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Receiver of

**National Consumer Council, London Financial Group,
National Consumer Debt Council, LLC, Solidium, LLC,
J. P. Landis, LLC, Financial Rescue Services, Inc. et al**

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**Federal Trade Commission v. National Consumer Council, et al.
CASE No. SACV-04-0474 CJC (JWJx)**

**Plaintiff Commission's Opposition to Individual Defendants Haines,
Kardos and Leddas' Application to Release Frozen Funds**

Filed June 8, 2004

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8 **COPY**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
NATIONAL CONSUMER COUNCIL, et
al.,
Defendants.

Case No. SACV04-0474 CJC (JWJx)
PLAINTIFF COMMISSION'S
OPPOSITION TO INDIVIDUAL
DEFENDANTS HAINES, KARDOS AND
LEDDAS' APPLICATION TO RELEASE
FROZEN FUNDS

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27 **FEDERAL STATUTES**

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1 INTRODUCTION

2 On April 23, 2004, Plaintiff Federal Trade Commission ["FTC"
3 or "Commission"] filed a nine count complaint against 19
4 defendants alleging violations of the FTC Act, the Telemarketing
5 Sales Rule and the Gramm Leach Bliley Act. Those violations are
6 alleged to have occurred in the course of the offer, sale and
7 provision of debt negotiation services to consumers nationwide.
8 ~~Concurrently with filing of the Complaint, the Commission applied~~
9 ex parte for the issuance of a temporary restraining order, an
0 asset freeze and the appointment of a temporary receiver. In
1 support of that application, the Commission submitted declarations
2 from 36 consumer victims as well as declarations from Commission
3 investigators, a state regulator and members of the credit
4 industry and the credit counseling industry; transcripts of sales
5 pitches, and hundreds of defendants' own documents. After
6 appropriate consideration and a hearing on the merits of the
7 application, this court granted the Commission's application.

8 Three weeks later, on May 21, 2004, the Court entered
9 stipulated orders of preliminary injunction ["PI"], continuing the
0 asset freeze as well as the placing of all the defendant
1 corporations in permanent receivership. After entry of the PIs,
2 the parties discussed the possibility of the release of frozen
3 assets for use by the individual defendants for living expenses
4 and attorneys fees. Defendants Harper, Levitsky and Warren
5 accepted the Commission's proposal but Defendants Haines, Kardos
6 and Ledda (referred to collectively as the "Individual
7 Defendants") refused and are now seeking to have the Court
8 dissolve the asset freeze over their personal assets or in the

1 alternative, the release of assets that, as they characterize it,
2 were generated before 2002, plus an unspecified additional amount.¹

3 Plaintiff Commission strongly opposes the Application and
4 asks that the Court deny it. In support of this Opposition,
5 Plaintiff has concurrently filed additional declarations and
6 documents found on Defendant's business premises. These
7 supplemental materials further corroborate the allegations of the
8 Commission's complaint and establish that Defendants, at the time
9 of the issuance of the TRO and before, were engaged in ongoing
10 violations of federal law.²

11 **II. THE APPLICATION OF INDIVIDUAL DEFENDANTS FOR ATTORNEYS' FEES**
12 **AND LIVING EXPENSES SHOULD BE DENIED.**

13 Defendants argue that, as a matter of fact, there is no
14 justification for an asset freeze given the facts of the case.
15 The Individual Defendants further argue that their actions were
16 not as egregious as various defendants in other FTC actions and
17

18 ¹ Defendants fail to comprehend that the Commission's
19 complaint is not limited to acts and practices post January 1,
20 2002 but plainly states "since at least 2002," clearly indicating
21 that the acts and practices may pre-date 2002. It is Plaintiff's
22 understanding, based on the Receiver's Initial Report and
23 Defendants' business records, that the current business operation
24 began in early 2000. Opposition Exhibit 8, Declaration of Ann
25 Stahl, ("Opp. Exh. 8 [Stahl]"), pg. 416, 461.

26 ² See Opposition Exhibit 1, Declaration of [REDACTED],
27 ("Opp. Exh. 1 [REDACTED]"), pg. 1; Opposition Exhibit 2, Declaration
28 of [REDACTED], ("Opp. Exh. 2 [REDACTED]"), pg. 12; Opposition Exhibit
29 3, Declaration of [REDACTED], ("Opp. Exh. 3 [REDACTED]"), pg.
30 24; Opposition Exhibit 4, Declaration of [REDACTED], ("Opp. Exh.
31 4 [REDACTED]"), pg. 31; Opposition Exhibit 5, Declaration of [REDACTED],
32 ("Opp. Exh. 5 [REDACTED]"), pg. 35; Opposition Exhibit 6,
33 Declaration of [REDACTED], ("Opp. Exh. 6 [REDACTED]"), pg. 45;
34 Opposition Exhibit 7, Declaration of Bruce Gale, ("Opp. Exh. 7
35 [Gale]"), pg. 48; Opposition Exhibit 9, Declaration of Bret
36 Smart, ("Opp. Exh. 9 [Smart]"), pg. 520.

1 thus, their assets should be unfrozen.

