

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
www.flsb.uscourts.gov

In re:

Case no. 19-21442-LMI
Chapter 11

STEVEN JOHN BRANSFIELD, JR.,

Debtor.

**MOTION TO APPROVE STIPULATION AND COMPROMISE BETWEEN DEBTOR
STEVEN JOHN BRANSFIELD, JR. AND HIS AFFILIATED ENTITIES AND THE
FEDERAL TRADE COMMISSION**

Any interested party who fails to file and serve a written response to this motion within 21 days after the date of service stated in this motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be canceled.

STEVEN JOHN BRANSFIELD, JR., the Debtor and Debtor-in-possession in the above-captioned chapter 11 case (“Debtor”), files this *Motion* (the “Motion”) *to Approve Stipulation and Compromise between Debtor Steven John Bransfield, Jr. and his affiliated entities and the Federal Trade Commission* (“FTC” or “Commission”) (collectively, the “Parties”), and in connection therewith seeks the entry of an Order pursuant to Fed. R. Bankr. P. 9019 and Local Rules 9019-1 and 9013-1(D) authorizing the Debtor to (a) enter into the proposed stipulated judgment with the FTC and (b) execute any and all documents as needed, if any, to further effectuate the terms of the stipulated judgment, and states as follows:

BACKGROUND

1. The Debtor filed an individual voluntary chapter 11 petition on August 26, 2019, commencing the above-captioned bankruptcy case styled as, *In re Steven John Bransfield, Jr.*, Bankr. Case No. 19-21442 (S.D. Fla.) (“Bankruptcy Case”).

2. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41, *et seq.* The Commission is charged with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such other equitable relief as may be appropriate in each case, including rescission of contracts and restitution and disgorgement of unlawfully obtained monies. 15 U.S.C. § 53(b).

3. Prior to the petition date, the FTC had been investigating Debtor and his affiliates SB&A Group, LLC, SB&A Media, Inc., and WeRunAds, LLC (collectively, the “SB&A Corporate Defendants”) regarding their involvement as high-ranking affiliates of a fraudulent online coaching program and investment opportunity scheme called “My Online Business Education” or “MOBE.” Since 2013, the perpetrators of the MOBE scheme defrauded tens of thousands of consumers—for over \$300 million—by claiming to offer a simple 21-step system that consumers could use to start their online marketing business and generate substantial income. Contrary to these representations, most consumers who purchased MOBE products did not make substantial income and instead suffered devastating financial losses or crippling debt. In early June 2018, the FTC commenced an enforcement action against the MOBE enterprise and its principals and obtained a temporary restraining order to halt the scheme. *FTC v. MOBE et al.*, No. 18-cv-00862-RBD-DCI (M.D. Fla.) (the “MOBE Litigation”).

4. The FTC has alleged that Debtor and the SB&A Corporate Defendants’ participation in the MOBE scheme constitutes deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a). The Debtor and SB&A Corporate Defendants neither admit nor deny these allegations.

5. The FTC further alleges that any equitable monetary relief ordered under Section 5 of the FTC Act for Debtor's violations is nondischargeable in bankruptcy under 11 U.S.C. §§ 523 and 1141(d). Debtor neither admits nor denies these allegations.

6. On August 26, 2019, Debtor filed his Schedules and Statement of Financial Affairs. (ECF 1, "Schedules".) Debtor identified a \$450,000 asset in "funds frozen by FTC. (Currently held by the receiver in FTC action of MOBE. Formerly in the Chase Bank account of Wealth Building Technologies, LLC)." (ECF 1 at 22, 125.) In fact, there were about \$340,000 held in three bank accounts with JP Morgan Chase Bank, N.A, associated with Wealth Building Technologies LLC ("WBT") that the district court in the MOBE Litigation ordered to be frozen in June 2018.¹ At the time of the asset freeze order, these bank accounts were held and controlled by one of the MOBE defendants, Russell Walter Whitney.²

7. The FTC disputes that Debtor has any interest in WBT or in the funds held by the MOBE receiver ("WBT Accounts"). Debtor is not a beneficiary or signatory to any of these accounts. Debtor also has not provided the FTC with any operating agreement or shareholder agreement demonstrating his alleged interest in WBT or the assets of WBT. Moreover, the FTC alleges that the WBT Accounts hold funds that are directly traceable to the MOBE scam and are being held by the MOBE receiver in constructive trust.

8. On September 26, 2019, Debtor subsequently revised his Schedules to identify only the potential interest of Debtor in WBT, rather than the WBT Accounts themselves. (ECF 28.)

¹ The asset freeze orders are still pending at the time of this motion.

² Russell Whitney died in November 2018 while the FTC's claims against him in the MOBE Litigation were pending. In May 2019, the district court granted the FTC's motion to substitute the personal representative of Russell Whitney's estate, Ingrid Whitney, as the defendant in the MOBE Litigation.

