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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

Federal Trade Commission,  
  
Plaintiff,

v.

AMG Services, Inc., et al.,  
  
Defendants, and  
  
Park 269 LLC, et al.,  
  
Relief Defendants.

Case No.: 2:12-cv-00536-GMN-VCF

**ROBERT D. CAMPBELL'S  
OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION**

**Oral Argument Requested**

Defendant Robert D. Campbell (hereinafter “Campbell”), by and through his attorneys of record, Jay Young, Esq. of Marquis Aurbach Coffing, hereby opposes Plaintiff Federal Trade Commission’s (hereinafter the “FTC”) Motion for Preliminary Injunction and Other Equitable Relief. This Opposition is made and based upon the attached Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument at the time of the hearing of this matter the Court may wish to entertain.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION.**

The FTC cannot succeed in obtaining personal liability against Campbell in this matter. As a threshold consideration, before this Court can analyze the FTC’s motion against Campbell, it must first make the determination that the FTC is entitled to injunctive relief against SFS, Inc. (hereinafter “SFS”) and/or the fictional “common enterprise”. Having failed to prove liability

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1 against SFS, the FTC is not entitled to have this Court even entertain the question of the  
2 likelihood of individual liability.

3 Moreover, the FTC predicates its argument for personal liability against Campbell on  
4 innuendo rather than evidence. For support, it points out that Campbell is and acts as an officer  
5 of SFS, Inc. Beyond that fact, there is little to the FTC's bare allegation but the mere insinuation  
6 of involvement by Campbell in the complained-of activities. There is no evidence of active  
7 participation or control by Campbell such as would require an injunction against him. The FTC  
8 doesn't even bother to allege a single fact, or provide any evidence for the Court to analyze  
9 showing that he *personally* engaged in a single allegedly deceptive act. Moreover, the FTC fails  
10 to even suggest that Campbell is so powerful as to control the entire fictional "common  
11 enterprise". The Motion must fail.

## 12 **II. LEGAL ARGUMENT.**

13 The FTC's Motion fails as to Campbell. First, the Court need not reach the analysis of  
14 whether the FTC enjoys a likelihood of success against Campbell, as it has failed to prove the  
15 same against either SFS or the fictional "common enterprise" defendants. Since individual  
16 liability it predicated on corporate liability, there is no need for the Court to entertain the  
17 exercise. Second, Campbell is not a part of any fictional "common enterprise"; the FTC cannot,  
18 therefore, use any of the alleged acts of the fictional "common enterprise" against Campbell in  
19 order to establish a likelihood of success against him. Third, even if the Court were to determine  
20 that the FTC is entitled to injunctive relief against SFS, liability will not lie against Campbell, as  
21 he did not participate directly in the acts alleged in Complaint.

### 22 **A. INDIVIDUAL LIABILITY IS PREDICATED ON CORPORATE** 23 **LIABILITY**

24 An individual may be held liable for injunctive relief under the FTCA for the practices of  
25 a corporation for which he is an officer if only the FTC can prove:

26 (1) that the corporation committed misrepresentations or omissions of a kind  
27 usually relied on by a reasonably prudent person, resulting in injury, and (2) that  
28 [the individual] participated directly in the acts or practices or had authority to  
control them.

1 FTC v. Grant Connect, LLC, 2009 WL 3074346 at 9 (D. Nev.), quoting FTC v. Publ'g Clearing  
 2 House, Inc., 104 F.3d 1168, 1170-71 (9<sup>th</sup> Cir. 1997).

3 In the instant matter, the FTC cannot prove it is entitled to injunctive relief against the  
 4 Tribal Defendants. Campbell hereby joins in the Opposition filed by the Tribal Defendants and  
 5 incorporates the same as if stated at length and in full herein. As the FTC cannot possibly  
 6 survive the overwhelming evidence and law preventing its request for injunctive relief against  
 7 the Tribal Defendants, the Court need not consider whether the FTC is entitled to injunctive  
 8 relief against Campbell. Without proof of corporate liability, the FTC cannot, by law, maintain  
 9 any hope of prevailing against Campbell.  
 10

