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United States District Court, N.D. California.

Kristina RIDGEWAY, Individually and on Behalf of all Persons Similarly Situated, Plaintiffs,

v.

FLAGSTAR CORPORATION and Denny's, Inc., Defendants.
UNITED STATES of America, Plaintiff,

v.

FLAGSTAR CORPORATION and Denny's, Inc., Defendants.

Nos. C 93-20202 JW, C 93-20208 JW. | Oct. 3, 1994.

Attorneys and Law Firms

Thomas L. Pfister, Latham & Watkins, Los Angeles, CA.

Brian F. Heffernan, U.S. Dept. of Justice, Housing and Civil Enforcement Div., Washington, DC.

Mary Beth Utti, Asst. U.S. Atty., San Francisco, CA.

Antonio Lawson, Saperstein, Mayeda & Goldstein, Oakland, CA.

Amanda K. Wilson, Public Interest Law Firm, San Jose, CA.

Opinion

ORDER TO CEASE AND DESIST

WARE, District Judge.

*1 The hearing on Plaintiff's Motion for an Injunction against Jimmy Sims, Jewell Kearney, Sims and Associates and Others Acting in Concert with them was held on September 30, 1994 at 9:00 a.m. Antonio Lawson appeared on behalf of Plaintiffs. Jimmy Sims and Jewell Kearney failed to appear. After considering the papers and arguments of counsel, the Court hereby orders Jimmy Sims, Jewell Kearney, Sims and Associates and Others Acting in Concert with them to cease and desist from conduct which interferes with the execution of the Amended Consent Decree issued by this Court as set forth below.

I. BACKGROUND

This is a class action suit brought under federal and state civil rights statutes challenging racially discriminatory customer policies and practices at Denny's Restaurants in California. On May 24, 1994, the parties filed, and the Court preliminarily approved, an Amended Consent Decree settling all monetary and injunctive issues. The Amended Consent Decree was given final approval by the Court on July 29, 1994. The Amended Consent Decree includes provisions for the establishment of a claims procedure under which members of the class who file valid and timely claims are entitled to a pro rata share of a settlement fund of approximately \$27 million.

Under the Amended Consent Decree, the claims procedure is to be administered by an experienced claims administrator jointly selected by the parties. The parties selected the Rust Consulting Group, Inc. of Minneapolis, Minnesota as Claims Administrator. A toll-free 800 telephone number was established to provide potential claimants with access to the Claims Administrator to request claim forms and to seek assistance in completing and filing claims. Additionally, under the Amended Consent Decree, the law firm of Saperstein, Mayeda & Goldstein is designated as Class Counsel.

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Following preliminary approval of the Amended Consent Decree and announcement of the settlement in May 1994, the parties received reports that a number of individuals and organizations in California were charging fees to individuals for services related to the preparation and/or filing of claims in this case. The parties investigated these activities and submitted two reports on their investigation to the Court.

On June 16, 1994, the Court approved a Stipulation and Order that (1) amended the claim form in this action to include express language advising that “giving false information or assisting others in providing false information on this claim form is a crime” and that anyone “provid[ing] false information on this claim form or assist[ing] others in providing false information ... could be subject to investigation ... and ... criminal prosecution;” and (2) directing that a Special Notice be mailed, along with the claim form, to all potential claimants. The Special Notice expressly cautions claimants that the Claims Administrator and Class Counsel are available to provide, free of charge, assistance in filing claims.

*2 While conducting their investigation, one of the first individuals who came to the parties’ attention was Jimmy Sims, who along with his wife, Jewell Kearney, owns and does business as Sims & Associates Information Center in the South Central District of Los Angeles, California.

It was initially reported to Class Counsel that Sims & Associates was charging individuals a fee for access to the toll-free number of the Claims Administrator and having individuals execute an agreement under which they agreed to pay Sims and Associates a portion of any recovery obtained in this action. Subsequently, it was reported to Class Counsel that Sims was charging individuals a fee for assisting them in filling out their claim forms and continuing to demand contingency agreements for 20% of the recovery obtained.