2 Individual Defendants' argument fails to acknowledge that the
3 asset freeze in the instant matter is part of a broad panoply of
4 equitable remedies available to the Court to preserve the
5 Commission's civil authority to enforce its statutes and
6 regulations.³ The issuance of the original TRO by this Court
7 constitutes a finding by the Court that the Commission is likely
8 to prevail on the merits of the case. Once that finding is
9 established, the purpose of the asset freeze is to protect the
0 Court's ability to render a meaningful equitable remedy, which in
1 this case, would involve redress to almost 50,000 consumer victims
2 injured by Defendants' violations of FTC statutes and regulations.
3 The real issue is whether the frozen assets are sufficient to
4 satisfy the joint and several liability of Defendants to make
5 refunds to their consumer victims.⁴

6 **A. Individual Defendants' Request for Attorney's Fees Should be**
7 **Denied.**

8 In the Ninth Circuit, when evaluating a request by the
9 Commission for issuance of a TRO or a preliminary injunction, the
0 district court is required to "consider the FTC's likelihood of
1 ultimate success before entering a preliminary injunction" and
2 "weigh equities" (i.e., compare the hardships to be suffered by
3 each party).⁵ Once the Commission has met its initial burden, the
4

5 ³ 15 U.S. C. § 53(b). See FTC v. Pantron I Corp., 33 F. 3d
6 1088, 1102 (9th Cir. 1994); FTC v. H. N. Singer, 668 F. 2d 1107,
7 112-1113 (9th Cir. 1982).

8 ⁴ H. N. Singer, 668 F.2d at 111-113.

⁵ FTC v. World Wide Factors 882 F.2d 344, 347 (9th Cir. 1989).

1 full range of equitable remedies are available. Courts have
2 regularly frozen assets and denied or limited attorney fees.⁵

3 In a civil lawsuit, even one brought by a governmental
4 agency, there is no right to counsel.⁷ Moreover, there is no
5 constitutional right to a particular attorney where cost is an
6 issue: "A defendant may not insist on representation by an
7 attorney he cannot afford."⁸ Even in a forfeiture action, it is
8 ~~not a violation of a defendant's constitutional rights to deny the~~
9 defendant access to frozen assets to pay attorney's fees.⁹ The
10 availability or use of less costly representation does not
11 preclude adequate legal representation.¹⁰ If a court may deny
12 defendants access to their personal assets in a forfeiture action,
13 then it can clearly deny Individual Defendants access to their
14 frozen assets in this civil action particularly where the assets
15 ~~are already woefully inadequate to compensate the multitude of~~
16 injured consumers.¹¹

17 Notwithstanding the lack of a constitutional right to counsel
18 in a civil matter, Individual Defendants have provided no evidence
19 that they have endeavored to obtain legal counsel from an attorney
20

21 ⁶ World Wide Factors, 882 F. 2d citing CFTC v. Co-Petro Mktg.
22 Group, Inc., 700 F.2d 1279 (9th Cir. 1983).

23 ⁷ Lassiter v. Dept. of Social Services, 452 US 18 (1982);
World Wide Factors, 882 F2d at 347.

24 ⁸ Caplin Drysdale Chartered v. United States, 491 US 617, 624;
109 S. Ct. 2646 (1989).

16 ⁹ United States v. Monsanto, 491 U. S. 600, 109 S. Ct 2657
(1989).

17 ¹⁰ Caplin Drysdale, 491 US 624.

18 ¹¹ See Discussion at Section IV, *infra*.

1 willing to take the risk of being paid only in the event of a
2 victory or from after acquired assets of the Individual
3 Defendants. With the Corporate Defendants in Permanent
4 Receivership, none of the Individual Defendants are currently
5 obligated to fulfill their day-to-day duties with the Corporate
6 Defendants. The asset freeze does not apply to after acquired
7 assets derived from a non-defendant source; the Individual
8 ~~Defendants are free to pursue legitimate full-time employment for~~
9 pay. Defendants Kardos and Ledda, as experienced corporate
0 executives, are clearly marketable as is Defendant Haines, himself
1 a long standing member of the California Bar. There is no
2 information on the work experience of the spouses of the
3 Individual Defendants. In that the Individual Defendants, and/or
4 their spouses, have the ability to obtain legal employment, any
5 ~~earnings can be used for their legal defense.~~

6 **B. Individual Defendants' Request for Individual Stipends Should**
7 **be Denied.**

8 In light of the Receiver's Initial Report as well as the
9 Individual Defendants' budget proposals, having spoken with more
0 consumer victims and reviewed more business records, Plaintiff
1 finds itself reticent to the provision of any sum to the three
2 individuals. First, the Receiver's Initial Report clearly
3 establishes that the amount frozen is already grossly insufficient
4 to fully remedy the massive consumer injury. Any disbursal to the
5 Defendants simply reduces the funds available for consumers.
6 Second, what Individual Defendants have proposed is, in essence, a
7 comfortable paid vacation which allows them to continue to enjoy
8 the spoils of their fraud. Their purported necessary living

1 expenses include items like insurance on Ferraris, clothing
2 allowances of \$1800 per month, a budget for toiletries of \$300,
3 payments to gardeners, pool maintenance, veterinarians and more.
4 As previously discussed in Section II A, above, the asset freeze
5 does not apply to after acquired assets. If the Individual
6 Defendants wish to spend lavish amounts of money maintaining their
7 lifestyle, there is nothing to prevent them from going out and
8 seeking gainful employment.¹² To date, no information on the
9 current employment, or possibility of employment, of their
10 spouses, has been provided by any of the Individual Defendants.¹³