11 **B. THE FTC'S ALLEGATIONS OF CAMPBELL'S ACTIVITY ARE WEAK**

12 The FTC, as if admitting the weakness of its case against Campbell, addresses his  
 13 "involvement" in this matter in two paragraphs. In the first, the FTC summarily proclaims  
 14 (without evidentiary support) that "Robert D. Campbell . . . participate[s] directly in and [has]  
 15 knowledge of the unlawful activity discussed herein, and [has] authority to control the companies  
 16 involved in those practices."<sup>12</sup> The FTC then cites its alleged "proof" of Campbell's  
 17 connectivity to the alleged violations: (1) Campbell is an officer of SFS, Inc.,<sup>3</sup> (2) Campbell is  
 18 the administrator for the www.oneclickcash.com website;<sup>4</sup> (3) Campbell is a signatory on the  
 19 SFS, Inc. bank account;<sup>5</sup> (4) Campbell has knowledge of SFS's "day-to-day" operations, lending,  
 20

21  
 22 <sup>1</sup> See Plaintiff's Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction  
 and Other Equitable Relief (hereinafter the "Motion") at 8:16-9:2.

23 <sup>2</sup> Motion at 8:17-9:2 (emphasis added). It is unclear whether the FTC's statement is intended to indicate  
 24 that Campbell has authority to control any of the corporate entities other than SFS. The statement seems  
 25 to indicate a belief that each individual defendant has the ability to control each of "the companies  
 26 involved in those practices." If the FTC is taking that position, it doesn't even attempt to provide  
 evidence of any involvement by Campbell in any entity except SFS. Moreover, it makes no attempt to  
 allege or prove Campbell's control over SFS, much less over the fictional "common enterprise".

27 <sup>3</sup> Motion at 11:13. Campbell does not deny that he is an officer of SFS.

28 <sup>4</sup> Id. at 11:13-14.

marketing, and strategy;<sup>6</sup> and (5) Campbell participated in the defense of “the Lending Defendants”<sup>7</sup> in state law enforcement proceedings.<sup>8</sup>

1. **The FTC Provides No Proof of Direct Involvement or Control by Campbell**

The FTC’s allegations are not sufficient, even if true, to subject Campbell to liability, as collectively they fail to suggest, much less prove, that Campbell personally engaged in a deceptive act or actually participated directly in any injurious activity. The FTC offers no proof that Campbell participates *directly* in any of the allegedly deceptive activities. It similarly offers no proof Campbell has the ability to *control* even SFS, much less the remaining members of the fictional “common enterprise”. Further, while Campbell doesn’t deny he is an officer of SFS, Inc., or that he generally has knowledge of SFS’s business, the FTC fails to connect the dots sufficient to show control from these bare allegations.

2. **The Website Registration as “Administrator” is Not Tantamount to Actual Administration of the Website**

Further, the FTC proffers documents showing that Campbell is listed by GoDaddy.com Inc. and Domains By Proxy as the administrator for SFS’s website, [www.oneclickcash.com](http://www.oneclickcash.com).<sup>9</sup> The FTC does not bother explaining who actually registered the website, although it insinuates elsewhere that the Muir Law Firm registered the site.<sup>10</sup> Examination of the documentation reveals that Campbell is listed as “administrator”, but it does not reveal who registered the URL

<sup>5</sup> Campbell does not deny being signatory on the account at the times referenced in the Motion at 11:13-14.

<sup>6</sup> *Id.* at 11:14-12:2.

<sup>7</sup> Again, the FTC attempts to improperly paint Campbell as one who is involved in the defense of the “Lending Defendants”, which it defined as: AMG Services, Red Cedar Services, Inc., SFS, and Tribal Finance Services Corporation. Motion at 3:10-11. The FTC has provided no proof of involvement by Campbell to defend AMG Services, Red Cedar Services, Inc., or Tribal Finance Services Corporation. What it has provided are three sworn statements by Campbell stating nothing more than was necessary to prove that SFS was a sovereign nation enjoying immunity from state enforcement.

<sup>8</sup> *Id.* at 12:2-3.

<sup>9</sup> See PX 22 at 1496-1507, attached to the FTC’s Motion.

