

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Case No. 9:20-CV-81057

BUREAU OF CONSUMER FINANCIAL PROTECTION,

Plaintiff,

v.

TIMEMARK SOLUTIONS, INC.,

TIMOTHY LENIHAN, SR.,

MARK NAGLER, and

CASEY GASSAWAY,

Defendants.

/

[PROPOSED] STIPULATED FINAL JUDGMENT AND ORDER

The Bureau of Consumer Financial Protection (Bureau) commenced this civil action on [date] to obtain injunctive and monetary relief and civil penalties from Timemark Solutions, Inc., Timothy Lenihan, Sr., Mark Nagler, and Casey Gassaway. The Complaint alleges violations of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 *et seq.*, and its implementing rule, the Telemarketing Sales Rule (TSR), 16 C.F.R. Part 310, as well as violations of Section 1036(a)(1)(A) of the Consumer Financial Protection Act (CFPA), 12 U.S.C. § 5536(a)(1)(A), in connection with Defendants'

telemarketing and offering and sale of debt-relief services to consumers with federal student-loan debt.

The Bureau and Defendants agree to entry of this Stipulated Final Judgment and Order (Order) to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint.

FINDINGS

1. This Court has jurisdiction over the parties and the subject matter of this action.

2. Defendants neither admit nor deny the allegations in the Complaint, except as specifically stated herein. For purposes of this Order, Defendants admit the facts necessary to establish the Court's jurisdiction over them and the subject matter of this action.

3. The Complaint alleges claims upon which relief may be granted.

4. In the course of telemarketing and offering or providing debt-relief services from 2016 through October 2019, Defendants requested and received payment of fees or consideration from consumers for such services before (1) they had renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the consumer; and (2) the consumer had made at least one payment pursuant to that agreement.

5. The relief provided in this Order is appropriate and available pursuant to sections 1054 and 1055 of the CFPA, 12 U.S.C. §§ 5564 and 5565.

6. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order and any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of

this action to the date of this Order. Each Party agrees to bear its own costs and expenses, including, without limitation, attorneys' fees.

7. Entry of this Order is in the public interest.

DEFINITIONS

The following definitions apply to this Order:

8. "Affected Consumer" means any consumer who paid Corporate Defendant for a Debt-Relief Service from 2016 through October 2019.
9. "Assisting Others" includes, but is not limited to:
 - a. formulating or providing, or arranging for the formulation or provision of, any advertising or marketing material, including, but not limited to, any telephone sales script, direct mail solicitation, or the text of any Internet website, email, or other electronic communication;
 - b. formulating or providing, or arranging for the formulation or provision of, any marketing support material or service, including web or Internet Protocol addresses or domain name registration for any Internet websites, affiliate marketing services, or media placement services;
 - c. consulting in any form whatsoever;
 - d. providing names of, or contributing to the generation of, potential customers;
 - e. participating in or providing services related to the offering, sale, or servicing of a product, or the collection of payments for a product;
 - f. acting or serving as an owner, officer, director, manager, principal, partner, or limited partner of any entity; and

g. investing or loaning money.

10. “Corporate Defendant” means Timemark Solutions, Inc., and its successors and assigns.

11. “Debt-Relief Service” means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

12. “Defendants” means the Corporate Defendant and all of the Individual Defendants, individually, collectively, or in any combination.

13. “Effective Date” means the date on which the Order is entered by the Court.

14. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegate.

15. “Individual Defendants” means Timothy Lenihan, Sr., Mark Nagler, and Casey Gassaway, collectively, or in any combination, and each of them by any other names by which they might be known.

16. “Person” means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

17. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against any Defendant based on substantially the same facts as described in the Complaint.

CONDUCT RELIEF

I

Permanent Ban on Debt-Relief Services

IT IS ORDERED that:

18. Defendants, whether acting directly or indirectly, are permanently restrained from:

- a. advertising, marketing, promoting, offering for sale, selling, or providing any Debt-Relief Service;
- b. Assisting Others in advertising, marketing, promoting, offering for sale, selling, or providing any Debt-Relief Service; and
- c. receiving any remuneration or other consideration from, holding any ownership interest in, providing services to, or working in any capacity for any Person engaged in or assisting in advertising, marketing, promoting, offering for sale, selling, or providing any Debt-Relief Service.

