

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**MUNICIPAL RECOVERY SERVICES
CORPORATION,** a corporation, also d/b/a
Warrant Enforcement Division,

MARCOS ANTHONY NIETO, a/k/a Mark Nieto
individually and as an officer of Municipal
Recovery Services Corporation,

Defendants.

Civil Action No. 15-CV-04064-N

**STIPULATED ORDER FOR PERMANENT INJUNCTION
AND MONETARY JUDGMENT**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Relief (“Complaint”), pursuant to Sections 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §53(b) and Section 814 of the Fair Debt Collections Practices Act, 15 U.S.C. § 1692l . The Commission and Defendants, Municipal Recovery Services Corporation and Marcos Anthony Nieto, stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.

2. The Complaint charges that Defendants participated in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the Fair Debt Collections Practice Act (“FDCPA”), 15 U.S.C. § 1692-1692p, in connection with the collection of municipal court-imposed debts and municipal utility debts.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
5. Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

- A. **“Collecting on a Debt”** means any activity the principal purpose of which is to collect or attempt to collect, directly or indirectly, debts owed, or asserted to be owed, or due.
- B. **“Consumer”** means any person.
- C. **“Debt”** means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.
- D. **“Debt Collector”** means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the

collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owned or due another. The term also includes any creditor who, in the process of collecting its own debts, uses any name other than its own which would indicate that a third person is collecting or attempting to collect such debts. The term also includes any person to the extent such person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt.

- E. **“Defendants”** means the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination.
1. **“Corporate Defendant”** means Municipal Recovery Services Corporation, also doing business as Warrant Enforcement Division, and its successors and assigns.
 2. **“Individual Defendant”** means Marcos Anthony Nieto, also known as Mark Nieto.
- F. **“Material Fact”** means likely to affect a person’s choice of, or conduct regarding, goods and services.

ORDER

I. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, 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, in connection with collecting on a debt, are permanently restrained and enjoined from misrepresenting, expressly or by implication:

- A. That consumers will be arrested, jailed, or imprisoned for failing to pay a debt;
- B. That consumers will have their vehicle impounded;
- C. That consumers will be unable to renew their driver's license;
- D. The sender of Defendants' communications;
- E. That consumers have committed a crime by having an unpaid debt;
- F. That consumers have outstanding arrest warrants against them;
- G. Threatening to take any action that cannot legally be taken or that is not intended to be taken; or
- H. Any other material fact.

II. INJUNCTION AGAINST UNLAWFUL COLLECTION PRACTICES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, 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, in connection with collecting on debt, are permanently restrained and enjoined from:

- A. Using any unfair or unconscionable means to collect or attempt to collect any debt, in violation of the FTC Act and Section 808 of the FDCPA, 15 U.S.C. § 1692f, including, but not limited to, using a postcard to communicate with a person about a debt.
- B. Violating Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a), by failing to provide debtors, either in an initial communication or a written notice sent five days after the initial communication, with:
 - 1. the amount of the debt;
 - 2. the name of the creditor to whom the debt is owed;

3. A statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
 4. A statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
 5. A statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.
- C. Violating the FDCPA, 15 U.S.C. §1692-1692p, a copy of which is attached as Attachment A, including without limitation, Section 807, 15 U.S.C. §1692e; Section 808, 15 U.S.C. §1692f; and Section 809(a), 15 U.S.C. §1692g(a).

III. MONETARY JUDGMENT AND SUSPENSION

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of ONE HUNDRED AND NINETY-FOUR THOUSAND EIGHT HUNDRED AND EIGHTY-EIGHT DOLLARS AND TWENTY-TWO CENTS (\$194,888.22) is entered in favor of the Commission against Defendants, jointly and severally, as equitable monetary relief.
- B. Judgment is suspended, subject to the Subsections below.
- C. The Commission's agreement to the suspension of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of the Defendants'

sworn financial statements and related documents (collectively, “financial representations”) submitted to the Commission, namely:

1. The Financial Statement of Individual Defendant Marcos Nieto signed on November 25, 2015, including the attachments; and
 2. The Financial Statement of Corporate Defendant Municipal Recovery Services Corporation signed by Marcos Nieto, owner on November 25, 2015, including attachments.
- D. The suspension of the judgment will be lifted as to any Defendant if, upon motion by the Commission, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.
- E. If the suspension is lifted, the judgment becomes immediately due as to that Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section plus interest computed from the date of entry of this Order.
- F. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- G. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

- H. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- I. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.
- J. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

IV. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

- A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 5 years after entry of this Order, Individual Defendant for any business that he, individually or collectively with Corporate Defendant, is the majority owner or controls directly or indirectly, and Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

V. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

- A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:
 1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
 2. Additionally, Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which Individual Defendant performs services whether as an employee or otherwise and any entity in which Individual Defendant has any

ownership interest; and (c) describe in detail Individual Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 15 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
2. Additionally, Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Individual Defendant performs services whether as an employee or otherwise and any entity in which Individual Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Municipal Recovery Services Corporation, et al.* FTC File No. 1523003.

VI. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 15 years after entry of the Order, and retain each such record for 5 years. Specifically, Individual Defendant for any business that he, individually or collectively with Corporate Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Records of all consumer accounts and payment histories;
- B. Records of all documents evidencing the existence of a warrant;
- C. Records of all consumer complaints, whether received directly or indirectly, such as through a third party, and any response;
- D. Records of all contracts signed with client-creditors;

- E. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination; and
- F. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

VII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to

Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

- D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

VIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SIGNED January 29, 2016.

A handwritten signature in black ink that reads "David C. Godbey". The signature is written in a cursive style with a large, sweeping "D" and a long, trailing flourish at the end.

DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

**FOR PLAINTIFF
FEDERAL TRADE COMMISSION**

/s/ Luis H. Gallegos

LUIS H. GALLEGOS, Oklahoma Bar #19098

REID A. TEPFER, Texas Bar #24079444

THOMAS B. CARTER, Texas Bar # 03932300

(214) 979-9383 (Gallegos)

(214) 979-9395 (Tepfer)

(214) 979-9372 (Carter)

(214) 953-3079 (facsimile)

LGALLEGOS@FTC.GOV

TCARTER@FTC.GOV

RTEPFER@FTC.GOV

DEFENDANTS:

DEFENDANT MUNICIPAL RECOVERY SERVICES CORPORATION

/s/Marcos Anthony Nieto

Date: 12-2-15

**BY: MARCOS ANTHONY NIETO,
INDIVIDUALLY AND AS AN OFFICER OF
MUNICIPAL RECOVERY SERVICES
CORPORATION**

DEFENDANT MARCOS NIETO

/s/ Marcos Anthony Nieto

Date: 12-2-15

**BY: MARCOS ANTHONY NIETO,
INDIVIDUALLY AND AS AN OFFICER OF
MUNICIPAL RECOVERY SERVICES
CORPORATION**