<sup>10</sup> See Motion at 8:11-14, citing PX 22 at 604-05; see also PX 22 at 1502-1507 showing payment by “The Muir Law Firm LLC” paid by credit card (Visa ending in 0503).

1 or provided Campbell's name to the registrar. In fact, the "Registrant Contact" information  
 2 reveals that the Registrant is listed as SFS, Inc. and Campbell at SFS's address: "52946 Highway  
 3 12, Niobrara, Nebraska 68760".<sup>11</sup> Campbell and SFS, Inc. are listed at the same address as the  
 4 "Shipping Information" and "Billing Information".<sup>12</sup>

5 That the Treasurer of a corporation is listed as the shipping and billing contact should not  
 6 surprise anyone acquainted with business practices. It certainly does not portend the ability to  
 7 control over a fictional "common enterprise" established to deceive the public. This is especially  
 8 true in light of the FTC's allegation that the Muir Law Firm, LLC actually paid for the  
 9 registration of the site.<sup>13</sup> The FTC is hard pressed to claim both that Mr. Muir "pays for the  
 10 website registration costs and other fees for each of the Lending Defendants,"<sup>14</sup> and at the same  
 11 time claim that Campbell registered the website absent showing that Campbell had permission to  
 12 use the Muir Firm's credit card.

13 More importantly, however, Campbell does not act as the administrator of the website in  
 14 any sense of the word other than being listed as such by whoever actually registered the site.  
 15 Campbell does not administer, control, or direct the day-to-day creation or maintenance of  
 16 content or operation of the site.<sup>15</sup> Campbell did not design the www.oneclickcash.com website,  
 17 did not implement the website, and has not ever worked on the content of website or the  
 18 language of the documents created by interactions with the website. Campbell is not involved in  
 19 the content or day-to-day administration of the website.<sup>16</sup> Again, the fact that Campbell is listed

20  
 21 <sup>11</sup> Id.; see also Declaration of Robert D. Campbell attached as Exhibit A at ¶ 3.

22 <sup>12</sup> See PX 22 at 1502.

23 <sup>13</sup> See Motion at 8:11-14, citing PX 22 at 604-05; see also PX 22 at 1502-1507 showing payment by "The  
 24 Muir Law Firm LLC" paid by credit card (Visa ending in 0503).

25 <sup>14</sup> Id.

26 <sup>15</sup> See Exhibit A at ¶ 4. The FTC actually alleges in its Complaint that Defendant Timothy J. Muir pays  
 27 for the domain registration. Complaint at ¶ 19. The FTC does not and cannot truthfully allege that  
 28 Campbell actually administers the website or its content – only that someone listed Campbell as  
 administrator on a website domain registration service.

<sup>16</sup> Id. at ¶ 4.

on a registration site as “administrator” of SFS’s website is of no moment to the analysis of this case when exposed to the light of the true circumstances.

### 3. Having Knowledge of Operations is Insignificant

Campbell testified via affidavit or declaration in prior actions in Colorado and California state courts.<sup>17</sup> As stated therein, the testimony was provided to contest jurisdiction of the respective courts over SFS. Campbell testified having sufficient knowledge of SFS’s “day-to-day” operations, lending, marketing, and strategy in order to testify truthfully that the same are and were conducted on the sovereign Santee Sioux Nation’s tribal land.<sup>18</sup> Campbell’s knowledge sufficient to so testify falls well short of what is required to prove control over either SFS or the fictional “common enterprise”.

### C. THE FTC’S FICTIONAL “COMMON ENTERPRISE” ALLEGATION FAILS

Without proving Campbell is a part of the fictional “common enterprise”, the FTC cannot possible prevail against him. Individuals are “held to be participants in a common enterprise where the individual and the other members of the enterprise operate as a single economic entity.”<sup>19</sup> The FTC does not even claim, must less attempt to prove, that Campbell operated as a single economic entity with the other defendants. Importantly, Campbell is entitled to have the Court evaluate the FTC’s proof against him independent of any proof made against any other defendant.<sup>20</sup>

Where is the allegation or proof that Campbell as an individual paid the setup costs for the eleven corporate defendants, including a law firm? Where is the allegation or proof that Campbell as an individual shared in the profits or losses of the corporate defendants? Where is the allegation or proof of a single payment to Campbell by any of the defendants? Campbell’s

<sup>17</sup> See PX 22 at 1007-1013, 1015-1019.

