

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,)
)
Plaintiff,) Case No. 09 7423
)
v.) Judge John F. Grady
)
2145183 ONTARIO INC., also dba) Mag. Judge Martin C. Ashman
DYNAMIC FINANCIAL RESOLUTIONS INC.)
an Ontario corporation, <i>et al.</i> ,)
)
Defendants.)

**PLAINTIFF FEDERAL TRADE COMMISSION'S MEMORANDUM
IN SUPPORT OF ITS *EX PARTE* MOTION FOR A TEMPORARY RESTRAINING
ORDER WITH ASSET FREEZE AND THE APPOINTMENT OF A RECEIVER**

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I. INTRODUCTION

The Federal Trade Commission asks that this Court take immediate action to stop a massive illegal enterprise that uses prerecorded telemarketing calls to sell consumers fraudulent credit card interest rate reduction services. Since 2007, Defendants have been charging consumers fees ranging from \$495 to \$1995 for a program that they claim will dramatically reduce consumers' existing credit card interest rates and save them thousands of dollars in a short time. This scheme, which goes by the name Dynamic Financial Resolutions ("Dynamic"), is operated through six related companies located in Canada and the United States. Law enforcement agencies and the Better Business Bureau have been flooded with complaints about Defendants' fraudulent business practices and blatant violations of the FTC's Do Not Call rules. Since beginning this scheme, Defendants have taken in nearly fifteen million dollars from their consumer victims.

Defendants' sales pitch focuses on their purported ability to lower consumers' credit card interest rates significantly, often to between 4% and 7%. Defendants claim that they can achieve lower rates than individuals could negotiate on their own because they have special relationships with the consumers' credit card companies. They guarantee that these reduced rates will quickly save consumers thousands of dollars in interest and finance charges, and will allow consumers to pay off their credit card debt three to five times faster. Consumers are also led to believe the deal is risk-free, because Defendants offer a money-back guarantee if they are unable to achieve the promised savings.

This is a case of outright fraud. Defendants cannot and do not achieve the dramatic interest rate reductions they promise their customers, and consumers do not save the promised amounts or pay off their debts three to five times faster. All Defendants do is place three-way calls to credit card customer service lines and ask for interest rate reductions, something consumers could do just as easily on their own. Defendants' efforts almost never succeed in reducing their customers' interest rates. In the rare instances that Defendants are able to secure a lower rate, the reduction is merely a point or two - significantly less than what the consumers had been promised. Furthermore, without extraordinary effort, consumers do not receive refunds when Defendants fail to deliver the promised savings. In denying refunds, Defendants claim that they have satisfied their savings obligation by providing a long-term "customized financial plan"

under which consumers could achieve the promised savings over the course of many years. These plans are usually not even mentioned to consumers at the time they purchase Defendants' services, and certainly are not the services consumers agreed to purchase.

At the same time, thousands of consumers have been harassed by Defendants' blatantly illegal telemarketing practices. Defendants use outbound prerecorded telemarketing calls, or "robocalls," to contact consumers regardless of whether consumers' telephone numbers are registered on the National Do Not Call Registry, or even if consumers have specifically asked Defendants to stop calling. Consumers receive Defendants' robocalls on their home, work, and cell phones, sometimes several times a day. Thousands of consumers have filed complaints with the FTC regarding these illegal practices.

Defendants operate their scheme in blatant violation of Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), and numerous provisions of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.¹ Defendants' misrepresentations violate both Section 5(a) and the TSR. In addition, Defendants' calling practices also violate the TSR in multiple ways – by flatly ignoring the requirement that their prerecorded calls disclose "promptly, and in a clear and conspicuous manner" the identity of the seller, the purpose of the telemarketing call, and the nature of the goods or services, by calling telephone numbers listed on the National Do Not Call Registry, by ignoring consumers' do not call requests, by using fake or "spoofed" caller ID information, and by abandoning calls, all of which are practices specifically prohibited by the TSR.