Nothing in this Order shall be read as an exception to this Paragraph.

II

Customer Information

IT IS FURTHER ORDERED that:

19. Defendants, and their officers, agents, servants, employees, and attorneys and all other Persons in active concert or participation with any of them who receive actual notice of this Order, whether acting directly or indirectly, may not:

- a. disclose, use, or benefit from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that Defendants obtained before the Effective Date in connection with any Debt-Relief Service;
- b. attempt to collect, sell, assign, or otherwise transfer any right to collect payment from any consumer who purchased or agreed to purchase a Debt-Relief Service from Corporate Defendant.

However, customer information may be disclosed if requested by a government agency or required by law, regulation, or court order.

MONETARY PROVISIONS

III

Order to Pay Redress

IT IS FURTHER ORDERED that:

20. A judgment for monetary relief is entered in favor of the Bureau and against Defendants, jointly and severally, in the amount of \$3,784,360 for the purpose of providing redress to Affected Consumers; however, full payment of this judgment will be suspended upon satisfaction of the obligations in Paragraph 21 of this Section and Paragraphs 34-38 and 40 of Section VI and subject to Section IV of this Order.

21. Within 10 days of the Effective Date, Defendants must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to

the Bureau's wiring instructions, the following amounts, in partial satisfaction of the judgment as ordered in Paragraph 20 of this Section:

- a. Corporate Defendant must pay \$5,000;
- b. Individual Defendant Mark Nagler must pay \$7,000;
- c. Individual Defendant Casey Gassaway must pay \$10,000.

22. With regard to any redress that Defendants pay under this Section, if Defendants receive, directly or indirectly, any reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, or if Defendants secure a tax deduction or tax credit with regard to any federal, state, or local tax, Defendants must: (a) immediately notify the Enforcement Director in writing, and (b) within 10 days of receiving the funds or monetary benefit, Defendants must transfer to the Bureau the full amount of such funds or monetary benefit (Additional Payment) to the Bureau or to the Bureau's agent according to the Bureau's wiring instructions. After the Bureau receives the Additional Payment, the amount of the suspended judgment referenced in Paragraph 20 will be reduced by the amount of the Additional Payment and the Additional Payment will be applied toward satisfaction of the monetary judgment entered in Paragraph 20.

23. Any funds received by the Bureau in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or the Bureau's agent according to applicable statutes and regulations to be used for redress for injured consumers, including, but not limited to, refund of moneys, restitution, damages or other monetary relief, and for any attendant expenses for the administration of any such redress.

24. If the Bureau determines, in its sole discretion, that providing redress to consumers is wholly or partially impracticable or if funds remain after the

administration of redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Defendants will have no right to challenge the Bureau's choice of remedies under this Section, and will have no right to contest the manner of distribution chosen by the Bureau.

25. Payment of redress to any Affected Consumer under this Order may not be conditioned on that Affected Consumer waiving any right.

IV

Effect of Misrepresentation or Omission Regarding Financial Condition
IT IS FURTHER ORDERED that:

26. The suspension of the monetary judgment entered in Section III of this Order is expressly premised on the truthfulness, accuracy, and completeness of Defendants' financial statements and supporting documents submitted to the Bureau, as follows, which Defendants assert are truthful, accurate, and complete, and which include:

- a. The Financial Statement of Corporate Defendant signed on May 14, 2020 and submitted to the Bureau on and about May 18, 2020;
- b. The Financial Statement of Individual Defendant Mark Nagler signed on May 14, 2020 and submitted to the Bureau on and about May 18, 2020;
- c. The Declaration of Individual Defendant Mark Nagler signed on June 24, 2020 and submitted to the Bureau on and about June 26, 2020;
- d. The Financial Statement of Individual Defendant Timothy Lenihan signed on May 31, 2020 and submitted to the Bureau on and about June 1, 2020;

- e. The Declaration of Individual Defendant Timothy Lenihan signed on June 26, 2020 and submitted to the Bureau on and about June 26, 2020;
- f. The Financial Statement of Individual Defendant Casey Gassaway signed on May 12, 2020 and submitted to the Bureau on and about May 20, 2020; and
- g. The Declaration of Individual Defendant Casey Gassaway signed on June 24, 2020 and submitted to the Bureau on and about June 26, 2020.

