

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION**

FEDERAL TRADE COMMISSION,

CASE NO.: 0:18-cv-61017-CMA

Plaintiff,

v.

POINTBREAK MEDIA, LLC, et al.,

Defendants.

**DUSTIN PILLONATO’S RESPONSE TO ORDER TO SHOW CAUSE WHY ASSETS
SHOULD NOT BE TURNED OVER TO THE FEDERAL TRADE COMMISSION**

I. INTRODUCTION

Defendant, Dustin Pillonato, by and through the undersigned attorneys, objects to this Court directing the turnover of any assets or further assisting the Federal Trade Commission (“FTC”) to collect any monetary relief from the Defendants in this action based on the United States Supreme Court’s recent unanimous holding in *AMG Capital Management, LLC v. FTC*, 141 S. Ct. 1341, 209 L. Ed. 2d 361 (April 22, 2021) (“*AMG*”). Based on the FTC’s lack of authority to obtain monetary relief in this action, and this Court’s retention of jurisdiction “for purposes of construction, modification, and enforcement of” the Final Order of Permanent Injunction and Monetary Judgment (D.E. 266) (“Final Order”), Defendant Pillonato respectfully requests the Court to deny the FTC’s request to enforce the improper monetary judgment against the Defendants and modify the terms of the Final Order to conform with the *AMG* ruling, eliminating the monetary relief provisions that were disallowed by the Supreme Court.

II. THE UNITED STATES SUPREME HELD IN *AMG CAPITAL MANAGEMENT v. FTC* THAT THE FTC HAD NO AUTHORITY TO SEEK OR OBTAIN MONETARY RELIEF IN ACTIONS SUCH AS THIS BASED ON SECTION 13(B)

In *AMG*, the Supreme Court considered whether Section 13(b) of the Federal Trade Commission Act, 15 U.S.C § 53(b), authorized the FTC to obtain monetary relief against defendants in civil enforcement actions, as it sought and obtained against the Defendants in this action. The Court decisively ruled against the FTC, holding that, “[s]everal considerations, taken together, convince us that §13(b)’s ‘permanent injunction’ language *does not authorize the Commission directly to obtain court ordered monetary relief.*” *Id.* at 1347 (emphasis added). The Court further stated that, “[t]he language and structure of §13(b), taken as a whole, indicate that the words ‘permanent injunction’ have a limited purpose—a purpose that does not extend to the grant of monetary relief.” *Id.* at 1348; *see also id* at 1349.

As in *AMG*, the FTC’s action against the Defendants here sought “restitution and disgorgement of unlawfully obtained funds” *solely* based on its claimed authority under Section 13(b). *See* Plaintiff’s Motion for Summary Judgment against Defendants Dustin Pillonato and Justin Ramsey (D.E. 228), p. 19 (p. 24 of 27). Where the FTC had no such authority, no asset freeze should have been ordered, no receivership should have been instituted, and no monetary judgment should have been entered against the Defendants.

Although the FTC has failed to alert this Court of the *AMG* ruling, it is fully aware of the decision and has acknowledged in numerous court filings that *AMG* precludes recovery of monetary relief against Defendants in Section 13(b) actions.¹

¹ *See*, for example, FTC’s Notice of Supplemental Authority dated April 30, 2021 (D.E. 104) in *FTC v. Mail Tree Inc.*, Case No. 15-cv-61034 (S.D. Fla.) (“On April 22, 2021, the U.S. Supreme Court issued a decision in *AMG Cap. Mgmt., LLC v. FTC*, holding that Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), which authorizes the FTC to seek injunctive relief in federal court in a case such as this, *does not also authorize the FTC to obtain court-ordered monetary relief.*”

Without authority to seek or obtain monetary relief against the Defendants in this action, the FTC cannot be allowed to *enforce* the monetary relief provisions in the Final Order of Permanent Injunction and Monetary Judgment (D.E. 266) (“Final Order”) against Defendant Pillonato.²

III. THE FTC HAS PUBLICALLY ADMITTED THAT THE AMG RULING PREVENTS THE FTC FROM COLLECTING MONETARY JUDGMENTS BASED ON SECTION 13(B)