Class Counsel subpoenaed Jimmy Sims and Jewell Kearney for deposition and sought production of any and all documents pertaining to their activities in connection with the completion and filing of claims in this case. Neither Mr. Sims, Ms. Kearney, nor any of their employees is a licensed attorney. At his deposition, Jimmy Sims produced 1,094 copies of claim forms which he or others acting with him have assisted individuals in completing; a number of receipts for cash received by Sims & Associates from individuals in connection with the “Denny’s discrimination” case; and approximately 559 contingency agreements between Sims & Associates and individuals. At the depositions, Class Counsel discovered the following facts:

In late May 1994, Sims began his Denny’s claims activities, initially by charging individuals between \$10–25 for access to the Claims Administrator’s 800 number. The amount Sims charges varies by the number of people seeking his assistance. For example, Sims charges \$10 for a single person; \$20 for two people; \$25 for a family of four; and \$5.00 for each additional person. In addition to these fees, Sims has all of his “Denny’s” clients execute a written contingency agreement under which they agree to pay him one thousand dollars or twenty percent of their recovery.

On his or her initial visit to Sim’s office, a potential claimant signs the contingency agreement, pays the cash fee and is taken into an office where an employee of Sims dials the 800 number on a telephone and then hands the phone to the claimant to speak to the Claims Administrator’s office and request a claim form. Once the potential claimant receives a claim form, he or she returns to Sims for assistance in completing it. Class Counsel have received reports that Sims charges a fee of up to fifty dollars for assistance in completing the claim form. Sims denies charging such fees. However, the receipts Sims produced to Class Counsel show payments in this amount.

Class Counsel sent its paralegal to Sims and Associates on two separate occasions, posing as a claimant. The paralegal reported that when she visited Sims and Associates, and told the man helping her that she could not remember the date or place of the incident, the man filled in the date for her and gave her a list of Denny’s Restaurants and advised her to pick out any restaurant, since the “whole Denny’s Corporation” was being sued. The paralegal was also encouraged to embellish details of her discriminatory incident. When asked at his deposition, Jimmy Sims denied that he, or anyone on his staff, would ever tell potential claimants what to say on their claim form or to give false information.

*3 After the parties filed their initial report to the Court on their investigation of Sims, the United States Department of Justice requested that the FBI investigate Sims. Even after the depositions and FBI investigation, the Claims Administrator continued to receive reports about the activities of Sims & Associates. Class Counsel sent a private investigator to Sims, posing as a claimant. The private investigator affirmed that Sims was charging a fee for his services and that he encouraged her to embellish details of her discriminatory incident. An investigator from the Alameda County District Attorney’s office also affirmed these practices. Class Counsel noticed the depositions of several individuals who filed claim forms with the assistance of Sims. Their deposition testimony also supports the conclusion that Sims and Associates encouraged and

participated in the filing of fraudulent claims.

II. LEGAL STANDARDS

This Court has personal jurisdiction over this action pursuant to 42 U.S.C. § 2000a-6 and 28 U.S.C. §§ 1331, 1343 and 1345. Continuing jurisdiction has been retained by the Court during the effective period of the Decree. *See* Amended Consent Decree at §§ V.D. and E. Under the Court's retained jurisdiction, the Court has authority to issue orders to effect compliance with the Decree. *See* Fed.R.Civ.P. 23(d). Additionally, The Court has authority under the All Writs Act, 28 U.S.C. § 1651(a) to issue "all writs necessary or appropriate in aid of [its' ...] jurisdiction [...]."

III. ANALYSIS

The power and duty of the Court to protect and effectuate its prior orders extends to the issuance of injunctions against nonparties whose conduct interferes with or impedes implementation of those orders. *Washington v. Washington State Commercial Passengers Fishing Vessel Ass'n*, 443 U.S. 658, 692 n. 32 (1979). Under the All Writs Act, "the Court can use its inherent powers to protect its final decrees, especially when the nonparty's actions threaten the adjudicated public rights of a party to the litigation." *NAACP v. Brock*, 619 F.Supp. 846, 852 (D.D.C.1985).