11 Third, Plaintiff has concerns as to whether the Individual
12 Defendants have disclosed all of their assets. Ledda initially
13 failed to disclose his control of a purported charitable
14 foundation called "British Foundation for the Performing Arts",
15 which incorporated in Liberia and headquartered in the Isle of
16 Man. At one time, Ledda had foreign bank accounts in the name of
17 this entity.¹⁴ Ledda disclosed this entity to the FTC only after
18 numerous requests from the FTC for full disclosure. FTC believes
19 that Haines may also have failed to disclose all of his money-
20 making activities. In May 2002, Haines appears to have served as
21 a lecturer, presenting information on foreign charitable

22
23 ¹² If Individual Defendants Kardos and Ledda wish to reduce
24 their monthly expenses by selling their houses and moving into
25 less expensive housing, the Commission would consider stipulating
to the sale of the houses so long as the money received from the
sale is held in trust pending the outcome of the litigation.

26 ¹³ Despite repeated requests, none of the Individual Defendants
27 have presented any evidence that over the life of the scam, they
28 used funds from any source, other than the fraudulent activities,
to fund their lavish lifestyles or to pay their mortgages.

¹⁴ Opp. Exh. 7 [Gale], pg. 389 - 412.

1 foundations, at the First Annual Global Conference on Offshore Tax
2 Planning, Compliance and Money Laundering.¹⁵

3 Based on the original financial documentation submitted,
4 plaintiff had determined that \$6,000 for each individual covered
5 the monthly mortgage payments of five of the six individuals and
6 provided some money for a living stipend.¹⁶ Kardos claimed his
7 mortgage was substantially higher than that of the other
8 ~~defendants, failed to provide any substantiation for his claim~~
9 until late in the evening the night before Individual Defendants
0 filed their application. At that time, based on the evidence
1 submitted, plaintiff offered to increase Kardos' allotment by 50%
2 but Kardos impliedly rejected the offer when the Individual
3 Defendants application was filed.

4 Moreover, documentation produced subsequent to the initial
5 ~~proposal raises credibility issues as to representations by the~~
6 Individual Defendants. For example, both defendants Kardos and
7 Haines claim on-going monthly property tax bills of thousands of
8 dollars, yet the copies of their receipts which they presented
9 show that they paid those bills in December 2003 and that nothing
0 is due until December 2004.¹⁷ The same can be said for their
1 claims for various forms of insurance payments that are due. A
2 comparison of the receipts submitted by Ledda to his proposed
3 budget shows that all of the numbers were increased from the
4 actual amount owed, in many cases substantially.

5 _____
6 ¹⁵ Opp. Exh. 9 [Smart], pg. 576 - 585.

7 ¹⁶ Defendants Haines, Harper, Ledda, Levitsky and Warren all
8 pay less than \$6,000 for their mortgage or rent.

9 ¹⁷ Mallow Declaration, Exh. B, pgs 19 - 21.

1 The Individual Defendants' current proposal that roughly
2 \$500,000, not including costs and attorneys fees, be released is
3 preposterous. There is no justification for providing the
4 Individual Defendants with "living expenses" that include large
5 sums for entertainment, donations to charity, pool maintenance,
6 shopping and gifts. In that the frozen assets are already
7 insufficient to pay restitution to consumers, Individual
8 Defendants' claim that substantial assets will remain after such a
9 disbursement is laughable.

10 The Commission has endeavored to be responsive to the request
11 for living expenses; however, the Commission cannot agree to
12 demands that the Individual Defendants be permitted to receive
13 payments from the frozen assets sufficient to allow them to live
14 lives of luxury even as their victims are being forced into
15 bankruptcy.¹⁸

16 **C. Defendants' Papers Misstate the Law Applicable to the**
17 **Imposition of an Asset Freeze.**

18 Defendants argue that, as a matter of law, assets subject to
19 the asset freeze must be shown to have been derived from the
20 specific illegal conduct alleged by the Commission for the money
21 to be used for redress and restitution. They then assert that the
22 requested money consists of their personal assets, that they were
23 not derived the fraudulent conduct alleged by the FTC in its
24 Complaint, and that therefore these funds should be released.
25 Individual Defendants' position has no basis in law, and the case
26 law they allege to be analogous is inapposite.

27
28 ¹⁸ TRO Exh. 10 [REDACTED], pg. 270; TRO Exh. 13 [REDACTED] p. 354;
TRO Exh. 15 [REDACTED], pg. 445; TRO Exh. 19 [REDACTED] pg. 616.