27. If upon motion by the Bureau, the Court determines that any Defendant has failed to disclose any material asset or that any of his financial statements or oral testimony contain any material misrepresentation or omission, including materially misstating the value of any asset, the Court shall terminate the suspension of the monetary judgment entered in Section III and without further adjudication, shall reinstate the judgment entered in Section III of this Order and the full judgment set forth in that Section with respect to that Defendant shall be immediately due and payable, less any amounts paid to the Bureau under Section III of this Order.

28. If the Court terminates the suspension of the monetary judgment under this Section, the Bureau will be entitled to interest on the judgment, computed from the date of entry of this Order, at the rate prescribed by 28 U.S.C. § 1961, as amended, on any outstanding amounts not paid.

29. Provided, however, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, provided further, that proceedings instituted under this provision would be in addition to, and not in

lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings that the Bureau may initiate to enforce this Order.

V

Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

30. Under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in the Complaint and taking into account the factors in 12 U.S.C. § 5565(c)(3), a judgment for a civil money penalty is entered in favor of the Bureau and against each Defendant, in the amount of \$1. This amount is based on each Defendant's limited ability to pay as attested to in his financial statements listed in Section IV above.

31. Within 10 days of the Effective Date, each Defendant must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

32. The civil money penalty paid under this Order will be deposited in the Civil Penalty Fund of the Bureau as required by Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

33. Defendants must treat the civil money penalty paid under this Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Defendants may not:

- a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Order; or

- b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Order.

Individual Defendants agree that the civil penalty imposed by the Order represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, thus, as to Individual Defendants, it is not subject to discharge under the Bankruptcy Code under 11 U.S.C. § 523(a)(7).

VI

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

34. In the event of any default on Defendants' obligations to make payment under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

35. Defendants relinquish all dominion, control, and title to the funds paid under this Order to the fullest extent permitted by law and no part of the funds may be returned to Defendants.

36. The facts alleged in the Complaint will be taken as true and be given collateral estoppel effect, without further proof, in any proceeding based on the entry of the Order, or in any subsequent civil litigation by or on behalf of the Bureau, including in a proceeding to enforce its rights to any payment or monetary judgment under this Order, such as a nondischargeability complaint in any bankruptcy case.

37. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Bureau under Section 523(a)(2)(A) of the Bankruptcy

Code, 11 U.S.C. § 523(a)(2)(A), and for such purposes this Order will have collateral estoppel effect against each Defendant, even in such Defendant's capacity as debtor-in-possession.

38. Under 31 U.S.C. § 7701, Defendants, unless they already have done so, must furnish to the Bureau their taxpayer-identification numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

39. Within 30 days of the entry of a final judgment, Order, or settlement in a Related Consumer Action, Defendants must notify the Enforcement Director of the final judgment, Order, or settlement in writing. That notification must indicate the amount of redress, if any, that Defendants paid or are required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Defendants may not argue that Defendants are entitled to, nor may Defendants benefit by, any offset or reduction of any monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Defendants based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Defendants must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

40. Upon written request, any consumer reporting agency must furnish consumer reports to the Bureau concerning any Individual Defendant under Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 b(a)(1), which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

COMPLIANCE PROVISIONS

VII

Reporting Requirements

IT IS FURTHER ORDERED that:

41. Defendants must notify the Bureau of any development that may affect compliance obligations arising under this Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against Defendants; or a change in any Defendant's name or address. Defendants must provide this notice at least 30 days before the development or as soon as practicable after the learning about the development, whichever is sooner.

42. Within 7 days of the Effective Date, each Defendant must:

- a. designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with such Defendant;
- b. identify all businesses for which such Defendant is the majority owner, or that Defendant directly or indirectly controls, by all

- of their names, telephone numbers, and physical, postal, email, and Internet addresses;
- c. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales;
 - d. identify such Individual Defendant's telephone numbers and all email, Internet, physical, and postal addresses, including all residences;
 - e. describe in detail such Individual Defendant's involvement in any business for which he performs services in any capacity or which he wholly or partially owns, including such Individual Defendant's title, role, responsibilities, participation, authority, control, and ownership.

43. Defendants must report any change in the information required to be submitted under Paragraph 44 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.