<sup>18</sup> Id.

<sup>19</sup> Commodity Futures Trading Comm’n v. Wall St. Underground, Inc., 281 F. Supp. 2d 1260, 1271 (D. Kan. 2003).

<sup>20</sup> See F.T.C. v. Kuykendall, 371 F.3d 745, 748 (10th Cir. 2004) (citation omitted) (each defendant is entitled to an individualized determination of his interests).



connectivity to the fictional “common enterprise” is nonexistence; the FTC certainly cannot prove he participated as a “single economic entity” with the other defendants.

In order to succeed against Campbell, the FTC must prove that he has the ability to control each of the other defendants—an impossible standard.<sup>21</sup> To determine whether a fictional “common enterprise” exists, courts consider the following factors: (1) whether purportedly separate corporations share employees, officers and office space; (2) whether corporate entities deal at arm’s-length; (3) whether corporate entities have their own substantive businesses; and (4) whether there is a commingling of corporate assets.<sup>22</sup> Other than making the bald allegation of the existence of the “common enterprise,” the FTC fails to even analyze these factors. Of course, the Court is not obligated to accept the FTC’s bare allegations without proof.<sup>23</sup> Simply put, the FTC cannot hope to prove the factors, as the proof does not exist. It certainly has not been proved as to Campbell.

#### **D. NO INDIVIDUAL LIABILITY IS JUSTIFIED**

The FTC may prove that the individual defendant either: (1) “actively participated in the violative practices”; or (2) had authority to “control the deceptive practices” **and** either had or should have had knowledge of the deceptive trade practice.<sup>24</sup>

<sup>21</sup> Id., 371 F.3d at 758 (The FTC failed to provide “any reason to believe the other corporate defendants could control [the primary corporate defendant], or that the corporate structure was nothing more than an effort to conceal the assets of [the primary corporate defendant] and not a legitimate liability-limiting arrangement.”)

<sup>22</sup> See, e.g., FTC v. J.K. Publications, 99 F.Supp.2d 1176, 1202 (C.D. Cal. 2000) (common enterprise found where corporate defendants were under individual defendant’s common control, shared office space, employees, and officers).

<sup>23</sup> See cf. Baumer v. Pacht, 8 F.3d 1341, 1347 (9th Cir. 1993) (stating that “the bare allegations of the complaint provide no basis to infer assent to contribute to a common enterprise”); see also Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc., 762 F.2d 1374, 1377 (9th Cir. 1985) (affirming denial of preliminary injunction supported by “only conclusory statements”); S.E.C. v. Cavanagh, 1 F.Supp.2d 337, 374 (S.D.N.Y. 1998) aff’d, 155 F.3d 129 (2d Cir. 1998) (denying relief against two defendants where government offered no evidence to prove individual involvement).

<sup>24</sup> See FTC v. Nat’l Prize Comm’n, 2006 WL 3234360, at 5 (D. Nev.), citing Publ’g Clearing House, 104 F.3d at 1170; see also FTC v. FMFG, Inc., 2006 WL 2639366 at 3, citing FTC v. World Media Brokers, 415 F.3d 758, 763 (7<sup>th</sup> Cir. 2005); see also Grant Connect, 2009 WL 3074346 at 9, quoting FTC v. Cyberspace.Com LLC, 453 F.3d 1196, 1202 (9<sup>th</sup> Cir. 2006) (emphasis added); see also FTC v. Grant Connect, 2011 WL 5149187 at 9 (D. Nev.).