1 Individual Defendants' cite to Connecticut General Life Ins.
2 Co. v. New Images of Beverly Hills¹⁹, for the proposition that
3 "certain assets that a defendant possesses that were acquired 'at
4 a time or through such means that there is no likelihood that they
5 were acquired from fraudulent practices must be released from an
6 asset-freezing injunction.'"²⁰ In fact, the 9th Circuit in Connect.
7 Gen. Life specifically states that it is not addressing the
8 ~~propriety of the asset freeze to the totality of the defendant's~~
9 assets because that issue had not been raised at the district
0 court level. Furthermore, the 9th Circuit upheld both the
1 preliminary injunction and the asset freeze on appeal finding that
2 the plaintiffs had met their burden of proof.²¹

3 Similarly, they cite to Reebok International, Ltd. v.
4 Marnatech Enterprises, Inc. for the proposition that the
5 "equitable power to freeze assets exists only as ancillary relief
6 necessary to accomplish complete justice."²² But the Reebok court
7 actually found the asset freeze in that case to be exactly the
8 sort of equitable intermediate relief appropriate under the
9 circumstances and noted "Our precedent makes clear that such a
0 remedy is authorized by the district court's inherent equitable
1 powers."²³

3
4 ¹⁹ Connect. Gen. Life Ins. Co. v. New Images of Beverly Hills
4 321 F. 3d 878, 883 (9th Cir. 2003).

5 ²⁰ Defendant's Opposition at 7.

5 ²¹ Connect. Gen. Life, 321 F. 3d at 883.

7 ²² 970 F 2d 552, 560 (9th Cir. 1992) quoting H.N. Singer, 668
F2d at 1113.

3 ²³ Id.

1 Individual Defendants go further to claim that the Reebok
2 Court found that "a freeze of those assets that 'in no
3 circumstances can be dealt with in any final [relief] that may be
4 entered,' is not within the equitable power of the court (Emphasis
5 added)."²⁴ What the Reebok court actually said that "a freeze of
6 those assets . . . may not be within the equitable power of the
7 district court," and went on to plainly say "Here, we do not
8 ~~decide the validity of each of the terms of the Reebok II~~
9 injunction or the authority of the district court to freeze each
10 of the assets the transfer of which is limited by the injunction
11 because Betch has not raised that issue on appeal."²⁵

12 **II. SUBSTANTIAL EVIDENCE ESTABLISHES ONGOING VIOLATIONS OF**
13 **FEDERAL LAW BY THE DEFENDANTS**

14 **A. The Violations of Section 5 Are Unequivocal**

15 ~~At the time of the original filing, the Commission submitted~~
16 declarations from over 36 consumer victims whose testimony
17 established the variety of violations alleged in the complaint.
18 Each of the original consumer victims attested to a very similar
19 experience of joining the program believing, based on the
20 representations of sales people, that the program would help the
21 consumer to solve their financial crisis. Consumers were told
22 that their debt would be reduced within a specified amount of
23 time; that consumers would not be subjected to collections
24 efforts; that defendants would promptly obtain settlements for
25 clients. A variety of potentially negative information including

26
27 ²⁴ Defendants' Opposition at 7, lines 9 - 15, citing Reebok
28 International, 970 F. 2d at 560, n. 11.

29 ²⁵ Reebok International, 970 F 2d at 560.

1 that late fees, penalties, and interest will continue to accrue on
2 the consumer's debt until the consumer's creditors accept a
3 settlement offer and the settlement is paid and that the
4 consumer's creditors may still sue to collect on his debts, and if
5 a judgment has been obtained, the creditors may garnish the
6 consumer's wages was not disclosed to consumers.²⁶ The Commission
7 has filed additional consumer declarations whose experiences
8 ~~replicate those reported of the original declarants. One consumer~~
9 had sought defendants out simply to act as a negotiator on her
10 behalf. From the very beginning, she had the money to pay down
11 her debt but needed them to be negotiated down by a few thousand
12 dollars. After almost 5 months in the program, the only activity
13 in her account was the removal of substantial fees.²⁷

14 The evidence shows that the Individual Defendants operated
15 ~~their business like a traditional boiler room. They initiated~~
16 contact to consumers via a pre-recorded phone message or bulk
17 mailing, neither of which contained any actual useful financial
18 information or advice for consumers.²⁸ Like the voicemail
19 messages, the written solicitations simply emphasize the need for
20 a consumer to call the NCC for more information.

21 Consumers calling the toll-free number reached a service
22 center packed with pre-screeners. These pre-screeners, while
23 purporting to provide financial assistance, primarily steered
24 consumers to one of the debt negotiation programs of the for
25

26 ²⁶ In their moving papers, Individual Defendants characterize
27 these omissions as "not material."

28 ²⁷ Opp. Exh. 1 [REDACTED], pg. 1 - 5.

²⁸ Opp. Exh. 7 [Gale], pg. 58.

1 profit companies: Solidium, FRS or UCLG. Ironically enough, some
2 consumers who were steered into one of the for-profit programs was
3 later told by defendants' own representatives that they should
4 have declared bankruptcy.

