

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

*In re* SANCTUARY BELIZE  
LITIGATION

Civil No. 18-3309-PJM

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**DEFENDANTS’ OPPOSITION TO FTC’S MOTION FOR  
PARTIAL IMPLEMENTATION OF PROPOSED REDRESS PLAN**

Defendants Andris Pukke, Peter Baker, John Usher, and the entities they own or control oppose the FTC’s Motion for Entry of a Proposed Order Partially Implementing the Proposed Redress Plan. There are three reasons for this opposition.

1. Implementation of the FTC’s Proposed Redress Plan, whether partially or otherwise, is barred by the Supreme Court’s decision in *AMG Capital Investment v. FTC*, 141 S. Ct. 1341 (2022). *AMG* holds that the FTC has no authority under section 13(b) of the Federal Trade Commission Act (“FTCA”), 15 U.S.C. § 53(b). to seek or obtain equitable monetary relief, including “the billions of dollars that the Commission has returned to consumers as a result of the Commission’s § 13(b) efforts.” 141 S. Ct. at 1352. The FTC invoked its putative authority under section 13(b) of the FTCA for the Proposed Redress Plan, which is a plan for monetary relief to consumers affected by defendants’ conduct held by the Court to be unlawful. Therefore, under *AMG*, the FTC cannot seek, and the Court cannot grant, authorization to implement the Proposed Redress Plan in part or in whole.

Furthermore, the Receiver has no authority to expend any of the funds placed by the Court in receivership, including funds to implement the Proposed Redress Plan. As the Eleventh Circuit held in *FTC v. On Point Capital Partners, LLC*, 17 F.4<sup>th</sup> 1066, 1078 (11<sup>th</sup> Cir. 2022), *AMG* requires the dissolution of any asset freeze or receivership created for the purpose of preserving funds for equitable monetary relief under section 13(b). Accordingly, the Receiver may not implement the Proposed Redress Plan. Defendants reserve their rights to recover any and all expenditures made by the Receiver.

2. Even as a prudential matter, the Court should not allow partial implementation of the Proposed Redress Plan at the present time. The issue of the FTC's authority to seek or obtain equitable monetary relief under section 13(b) of the FTCA, including its authority to implement through the Receiver its Proposed Redress Plan, has been fully briefed by the FTC, Defendants, and the Receiver in defendants' pending appeal, and is squarely before the Fourth Circuit. Defendants' unsuccessful motion in the Fourth Circuit for a stay of this Court's Orders providing equitable monetary relief was opposed by the FTC on the ground, among others, that this Court had not entered any order implementing the Redress Plan.<sup>1</sup> In light of the FTC's failure to notify the Fourth Circuit of its change of position, this Court should stay its own hand, especially because the FTC has not identified any emergency that requires immediate partial implementation of the Proposed Redress Plan.

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<sup>1</sup> The FTC said: “[Appellants] also claim the district court may soon enter a *redress plan* that will liquidate assets in the receivership and distribute them to consumers, but *no such order has been entered* and appellants do not explain how the injuries they claim are actual and imminent rather than remote and speculative (emphasis added).” *FTC v. Pukke*, No. 20-2215 (L), etc., 4<sup>th</sup> Cir. ECF Dkt. No. 48 at 10.

3. Grant of the FTC's motion for implementation of the first 150 days of its Proposed Redress Plan under Sections II and III may cause confusion and harm to affected consumers who will be asked to review and submit applications for monetary relief. Should Defendants prevail on appeal and be awarded the full relief they seek, the receivership and the actions of the Receiver will be vacated. That means the pre-existing contractual obligations and loans owed by affected consumers to defendants retroactively may be restored. This is important information that consumers should have before they make application decisions. Yet, nothing in the FTC's Proposed Redress Plan notifies affected consumers about this possibility, which in light of *On Point Capital Partners*, 17 F.4<sup>th</sup> at 1078, is not beyond imagination. Absent such notification, the Court should not grant the FTC's motion.

For these reasons, defendants oppose the FTC's Motion for Entry of a Proposed Order Partially Implementing the Proposed Redress Plan and request that the Court deny that Motion.

Respectfully submitted,

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