44. Within 90 days of the Effective Date, and again one year after the Effective Date, each Defendant must submit to the Enforcement Director an accurate written compliance progress report sworn to under penalty of perjury (Compliance Report), which, at a minimum:

- a. lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which such Defendant has complied with each such paragraph and subparagraph of this Order; and
- b. attaches a copy of each Order Acknowledgment obtained under Section VII, unless previously submitted to the Bureau.

VIII

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that,

45. Within 7 days of the Effective Date, each Defendant must submit to the Enforcement Director an acknowledgment of receipt of this Order, sworn under penalty of perjury.

46. Within 30 days of the Effective Date, Corporate Defendant, and each Individual Defendant, for any business for which he is the majority owner or which he directly or indirectly controls, must deliver a copy of this Order to each of its board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Order.

47. For 5 years from the Effective Date, Corporate Defendant, and each Individual Defendant, for any business for which he is the majority owner or which he directly or indirectly controls, must deliver a copy of this Order to any business entity resulting from any change in structure referred to in Section VII, any future board members and executive officers as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Order before they assume their responsibilities.

48. Each Defendant must secure a signed and dated statement acknowledging receipt of a copy of this Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et*

seq., within 30 days of delivery, from all persons receiving a copy of this Order under this Section.

IX

Recordkeeping

IT IS FURTHER ORDERED that

49. Defendants must create, for at least 10 years from the Effective Date, the following business records, including for any business for which Individual Defendants, individually or collectively with any other Defendant, is a majority owner or which he directly or indirectly controls: all documents and records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Bureau. Defendants must retain these documents for at least 10 years after creation and make them available to the Bureau upon the Bureau's request.

50. Corporate Defendant must maintain, for at least 5 years from the Effective Date or 5 years after creation, whichever is longer:

- a. for each individual Affected Consumer and his or her enrollment in a Debt-Relief Service: the consumer's name, address, phone number, email address; amount paid, description of the Debt-Relief Service purchased, the date on which the Debt-Relief Service was purchased and, if applicable, the date and reason consumer left the program;
- b. accounting records showing the gross and net revenues generated by any Debt-Relief Service;
- c. any and all documentation required to complete the Bureau's individual and corporate financial disclosure forms; and

- d. all consumer complaints and refund requests (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests.

Corporate Defendant must make these materials available to the Bureau upon the Bureau's request.

51. Individual Defendants must maintain, for at least 5 years from the Effective Date or 5 years after creation, whichever is longer, financial records, including, but not limited to, individual and corporate tax returns, credit reports, any and all documentation required to complete the Bureau's individual and corporate financial disclosure forms, and accounting records showing gross and net revenues, all costs incurred in generating revenues, and the resulting net profit or loss. Individual Defendants must make these materials available to the Bureau upon the Bureau's request.

X

Notices

IT IS FURTHER ORDERED that:

52. Unless otherwise directed in writing by the Bureau, Defendants must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, "*CFPB v. Timemark Solutions Inc., et al.*, Case No. 9:20-CV-81057" and send them by overnight courier or first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Bureau of Consumer Financial Protection
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

XI

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

53. Defendants must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Defendants must provide such information in their or their agents' possession or control within 14 days of receiving a written request from the Bureau.

XII

Compliance Monitoring

IT IS FURTHER ORDERED that, to monitor Defendants' compliance with this Order, including the financial representations upon which the monetary judgment was partially suspended:

54. Within 14 days of receipt of a written request from the Bureau, Defendants must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; provide sworn testimony; or produce documents.

55. For purposes of this Section, the Bureau may communicate directly with Defendants, unless Defendants retain counsel related to these communications.

56. Defendants must permit Bureau representatives to interview any employee or other person affiliated with Defendants who has agreed to such an interview. The person interviewed may have counsel present.

57. Nothing in this Order will limit the Bureau's lawful use of compulsory process, under 12 C.F.R. § 1080.6.

XIII
Retention of Jurisdiction

IT IS FURTHER ORDERED that:

58. The Court will retain jurisdiction of this matter for the purpose of enforcing this Order.

XIV
Service

IT IS FURTHER ORDERED that:

59. This Order may be served upon Defendants by electronic mail, certified mail, or United Parcel Service, either by the United States Marshal, the Clerk of the Court, or any representative or agent of the Bureau.

IT IS SO ORDERED.

DATED this ____ day of _____, 20___.

United States District Court Judge