5 In monthly training sessions, sales people were encouraged to
6 downplay the likelihood that consumers might be sued by their
7 creditors.²⁹ In fact, as Individual Defendants were well aware,
8 ~~certain creditors even made a practice of sending the files of any~~
9 consumer attempting to negotiate through a debt negotiator
10 directly to litigation or collections.³⁰

1 Defendants' claim that disclosures were always provided to
2 consumers fails to address when those disclosures were made. In a
3 sworn declaration, a former employee states that while he was told
4 to make the disclosures, he was encouraged by Ledda to downplay
5 ~~the disclosures and that he generally taped disclosures after the~~
6 sales pitch and after consumers had returned their enrollment
7 materials with managements full knowledge.³¹ Indeed, email found
8 on Kardos' computer show that the different levels of management
9 both knew and encouraged sales people to coach consumers on how to
10 respond to the disclosure taping.³²

1 **B. Individual Defendants Used NCC as a Tool to Generate Profits**

2 The Individual Defendants' own business records clearly
3 demonstrate that the goals of the businesses were profit. Contests
4

5 ²⁹ Opp. Exh. 5 [REDACTED], pg. 37.

6 ³⁰ TRO Exh. 23 [REDACTED], pg. 1366.

7 ³¹ Opp. Exh. 5 [REDACTED], pg. 37.

8 ³² Opp. Exh. 7 [Gale], pg. 56, attach, 10, pgs. 305 - 315.

1 were held within the sales operation to determine who could enroll
2 the most consumers in a debt negotiation program within a
3 designated period of time.³³ Compensation to debt consultants was
4 predicated on high sales.³⁴ High achieving sales people were
5 treated to a night on the town with Ledda and others where the
6 costs for a single evening could run as high into the thousands of
7 dollars.³⁵ Emails from Ledda's computer clearly indicate that his
8 primary concern was keeping sales up.³⁶ Monthly training sessions
9 took place between Ledda and the sales staff.³⁷ Debt consultants
10 who enrolled multiple consumers in the debt negotiation program on
11 the same day that the consumer was initially called were touted by
12 management as exemplary employees.³⁸

13 All the while, the Individual Defendants have been fully
14 cognizant of the true nature of their operation and the complaints
15 being generated by consumers. In an email exchange between the
16 Individual Defendants and Warren, Warren complained about how all
17 of the complaining consumers are saying the same things about
18 being inundated with creditor calls, threats of litigation and the
19 non-payment of their bills.³⁹ Another email, from defendant
20 Haines, acknowledges that 50% of consumers drop out in the first 7
21

22 ³³ Opp. Exh. 5 [REDACTED], p. 39; Opp. Exh. 7 [Gale], pg. 230-31.

23 ³⁴ Opp. Exh. 5 [REDACTED], p. 38.

24 ³⁵ Opp. Exh. 5 [REDACTED], pg. 39.

25 ³⁶ Opp. Exh. 7 [Gale], pg. 218, 221-223, 225 - 226.

26 ³⁷ Opp. Exh. 5 [REDACTED], pg. 37; Opp. Exh. 7 [Gale], pg.

27 ³⁸ Opp. Exh. 7 [Gale], pg. 228, 229.

28 ³⁹ Opp. Exh. 8 [Stahl], pg. 448, attach 3.

1 months due largely to pressure from creditors.⁴⁰

2 **C. Defendants Violated the Do Not Call Rules and the TSR.**

3 **1. Defendants Were Responsible for Over 4 Million**
4 **Violations of the National Do Not Call Registry in a**
5 **One-week Period**

6 From October 17, 2003 to May 3, 2004, Defendants made over
7 one million telephone calls every day to consumers throughout the
8 country, many of whom registered on the National Do Not Call
9 Registry and/or who had previously told NCC not to call them
0 again. As of April 16, 2004, consumers filed over 925 FTC
1 complaints against NCC for violations of the National Do Not Call
2 Registry, and over 17 FTC complaints for ignoring their requests
3 to not call them again.⁴¹

4 LFG's LEADS database shows even more violations of the
5 National Do Not Call Registry. A review of the calls made during
6 a one-week period, April 21-28, 2004, shows that the LFG
7 autodialer made over seven million (7,011,423) telephone calls.
8 FTC computer staff compared the telephone numbers that the LFG
9 autodialer called during that one-week period with the telephone
0 numbers registered on the National Do Not Call Registry. This
1 comparison shows that of the 7,011,423 calls that the LFG
2 autodialer made, 4,430,572 of those calls were made to telephone
3 numbers registered on the National Do Not Call Registry. In other
4 words, over 63% of the calls made by the LFG autodialer during
5 that one-week period were made to telephone numbers on the
6

7
8 ⁴⁰ Opp. Exh. 8 [Stahl], pg. 452, attach 4.

9 ⁴¹ TRO Exh. 25 [Gale], pg. 1385-86.

1 National Do Not Call Registry.⁴²

2 2. Defendants Intentionally Called Telephone Numbers on the
3 Federal Do Not Call Registry

4 Contrary to Defendants' assertion that they "substantially
5 complied with the DNC" and that it is the FTC's fault that they
6 called telephone numbers registered on the National Do Not Call
7 Registry, the evidence shows that Defendants made these calls to
8 ~~telephone numbers registered on the National Do Not Call Registry~~
9 intentionally.

0 On April 12, 2004, Ledda informed Kardos, Haines, Warren, and
1 Michael Mallow that "[w]e are rolling out calls to those who are
2 on the National DNC list with the new (Exception Disclosure
3 Recording) both Texas and Michigan only [sic]."⁴³ This content of
4 the voice message advertisement was as follows:

5 This is Steve Schuller with the National Consumer

6 Council at 1-800-990-3990. Exempted under the National
7 Do Not Call List we're a charitable non-profit
8 organization. ... If you're only making minimum
9 payments, and for more than six months, your finances
0 are getting out of control. The NCC is formed and well-
1 organized to help you in these matters. As a matter of
2 fact, there's no charge for calling and the services
3 that we offer are completely free. ... "

4
5 ⁴² Opp. Exh. 7 [Gale], pg. 300.