Since the *AMG* ruling was decided, FTC leadership has publicly admitted that the FTC does not have authority to *collect* monetary relief in judgments entered before the ruling was entered. On July 29, 2021, FTC Commissioner Rebecca Kelly Slaughter, issued a concurring statement advocating on behalf of the Commission’s approval of a \$450,000 settlement with a defendant against which the FTC had previously obtained an Order in August 2020 that included a monetary judgment in the amount of \$7,203,227.³ In defending a post-judgment, post-*AMG* settlement that netted only 6.2% of the original judgment, Commissioner Slaughter stated:

(Emphasis added); *FTC v. SPM Thermo-Shield, Inc.*, Case No. 20-cv-542 (M.D. Fla.) (Opposition to Motion to Dismiss filed May 24, 2021 (D.E. 36): “In *AMG*, the U.S. Supreme Court addressed the narrow question of whether Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorized retrospective monetary relief. ***The Court held that Section 13(b) did not authorize such relief.***” (Emphasis added.)); *FTC v. American Future Systems, Inc.*, Case No. 20-cv-02266 (E.D. Pa.) (“As to the actual holding of *AMG*, explaining that Section 13(b) does not authorize equitable monetary relief, ***the FTC has already ceased its pursuit of monetary relief in this matter. In the months since the decision in AMG, the FTC has pursued only nonmonetary injunctive relief in this case.***” (Emphasis added).

² The authority of a district court to maintain a pre-*AMG* receivership and asset freeze is currently under review before the 11th Circuit in *FTC v. Burton Katz*, Court of Appeals Dkt. No. 20-10790. During oral arguments on July 23, 2021, the appellate court judges expressed doubts about the FTC’s claims that a similar receivership could be maintained after *AMG*. (<https://www.ca11.uscourts.gov/oral-argument-recordings>)

³ See August 18, 2020 Order (D.E. 148) in *FTC v. Tate’s Auto Center of Winslow Incorporation*, Case No. CV-18-08176 (https://www.ftc.gov/system/files/documents/cases/148_order.pdf).

But on April 21, 2021, the United States Supreme Court ruled in *AMG Capital Management* that ***the FTC no longer has the authority to seek monetary relief on behalf of consumers in federal court under Section 13(b)*** of the FTC Act. If the FTC continued to pursue Section 5 claims against Mr. Berry and relief defendant claims against Ms. Tate through trial ***the most we could expect to return to consumers is not \$7 million, but \$0.***

In this stark judicial landscape, staff's ability to secure injunctive relief and a payment of \$450,000 is the best available outcome for consumers and will hopefully provide modest monetary relief to some victims.

Concurring Statement of Commissioner Rebecca Kelly Slaughter, *In the Matter of Tate's Auto*, Commission File No. X180041, p. 2 (July 29, 2021) (Emphasis added) (<https://www.ftc.gov/public-statements/2021/07/concurring-statement-commissioner-rebecca-kelly-slaughter-matter-tates>).

IV. THIS COURT SHOULD DENY THE FTC'S REQUEST AND MODIFY THE FINAL ORDER AGAINST DEFENDANTS TO REMOVE THE MONETARY RELIEF PROVISIONS

Based on the Supreme Court's clear determination that the FTC had no authority to obtain monetary relief against defendants in actions under Section 13(b), including actions such as this one, this Court should deny the FTC's request for a turnover order, which would enforce the improper monetary judgment against the Defendants.

In addition, where this Court retained jurisdiction over this action "for purposes of construction, modification, and enforcement of th[e] Order" in paragraph XI of the Final Order, the Court should modify the terms of the Final Order to conform with the *AMG* ruling, eliminating the monetary relief provisions that were disallowed by the Supreme Court.

V. CONCLUSION

For the reasons stated above, Defendant, Dustin Pillonato, respectfully requests this Court to deny the relief requested by the Federal Trade Commission and modify the terms of the Final Order in conformity with the *AMG* ruling.

Dated: August 10, 2021.

Respectfully submitted,

By: /s/ Jamey R. Campellone

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **10th** day of August 2021, a copy of the foregoing Defendant Dustin Pillonato's Response to Order to Show Cause was filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

By: /s/ Jamey R. Campellone
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