperly includes \$1,691,600 in funds  
12 to RLG during the last three months of RLG's operation because  
13 RLG was deprived of the opportunity to satisfy its customers; and  
14 (4) the figure improperly includes \$2,651,253 because Mr.  
15 D'Antonio cannot afford his household expenses, let alone a  
16 multi-million dollar judgment, and a judgment higher than  
17 \$2 million would amount to a financial death sentence.

18 Defendant D'Antonio's contentions are rejected. First,  
19 as to the \$3,369,521 in funds attributable to TFG, the Court  
20 found that TFG was bound by the permanent injunction because it  
21 had actual notice of the injunction, acted in concert with Mr.  
22 D'Antonio, and was Mr. D'Antonio's alter ego. (Court's COL  
23 ¶¶ 20-29.) TFG violated the permanent injunction by  
24 participating directly in a telemarketing campaign. (Court's COL  
25 ¶ 46.) Consequently, the consumer funds received by TFG as a  
26 result of its campaign are properly included in the contempt  
27 sanctions. To the extent that Mr. D'Antonio argues that all of  
28 the consumer funds received by TFG should not be included, he

1 fails to carry his burden to establish that the figure is  
2 inaccurate or that he is entitled to an offset because a specific  
3 amount of the consumer funds received by TFG did not violate the  
4 permanent injunction. See Trudeau, 579 F.3d at 773.

5 Second, as to the \$920,409 in net payments to ALG and  
6 \$1,691,600 in payments to RLG, defendant D'Antonio is not  
7 entitled to an offset because he has not set forth specific  
8 evidence that any of the customers were wholly satisfied with  
9 services received.<sup>5</sup> Id. (allowing offset if defendant shows that  
10 "some customers where wholly satisfied with their purchase.");  
11 cf. Figgie, 994 F.2d at 607 ("While ordinarily the proper measure  
12 of restitution is the amount of enrichment received, if the loss  
13 suffered by the victim is greater than the unjust benefit  
14 received by the defendant, the proper measure of restitution may  
15 be to restore the status quo.") (citation omitted). Defendant  
16 D'Antonio fails to carry his burden to show why he is entitled to  
17 offset because he does not identify customers who were wholly  
18 satisfied, and he therefore fails to offset the baseline figure  
19 by the amount paid by such customers.

20 As to Mr. D'Antonio's claim that he should not be  
21 responsible for \$2,651,253 in sanctions because he cannot afford  
22 a higher judgment than \$2 million, his argument fails because he  
23 does not offer any authority to support such reduction when  
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26 <sup>5</sup> The Court also found that Contempt Defendants continued to  
27 engage in telemarketing in violation of the permanent injunction  
28 from mid-April 2009 until the Receiver took over on May 28, 2009,  
and that there is no evidence that the Contempt Defendants had  
obtained or could obtain the promised results for their new  
clients. (Court's COL ¶ 63.)

1 compensatory sanctions are imposed. The Court does have  
2 discretion to limit sanctions in light of defendant D'Antonio's  
3 financial circumstances, but the Court declines to grant Mr.  
4 D'Antonio's request owing to the severity of his contumacious  
5 conduct.

6 **B. The Rodis Law Group**

7 RLG acted in a common enterprise with the other  
8 Contempt Defendants and thus "share[s] liability for the unlawful  
9 practices of any of the participants without regard to their  
10 corporate identities or affiliation."<sup>6</sup> (Court's COL ¶ 30.)  
11 Accordingly, RLG is joint and severally liable for the consumer  
12 loss of \$11,406,681. (See COL ¶ 32.)

13 **C. America's Law Group**

14 ALG acted in a common enterprise with the other  
15 Contempt Defendants and thus "share[s] liability for the unlawful  
16 practices of any of the participants without regard to their  
17 corporate identities or affiliation." (Court's COL ¶ 30.)  
18 Accordingly, ALG is joint and severally liable for the consumer  
19 loss of \$11,406,681. (See COL ¶ 32.)

20 **D. The Financial Group**

21 TFG acted in a common enterprise with the other  
22 Contempt Defendants and thus "share[s] liability for the unlawful  
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24 <sup>6</sup> At the March 1, 2010 hearing, RLG indicated that it would  
25 wind itself down, waive any rights or claims it may have now or  
26 in the future to any of its assets in favor of the Receivership,  
27 and dissolve. In the event this offer satisfies the FTC's  
28 concerns, judgment may not be necessary with respect to RLG.  
However, unless RLG and the FTC reach agreement, and the Court  
receives notice of such agreement, RLG remains liable for the  
sanctions judgment.

1 practices of any of the participants without regard to their  
2 corporate identities or affiliation." (Court's COL ¶ 30.)  
3 Accordingly, TFG is joint and severally liable for the consumer  
4 loss of \$11,406,681. (See COL ¶ 32.)

5 **III.**

6 **CONCLUSION**

7 Accordingly and for the foregoing reasons, the FTC's  
8 request for sanctions is granted. The Contempt Defendants are  
9 jointly and severally liable in the amount of \$11,406,681.  
10 Judgment shall be entered in accordance with this order on March  
11 31, 2010.

12 IT IS SO ORDERED.

13 The Clerk shall serve this Order Assessing Civil  
14 Contempt Sanctions against Contempt Defendants on all counsel  
15 involved with the Order to Show Cause re Contempt.

16 Dated: March 16, 2010.

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18 **ALICEMARIE H. STOTLER**  
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ALICEMARIE H. STOTLER  
20 UNITED STATES DISTRICT JUDGE  
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