5 ⁴³ Id.

7 ⁴⁴ This script, which Ledda sent by e-mail to Kardos, Haines,
Warren, and Mike Mallow, is called "FedNocall.wav." Opp. Exh. 7
1 [Gale], pg. 299. The FTC found a transcription of this message
at NCC's call center. Opp. Exh. 8 [Stahl] pg. 500.

1 Consumer Judith Shepard of Texas reported that on April 14, 2004,
2 she received one of the NCC's calls.⁴⁵

3 NCC and LFG began calling other consumers in other states
4 soon afterward. On April 15, Ledda reported that "[w]e have had
5 success with the messages so far. We will begin the roll out of
6 this new message to the rest of the state [sic] that we dial in."⁴⁶

7 NCC and LFG stopped the telemarketing calls temporarily about
8 a week later. Defendant Ledda reported on April 20 that "[w]e
9 have temporarily stopped dialing FED DNC. We need to check our
0 data as there are individuals who have called us in the past and
1 requested to be removed manually that we should respect.
2 Unfortunately when the FED DNC list was implemented it overwrote
3 the data regarding past removals. ... I expect a 24hr period
4 before we start-up again."⁴⁷

5 These calls generated enough complaints to prompt Ledda to
6 suggest, on May 3, 2004 (the day the Court issued its temporary
7 restraining order in this case), making changes to the script.⁴⁸

8 **3. Defendants' Violations of the TSR Were Intentional, Not**
9 **a "Mistake" Due to Computer Error**

0 Defendants claim that the FTC provided a corrupted download
1

2 ⁴⁵ TRO Exhibit 25 [Gale], pg. 1483. This is confirmed by Avi
3 Gupta, who stated that Ledda instructed him to not "scrub"
4 NCC/LFG's LEADS telephone list, so that the autodialer would call
5 the telephone numbers on the National Do Not Call Registry, as
6 well as the telephone numbers which were not on the National Do
7 Not Call Registry. Exhibit 7 [Gale], paragraph 17.

8 ⁴⁶ Opp. Exh. 7 [Gale], pg. 301.

9 ⁴⁷ Opp. Exh. 7 [Gale], pg. 303.

0 ⁴⁸ Opp. Exh. 7 [Gale], pg. 304.

1 of the National Do Not Call Registry, and thus Defendants could
2 not comply with the National Do Not Call Registry. Defendants'
3 sole support for this claim is Paragraph 6 of the Declaration of
4 Avi Gupta.

5 Avi Gupta misleadingly states that the telephone numbers did
6 not appear in the "Do-Not Call" list he maintains and claims that
7 the FTC person "acknowledged" that the list was missing data. In
8 fact, ~~at that meeting described in Paragraph 6, Avi Gupta~~
9 confirmed that the last download NCC/LFG had received from the FTC
10 was a Change List Download (a download that contains only those
11 telephone numbers added to or deleted from the National Registry
12 since the last time the telemarketer downloaded its subscription),
13 and not a Full List Download (which contains all the registered
14 telephone numbers within the area codes that are part of the
15 ~~telemarketer's subscription). Thus, by definition, most of the~~

16 telephone numbers on the National Do Not Call Registry would not
17 have appeared on NCC/LFG's most recent download. To put it
18 differently, the telephone numbers Avi Gupta looked up only would
19 have been on his most recent download if they were new additions
20 to the National Do Not Call Registry. Thus, it makes no sense for
21 Defendants to claim that the National Do Not Call Registry
22 download was "corrupted" because it did not include all of the
23 telephone numbers contained in the Registry.

24 **D. NCC Is Controlled by the Individual Defendants**

25 Regardless of whether the Internal Revenue Service considers
26 any of the NCC entities to be valid 501(c)(3) non-profits,⁴⁹

27 _____
28 ⁴⁹ That status may well be under reconsideration. As the
Receiver noted in his report, he has received summons from the

1 Defendants' own documents belie their claims as to the independent
2 non-profit nature of any of the NCC entities. A purportedly
3 annual speech, found on defendant Edda's computer, describes the
4 establishment of the relationship between the NCC and the other
5 corporate defendants.⁵⁰ Other documents found in defendant Kardos'
6 office describe the interrelationship between the companies.⁵¹

7 Emails from defendant Ledda's computer establish that Ledda
8 and Kardos, not defendant Warren, controlled every aspect of NCC
9 as well as all of the other entities. They drafted the scripts⁵²,
0 set salaries and bonuses⁵³ and controlled refunds.⁵⁴

1 Defendants' claims as to the provision of educational
2 programs by the NCC entities is contradicted by declarations of
3 the people they claim to be working with. ██████████ of
4 Jumpstart, states that NCC had nothing to do with the
5 establishment of Jumpstart in Nevada and that the NCC is nothing
6 more than a member like any other member⁵⁵, although they haven't
7 renewed their membership in two years. Likewise, the ██████████ law
8 firm contends that defendants mischaracterize the relationship
9 between the Firm and the NCC.⁵⁶

0 _____
1 IRS concerning the business records of the NCC entities.