The actions of Jimmy Sims, Jewell Kearney, Sims & Associates and others acting in concert with them are an affront to the settlement and remedial provisions approved by the Court. Sims, a thrice-convicted felon who is not an attorney, blatantly has established a claims filing business and is engaged in encouraging and assisting the filing of fraudulent claims and providing incorrect and inadequate information about the claims procedure in this case. Sims and Associates' activities directly injure the rights of class members with valid claims and otherwise jeopardize the integrity and fairness of the remedial provisions of the Court's Orders.

The Court has established reasonable compensation for attorneys' fees in this case and the Court's decree establishes a claim fund which the Court intends to be paid to the class with no further deductions for attorney's fees. The Court has also appointed Class Counsel, who are licensed attorneys, to aid class members in filing their claims free of charge. Sims & Associates practice of charging class members to aid them in completing their claim forms not only taxes the class twice for attorney's fees, but is also extremely dangerous, since neither Mr. Sims, Ms. Kearney nor any of their employees is a licensed attorney.

*4 Furthermore, Sims & Associates encouragement and assistance to others in providing false claims to the Claims Administrator dilutes the value of the claims of persons who actually were victims of discriminatory conduct and undercuts the remedial purpose of the Decree "[t]o provide ... monetary relief to all class members by means of the ... procedures set forth in th[e] Decree."

By providing false and misleading information to individuals about the claim filing requirements, Sims & Associates create the danger that claims of actual victims of discriminatory conduct will be rejected since the claim may fail to provide information sufficient for a determination of validity.

The actions of Jimmy Sims, Jewell Kearney, Sims and Associates, and others acting in concert with them seriously threaten the integrity and orderly implementation of the claims procedures approved by this Court thereby infringing upon the rights of all class members in this matter.

IV. ORDER

For the foregoing reasons, the Court orders as follows:

Jimmy Sims, Jewell Kearney and Sims & Associates, their officers, agents or employees, and others acting in concert with

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them shall:

1. cease and desist from engaging in any activities related to the claims procedure in this case, including, but not limited to, the completion of claim forms and filing of claims for or on behalf of any person; entering into contingent fee agreements with any class members; and charging class members for access to the Claims Administrator's 1-800 line; and
2. present Class Counsel with a list, including address and telephone number, if any, of all class members who have signed a contingent fee agreement with Sims & Associates;
3. present Class Counsel with a list, including address and telephone number, if any, of all class members who have paid a fee to Sims & Associates for services related to filing claims in this action, including but not limited to, those class members who were charged a fee for access to the Claims Administrator's 1-800 line;
4. present Class Counsel with a list, including address and telephone number, if any, of all class members who have contacted Sims & Associates, but have not yet signed a contingent fee agreement or completed the claim filing process;

IT IS FURTHER ORDERED that Class Counsel shall send to each class member on the various Sims and Associates lists, a copy of this Order and a special notice informing the class members who filed their claims with the assistance of Sims and Associates, and who have otherwise valid claims, that they will be permitted to notify the Claims Administrator of such claims; a proposed form of such notice shall be sent to the Court for its approval.

IT IS FURTHER ORDERED that a copy of this Order to Cease and Desist be personally served on Jimmy Sims, Jewell Kearney and Sims and Associates. The Court appoints the following process server for this purpose:

Alex Martinez, Process Manager

*5 EXPRESS NETWORK, INC.

601 West 5th Street, Room 350

Los Angeles, California 90071

Personal service on Jimmy Sims and Jewell Kearney shall be deemed service upon him and her and Sims & Associates.

IT IS SO ORDERED.

Footnotes

¹ Class Counsel have reviewed the 1,094 claim forms produced by Sims. The reports of discriminatory incidents on these claim forms are completely at odds with the patterns that emerged during Class Counsel's initial eight month investigation in which they interviewed over 3,000 individuals about 1,426 separate incidents of discriminatory treatment at Denny's restaurants in California.