

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 0:18-cv-60379-KMM

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THOMAS DLUCA, *et al.*,

Defendants.

ORDER

THIS CAUSE came before the Court upon Plaintiff Federal Trade Commission (“FTC”) and Defendant Thomas Dluca’s (“Dluca”) Joint Motion to Enter Stipulated Order Regarding Violation of Preliminary Injunction As To Defendant Thomas Dluca. (“Joint Motion”) (ECF No. 133).

On April 16, 2018, the Court entered a Preliminary Injunction with respect to three named Defendants in the above-styled cause, including Dluca. Preliminary Injunction (“PI”) (ECF No. 72). The PI required each Defendant, including Dluca, to (1) turn over to Plaintiff electronically stored information regarding Defendants’ promotion of money-making opportunities since January 1, 2014 and (2) preserve certain business records relevant to the instant cause. *Id.* at ¶¶ VII, XII. At the time that the Court entered the PI, Defendant Dluca’s email account, thomasdluca@gmail.com, contained emails likely relating to the instant matter, including messages concerning cryptocurrency and other money-making opportunities. Stipulated Order (ECF No. 133–1) at 3. These emails constituted electronically stored information that contained information concerning Dluca’s promotion of money-making

opportunities since January 1, 2014 and therefore had to be preserved and produced to Plaintiff. *Id.* Following the Court's entry of the PI, and despite having actual notice of the PI's provisions on evidence presentation and turnover, Dluca deleted all emails stored within the thomasdluca@gmail.com account prior to May 2018. *Id.* The Parties jointly move to have the Court impose sanctions on Dluca for violating the evidence preservation and production portions of the PI. Joint Motion at 2.

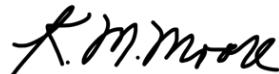
The Court finds that Dluca violated Sections VII and XII of the PI by deleting emails that likely contained information relevant and responsive to the instant action, and that Plaintiff was prejudiced by Dluca's conduct. Accordingly, UPON CONSIDERATION of the Joint Motion, the PI, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Joint Motion to Enter Stipulated Order Regarding Violation of Preliminary Injunction As To Defendant Thomas Dluca (ECF No. 133) is GRANTED. Pursuant to Federal Rule of Civil Procedure 37(b)(2)(A), which governs failures to comply with court orders relating to discovery, the Court hereby enters the following sanctions against Dluca:

- A. The Court will presume for all purposes in this litigation that the deleted emails would have been relevant and unfavorable to Defendant Dluca, and will permit the introduction of a rebuttable adverse inference at trial or in connection with Rule 56 motions. Specifically, the Court will presume that the deleted emails would have supported the factual allegations of the Complaint (ECF No. 1). The Court will further presume that the deleted emails would have tended to negate the factual allegations underlying the purported "Affirmative Defenses" listed in Dluca's Answer and Affirmative Defenses. (ECF No. 76), at 5-6. This

presumption will apply whether the defenses are in fact affirmative defenses or negative defenses.

- B. Dluca will be barred from introducing any evidence of the contents of the deleted emails.
- C. Dluca's affirmative defenses of "Good Faith" and "Mootness" are stricken from Dluca's Answer and Affirmative Defenses.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of October, 2018.



K. MICHAEL MOORE
UNITED STATES CHIEF DISTRICT JUDGE

c: All counsel of record