1                   **1.     Campbell Did Not Actively Participate in the Lending Business**

2           As indicated above, Campbell does not administer, control, or direct the day-to-day  
3 creation or maintenance of content or operation of the site. He did not design the  
4 www.oneclickcash.com website, did not implement the website, and has not ever worked on the  
5 content of website or the language of the documents created by interactions with the website.  
6 Campbell is not involved in the content or day-to-day administration of the website. Finally, he  
7 is not involved in any transaction with customers of the www.oneclickcash.com site.<sup>25</sup>  
8

9                   **2.     Campbell Had No Authority to Control**

10          The FTC's Motion can certainly not be accused of drawing too fine a point on its  
11 discussion of "proof" against Campbell. Indeed, its brief is bereft of any analysis discussing how  
12 it believes its bare allegations show that Campbell had and used authority to control SFS or the  
13 fictional "common enterprise". The FTC does not even discuss an allegation that Campbell had  
14 authority to control any deceptive trade practice. The reason is simply that Campbell did not and  
15 does not wield any such authority.  
16

17          In the absence of specific evidence, requisite authority may be inferred from activities  
18 that exhibit signs of planning, decision making, and supervision, such as preparing or approving  
19 ads containing deceptive representations.<sup>26</sup> Again, the FTC fails to allege or prove that Campbell  
20 planned the business of SFS, www.oneclickcash.com, or the fictional "common enterprise". The  
21 only competent testimony on the topic before the Court is that Campbell did not make any  
22 decisions about, supervise, prepare, or approve of the content of the website.<sup>27</sup> The FTC cannot  
23 prove Campbell had or used authority to control the actions of the SFS, the website, or the  
24

25 \_\_\_\_\_  
26 <sup>25</sup> See Exhibit A at ¶ 4.

27 <sup>26</sup> See Sw. Sunsites, Inc. v. FTC, 785 F.2d 1431 (9th Cir. 1986).

28 <sup>27</sup> See Exhibit A at ¶ 4.



1 “common enterprise.”

2 **3. Joinder in the Tucker Defendants’ Opposition**

3 Campbell hereby joins in the Tucker Defendants’ arguments regarding the FTC’s failure  
4 to plead with particularity as required by Rule 9(b). This fatal flaw prevents the FTC from  
5 prevailing in this matter.

6 **III. CONCLUSION**

7 The FTC cannot succeed in obtaining personal liability against Campbell in this matter.  
8 As a threshold consideration, the FTC failed to prove a likelihood of success against SFS and  
9 therefore Campbell is entitled to have this Court deny the motion. Beyond that, the FTC’s bare  
10 allegations of a fictional “common enterprise” cannot survive. Of course, without the allegation  
11 of a “common enterprise”, the FTC’s Motion cannot succeed against Campbell. Campbell  
12 respectfully requests that the Court deny the FTC’s Motion.

13 Dated this 4<sup>th</sup> day of May, 2012.

14 MARQUIS AURBACH COFFING

15 By Jay Young

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND OTHER EQUITABLE RELIEF** was submitted electronically for filing and/or service with the United States District Court for the District of Nevada on the 4th day of May, 2012. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

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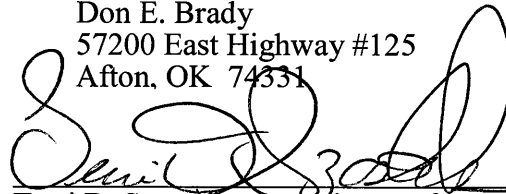
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**DECLARATION OF ROBERT D. CAMPBELL IN SUPPORT OF OPPOSITION TO  
MOTION FOR PRELIMINARY INJUNCTION**

Robert D. Campbell, declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

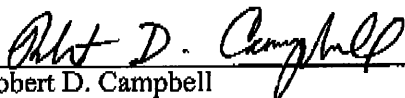
2. I am a long time resident of the Santee Sioux Reservation located in Knox County, Nebraska.

3. SFS, Inc.'s address is 52946 Highway 12, Niobrara, Nebraska 68760.

4. I did not design the www.oneclickcash.com website, and did not make any decisions about, supervise, prepare, or approve of the content of the website. I did not implement the website, and have not worked on the content of website or the language of the documents created by interactions with the website. I do not administer, control, or direct the day-to-day creation or maintenance of content or operation of the site. A business manager operates the website; I am not involved in the content or day-to-day administration of the website.

5. I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 4 day of May, 2012.

  
Robert D. Campbell