9. The FTC does not consent to the Bankruptcy Court's jurisdiction to enter a final order resolving the FTC's allegations against Debtor and the SB&A Corporate Defendants that they violated Section 5 of the FTC Act.

10. The FTC's proposed action against Debtor is exempt from the automatic stay provision under the exception for police and regulatory actions set forth in 11 U.S.C. § 362(b)(4). Courts have repeatedly held that FTC enforcement actions seeking injunctive relief for violations of the FTC Act and other laws the Commission enforces fall within this exception and may proceed notwithstanding the filing of a bankruptcy petition.³

11. The Parties have reached an agreement to settle and compromise any and all claims and causes of action between them, the terms of which agreement are set forth in detail below.

SUMMARY OF THE TERMS OF THE STIPULATED JUDGMENT⁴

12. The FTC has negotiated a proposed stipulated judgment for permanent injunction and equitable monetary relief ("Stipulated Judgment") with Debtor and the SB&A Corporate Defendants to resolve the FTC's allegations that Debtor and the SB&A Corporate Defendants violated Section 5 of the FTC Act.⁵

13. The FTC's proposed complaint and Stipulated Judgment will be filed in the District Court for the Middle District of Florida ("District Court") as a related proceeding to the MOBE Litigation. The proposed Stipulated Judgment would impose injunctive relief to prevent the

³ See, e.g., *FTC v. AmeriDebt, Inc.*, 343 F. Supp. 2d 451, 459 (D. Md. 2004); *In re First Alliance Mortg. Co.*, 264 B.R. 634, 645-51 (C.D. Cal. 2001); *FTC v. Consumer Health Benefits Ass'n*, No. 10-cv-3551, 2011 U.S. Dist. LEXIS 61305, at *10-13 (E.D.N.Y. June 8, 2011); see also *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1107-08 (9th Cir. 2005); *In re McClafferty*, 571 B.R. 267, 275 (N.D. Ohio 2017) (regarding analogous Ohio consumer protection statutes).

⁴ This Motion only summarizes the terms of the Stipulated Judgment. In the event of any inconsistency between the terms of the Stipulated Judgment and terms outlined in this Motion, the terms of the Stipulated Judgment shall control.

⁵ The Stipulated Judgment is subject to final approval by the Commission.

recurrence of the alleged unlawful conduct, and impose certain record-keeping and reporting requirements on Debtor.

14. The proposed Stipulated Judgment also would enter a monetary judgment in the amount of four million seven hundred ten thousand one hundred forty-nine dollars (\$4,710,149) in favor of the Commission against Debtor and the SB&A Corporate Defendants, jointly and severally, as equitable monetary relief, which will be suspended, subject to certain provisions, as set forth in Sections III and IV of the Stipulated Judgment (“Suspended Monetary Judgment”).

15. Specifically, Debtor has provided to the FTC certain financial statements and documents, and agrees that the Suspended Monetary Judgment shall be reinstated, and become immediately due, if the FTC determines that Debtor failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial statements.

16. Debtor further agrees that the Suspended Monetary Judgment shall be nondischargeable in bankruptcy, and agrees to the filing of a Complaint to Determine Nondischargeability of Debt and a Stipulated Judgment of Nondischargeability after entry of the Stipulated Judgment by the District Court. Debtor neither admits nor denies any of the allegations, except as specifically stated in the District Court Stipulated Judgment or this stipulation. Only for purposes of these actions, Debtor admits the facts necessary to establish jurisdiction. For all other purposes and with respect to all other parties, Debtor’s stipulation shall have no effect. Debtor further agrees to surrender any interest he may have, if any, in the WBT Accounts to the FTC.

RELIEF REQUESTED AND BASIS THEREFORE

The Court Should Authorize Debtor to Enter into Proposed Stipulated Judgment Pursuant to Fed. R. Bankr. P. 9019

17. Bankruptcy Rule 9019(a) authorizes the Court, after notice and a hearing, to

approve a compromise or settlement of a controversy. The Debtor seeks an order for authority to enter into the Stipulated Judgment pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure. The decision of whether to approve a settlement and compromise is within the sound discretion of the court. *In re Chira*, 367 B.R. 888, 896 (S.D. Fla. 2007) (citing *In re Air Safety Intern., L.C.*, 336 B.R. 843, 852 (S.D. Fla. 2005)); *In re Arrow Air, Inc.*, 85 B.R. 886 (Bankr. S.D. Fla. 1988).

18. In passing on proposed settlements, the Court must determine whether a proposed settlement is fair and equitable. *In re Chira*, 367 B.R. at 896. The Court must evaluate whether the compromise falls below the “lowest point in the range of reasonableness.” *In re S&I Invs.*, 421 B.R. 569, 583 (Bankr. S.D. Fla. 2009) (citing *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993)); *In re Arrow Air, Inc.*, 85 B.R. at 886.