2 ⁵⁰ Opp. Exh. 7 [Gale], pg. 65-66.

3 ⁵¹ Opp. Exh. 7 [Gale], pg. 178-182.

4 ⁵² Opp. Exh. 7 [Gale], pg. 71-72, 81.

5 ⁵³ Opp. Exh. 7 [Gale], pg. 92.

6 ⁵⁴ Opp. Exh. 9 [Smart], pg. 537 - 542.

7 ⁵⁵ Opp. Exh. 4 [████████], pg. 32 - 33.

8 ⁵⁶ Opp. Exh. 6 [████████], pg. 45 - 47. See also Opp. Exh. 8
9 [Stahl], pg. 418, 474.

1 IV. THE RECEIVER'S INITIAL REPORT ESTABLISHES THAT INJURY TO
2 CONSUMERS AS A RESULT OF DEFENDANTS' FRAUDULENT ACTIVITIES
3 FAR SURPASSES THE FUNDS AVAILABLE FOR REDRESS.

4 According to the Receiver's Initial Report, between January
5 1, 2001 and March, 2004, 44,844 consumers enrolled in the
6 Defendants' debt negotiation program. The Commission contends
7 that because the business activities were permeated by fraud, all
8 ~~of the consumers who enrolled in the program were induced to do so~~
9 as a result of fraudulent misrepresentations and in violation of
10 various laws and all of the fees paid by consumers should be
11 refunded. Between January 1, 2001 and March, 2004, consumers paid
12 the total fees exceeding \$101 million, all of which should be
13 returned to consumers. In the Ninth Circuit, the legal standard
14 for consumer redress for deceptive sales is the total sales price.
15 "Fraud in the selling, not the value of the thing sold

16 entitles consumers in this case to full refunds ... for each
17 [product] that is not useful to them."⁵⁷

18 The bulk of the money in the Receivership consists of trust
19 fund assets which the parties have all agreed should be returned
20 to consumers as promptly as possible. The remaining Receivership
21 assets, after payments to employees and consumers, as well as the
22 frozen assets attributable to each individual, do not come close
23 to the amount of consumer injury. In that the existing frozen
24 assets fall short of the amount of consumer injury, continuation
25 of the freeze to preserve those assets is further justified.⁵⁸ The

7 ⁵⁷ FTC v. Figgie Int'l, Inc., 994 F.2d 595, 606 (9th Cir. 1993)

8 ⁵⁸ World Wide Factors Ltd., 882 F. 2d at 347; CFTC v. Noble
Metals Int'l, Inc., 67 F. 3d 766, 775 (9th Cir. 1995); see also

1 public interest in preserving such assets for consumer redress far
2 outweighs any private interest at stake here.

3 Individual Defendants dispute the accuracy of the Receiver's
4 calculation and insist that the Receiver's amount fails to take
5 into consideration 12 million in consumer refunds. Even assuming
6 arguendo, that the Individual Defendants are correct as to how the
7 calculation should be made, the losses for which the Commission
8 ~~seeks restitution would still exceed 85 million dollars. The~~
9 assets currently held by the Receiver include roughly 20 million
10 in "trust fund" money which will shortly be paid out to consumers
11 who originally sent it in plus another 4.8 million, some of which
12 will be paid out to former employees of the corporate defendants.
13 The frozen personal assets, exclusive of homes and cars, total
14 only 4.08 million leaving a massive shortfall with respect to what
15 ~~consumers will be owed if the Commission prevails, an event of~~

16 which there is a high probability based on the fact that the Court
17 initially granted the Commission's application for issuance of a
18 TRO and in doing so, found a high probability that the Commission
19 will prevail in a hearing on the merits of the case.

20 A. Consumers Enrolling in Defendants' Program Suffered Losses
21 Both Calculable and Incalculable.

22 The Commission does not contend that Defendants never
23 performed any debt negotiation services, rather that the majority
24 of consumers who enrolled in the Defendants' program were induced
25 to sign up for the programs based on misrepresentations and
26 omissions and that the harm they experienced, both while enrolled
27 in the program and after they left, outweighed any benefit.

28 CFTC v. Morse, 762 F. 2d 60, 63 (8th Cir. 1985).

1 Defendants would have this Court believe that the majority of
2 consumers who enroll in their program receive a financial benefit
3 from their services, even those consumers who left the program.
4 They define savings as "more settlement savings than they have
5 paid to settle the debt and all fees they incurred during their
6 tenure in the program."⁵⁹ They focus on the number of settlements
7 and ignore the completion rate for the program.