19. The Eleventh Circuit in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990) provided additional guidance regarding whether a settlement should be approved and established the following four-part test to be employed by Courts considering a settlement and compromise:

- a. The probability of success in litigation;
- b. The difficulties, if any, to be encountered in the matter of collection;
- c. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- d. The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

20. An analysis of each of the *Justice Oaks* factors supports authorizing Debtor to enter into the Stipulated Judgment for the following reasons:

a. The probability of success in litigation.

This is a factor in this case. The Debtor believes that there is considerable risk in litigating the matters at hand, particularly as there are numerous evidentiary issues.

b. The difficulties, if any, to be encountered in the matter of collection.

This may be a factor in this case as to the Debtor, as he has little in the way of personal assets. The Stipulated Judgment suspends collection of the monetary judgment (unless reinstated under the conditions set forth in Section III of the proposed Stipulated Judgment), thus increasing the potential recovery for other creditors.

c. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it.

This is a significant factor in this case. The evidence required to litigate the dispute is extensive. The FTC's action is not stayed by the Bankruptcy Case, the FTC does not consent to entry of final orders by the Bankruptcy Court with respect to the allegations in the District Court complaint, and the FTC alleges that any judgment entered in the case is nondischargeable in bankruptcy. The Debtor anticipates that the cost to litigate with the FTC will be substantial. Entering into the Stipulated Judgment will resolve the allegations and allow the Bankruptcy Case to move forward expeditiously, with no negative economic impact on the estate.

d. The paramount interest of the creditors and a proper deference to their reasonable views in the premises. The paramount interest of the creditors and a proper deference to their reasonable views in the premises will be substantially furthered by entering into the Stipulated Judgment. The Debtor will not have to engage in extensive litigation, preserving the limited resources of the estate, and potentially allows for a distribution to creditors.

Based on the above, the Debtor believes that entering into the Stipulated Judgment is in the

best interest of all creditors and the bankruptcy estate.

CONCLUSION

For the reasons stated above, the Debtor requests that the Court enter an Order substantially in the form attached hereto as **Exhibit A** (i) granting this Motion, (ii) authorizing Debtor to enter into the Stipulated Judgment, (iii) authorizing the Debtor to execute and deliver any and all documents, and take any and all actions required by or necessary to implement the terms of the Stipulated Judgment, and (vi) granting such other and further relief as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the parties listed below, in the manner stated below on October 11, 2019.

Dated: 11/1/2019

Respectfully submitted:
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By: /s/ Aaron A. Wernick
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Served by CM/ECF Notice:

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Served by U.S. Mail Notice:

All creditors and parties of interest on the attached master mailing matrix, unless served via CM/ECF or email.

EXHIBIT A – PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
www.flsb.uscourts.gov

In re:

Case no. 19-21442-LMI
Chapter 11

STEVEN JOHN BRANSFIELD, JR.,

Debtor.

**ORDER GRANTING MOTION TO APPROVE STIPULATION AND COMPROMISE
BETWEEN DEBTOR STEVEN JOHN BRANSFIELD, JR. AND HIS AFFILIATED
ENTITIES AND THE FEDERAL TRADE COMMISSION**

THIS MATTER came before the Court without a hearing on the Motion [ECF __] (the “Motion”) of STEVEN JOHN BRANSFIELD, JR., as Debtor and Debtor-in-possession in the above captioned Chapter 11 Case (the “Debtor”), for entry of an Order pursuant to Fed. R. Bankr. P. 9019 and Local Rules 9019-1 and 9013-1(D) approving a settlement and compromise between Debtor Steven John Bransfield, Jr. and his affiliated entities on the one hand, and the Federal Trade Commission on the other (Collectively, the “Parties”) pursuant to the terms of, and as set forth in, the Stipulated Judgment executed by the Parties (the “Stipulated Judgment”), which is attached to the Motion. The Debtor, by submitting this form of order, has represented that the Motion was served on all parties required by Local Rule 9013-1(D), that the 21-day response time provided by such Local Rule has expired, that no creditor or party in interest has filed or served a response to the Motion, and that the form of this order was attached as an exhibit to the Motion. The Court, having reviewed the Motion and the record in this case, and otherwise being fully advised in the premises, finds that the relief requested in Motion is reasonable and in the best interests of the

Debtor, the Debtor's bankruptcy estate, and all creditors and parties in interest in the Chapter 11 case, and further finds that good cause exists to approve the Stipulated Judgment and grant the relief requested in the Motion. Accordingly, the Court:

ORDERS AS FOLLOWS:

1. The Motion is GRANTED in all respects.
2. The Debtor has the authority to enter into the proposed Stipulated Judgment.
3. The Debtor is authorized and directed to execute and deliver any and all documents, and take any and all actions required by or necessary to implement the terms of the Stipulated Judgment, including stipulating to the nondischargeability of the Suspended Monetary Judgment and to surrender all interest, if any, to the MOBE Accounts.

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Submitted by:

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Attorney Wernick is directed to serve a copy of this order on all parties in interest and file an appropriate certificate of service.

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