8 ~~Defendants' analysis and their definition of success is~~
9 flawed. First, while a consumer may at some point have received
10 more in "settlement" savings than they paid in fees or owed on a
11 particular card, this situation does not last through the life of
12 the program with every credit card. Second, the analysis fails to
13 take into consideration the incalculable injury that consumers
14 suffer while in the program due to lawsuits, arbitrations,
15 ~~harassment from creditors, garnishment of wages and destruction of~~

16 their credit report. Consumer [REDACTED] typifies the experience
17 of countless consumers who sought Defendants' assistance in
18 dealing with their financial situation. On paper, Ms. [REDACTED] should
19 appear as one of Defendants' success stories as she had nearly
20 completed the program in April, 2004. She enrolled in the program
21 in debt over \$55,000 spread over 8 credit cards.⁶⁰ She was told
22 that in five years, she would be debt free.⁶¹ After she had been
23 in the program for a short while her larger creditors began to
24 send her legal notices and before she had been in the program a
25

6 ⁵⁹ Defendants' Opposition at 11, citing Meeks Decl. ¶ .
7

8 ⁶⁰ Opp. Exh. 2 [REDACTED], p. 12.

⁶¹ Opp. Exh. 2 [REDACTED], p. 15.

1 year, 5 of her creditors had taken legal action against her.⁶² In
2 the end, she paid out more in fees and settlements in a single
3 year than she had owed when she entered the program. While
4 defendants did negotiate the balance of her credit card debt,
5 Consumer [REDACTED] was forced to borrow money from family members and
6 deplete her retirement savings to avoid possible garnishment of
7 her wages.⁶³

8 ~~According to the Receiver's calculations, 19,237 consumers~~
9 stopped using Defendants' services before completing the program.
10 These consumers were enrolled with UCLG, Solidium or FRS to
11 perform debt negotiation services. The Commission took a random
12 sample of 1% of the consumers who quit the Solidium and FRS
13 programs before completion.⁶⁴ Staff attempted to contact these
14 consumers, by telephone using primarily Defendants' own records,
15 ~~to determine why they left the program and what happened to their~~
16 finances after they quit.

17 In the space of less than a week, staff called the phone
18 numbers of 87 former FRS clients and 67 former Solidium clients.
19 Staff spoke to 38 former FRS clients and 22 former Solidium
20 clients. Of the consumers who spoke with staff, the majority of
21 consumers reported having had a negative experience as a result of
22 their participation in the program.⁶⁵ Many reported having left
23 the program because they were unable to deal with calls from their
24

5 ⁶² Opp. Exh. 2 [REDACTED], pg. 18 - 20.

6 ⁶³ Opp. Exh. 2 [REDACTED] pg. 21.

7 ⁶⁴ A sample of UCLG consumers was also compiled however due to
8 limited time and resources, the survey has not yet commenced.

⁶⁵ Opp. Exh. 9 [Smart], pg. 523 - 529.

1 creditors. A significant number reported that after they left the
2 program, they dealt with their financial situation by filing
3 bankruptcy.⁶⁶ In summary, contrary to Defendants' accusations that
4 the Commission has "cherry picked" a few witnesses, even randomly
5 selected consumers still dispute Defendants' portrayal of their
6 operation and their services and claim to have experienced the
7 same damage to their lives and their credit reports as the
8 Commission's original declarants.

9 B. The Individual Defendants Received Handsome Profits from
10 their Fraudulent Activities

11 The Receiver's Report establishes that each of the moving
12 Individual Defendants were paying themselves substantial salaries
13 and bonuses out of the fees consumers paid into the programs.
14 Ledda's real attitude towards consumers is neatly presented in his
15 email response to a request from FRS to refund all fees paid to a
16 destitute consumer who FRS conceded should never have been in
17 their program. The money sought was roughly \$500 in fees in
18 addition to the balance of the woman's trust fund. Defendant
19 Ledda's response: "Since FRS has taken it upon themselves to
20 decide that the client should receive a full refund, then I
21 suggest that FRS pay it."⁶⁷ A few months later, he and Kardos made
22 distributions to themselves in excess of \$350,000 each paid in a
23 single month.⁶⁸ That the Individual Defendants organized their
24 scheme for the purpose of benefitting themselves cannot be

6 ⁶⁶ Opp. Exh. 7 [Gale], pg. 61 (17 bankruptcies); Opp. Exh. 9
7 [Smart], pg. 528 (15 bankruptcies).

8 ⁶⁷ Opp. Exh. 9 [Smart], pg. 537 - 542.

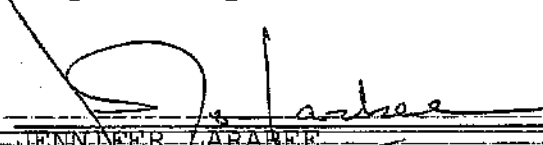
9 ⁶⁸ Receiver's Initial Report at 11.

1 | disputed.

2 | **V. CONCLUSION**

3 | Where the Receiver's Initial Report establishes that the
4 | amount frozen already is so grossly insufficient to remedy the
5 | massive consumer injury caused by Defendants' conduct, and the
6 | Individual Defendants have failed to establish their inability to
7 | obtain funds from any other source, it would be inequitable to
8 | ~~further deplete the limited amounts available for consumer redress~~
9 | in order to provide living expense to the Individual Defendants.
10 | For all of the reasons stated within, the Commission asks that the
11 | Court deny the Individual Defendants' application for the release
12 | of fees.

13 | Respectfully submitted,

14 | 

15 | June 8, 2004

16 | ~~JENNIFER LARABEE~~
17 | FAYE CHEN BARNOW
18 | Attorneys for Plaintiff
19 | Federal Trade Commission