These Defendants, located in Canada, Florida, New Jersey, and Delaware, have perpetrated their scheme by calling consumers across the nation, including Illinois consumers who reside in this District.² To bring an immediate halt to Defendants' law violations and to preserve assets for eventual restitution to victims, the Commission asks that the Court enter an *ex parte* temporary restraining order ("TRO") that includes a freeze of Defendants' assets,

¹ For the Court's convenience, a copy of the TSR is attached hereto as Plaintiff's Exhibit ("PX") 1.

² The FTC has included among its exhibits two declarations from consumers in this district who were victimized by this enterprise. *See* PX 18, Nalls ¶ 1; PX 23, Woodhouse ¶ 1. In addition, over \$5.4 million in sales related to this scam were processed through a credit card processor located in this district. PX 2, McKenney ¶¶ 44, 53 & Att. RR.

expedited discovery, and the appointment of a temporary receiver over the corporate Defendants.³ The requested relief is necessary to prevent continued injury to consumers, the destruction of evidence, and the dissipation of assets, thereby preserving the Court's ability to provide effective final relief.

II. DEFENDANTS' ILLEGAL BUSINESS PRACTICES

Since at least 2007, Defendants have pitched credit card interest rate reduction services that the Defendants know they cannot provide.⁴ Defendants' scheme is designed to convince consumers that the Defendants can dramatically reduce their interest rates and save them thousands of dollars and several years of credit card payments, and do so in a way that is completely risk-free. All too often, Defendants are able to convince consumers to pay hundreds of dollars for the promise of credit card interest savings that Defendants then fail to deliver. After failing to provide the promised savings, Defendants then also do not honor their money-back guarantee.

A. Defendants Violate the FTC Act

1. Defendants' Deceptive Sales Calls

Defendants initially contact most consumers through unsolicited robocalls, which warn consumers of the importance of speaking to one of the Defendants' representatives about their credit card interest rates.⁵ The recording instructs consumers to "press one" to speak to a live agent.⁶ Consumers who do so are transferred to one of Defendants' telemarketers, who often

³ This is one of three cases being filed today by the FTC that target companies using robocalls to market fraudulent credit card interest rate reduction services to consumers. This matter is also very similar to another case brought by the FTC in this jurisdiction, *FTC v. Select Personnel Management, Inc., and James Stewart*, No. 07 C 0529 (N.D. Ill. Jan. 29, 2007) (Norgle, J.), in which the FTC obtained a final judgment of \$7.8 million against all Defendants.

⁴ PX 2, McKenney ¶ 44.

⁵ PX 6, Becker ¶ 3; PX 8, Bower ¶ 3; PX 9, Braver ¶ 4 & Att. A p.4; PX 12, Green ¶ 3; PX 3, Morrison ¶ 13; PX 20, Robinson ¶ 3; PX 23, Woodhouse ¶ 3.

⁶ PX 6, Becker ¶ 3 (told to "press 9"); PX 8, Bower ¶ 3; PX 9, Braver ¶ 4 & Att. A p. 4; PX 12, Green ¶ 3; PX 20, Robinson ¶ 3; PX 22, Therrien ¶ 3; PX 23, Turner ¶ 3; PX 23, Woodhouse ¶ 3.

purports to be calling from “credit card services” or “account services.”⁷ Both the prerecorded messages and generic company names are intended to make consumers think that they are talking to their own credit card company.⁸ The generic company names also allow Defendants to remain anonymous to consumers who complain about the calls.⁹

Consumers are asked some basic questions about their credit card debt and interest rates, and then put through a “qualification” process to “verify” that at least one of their cards is in good standing and can be used to pay Defendants’ fee.¹⁰ Defendants often further perpetuate consumers’ belief that the call is from their own credit card company by pretending to already know the credit card number. They do this by offering the first digit to the consumer after finding out the type of card the consumer has.¹¹ Most consumers do not realize that all Visa credit card numbers start with 4, Mastercard numbers with 5, and American Express numbers with 3. This verification process is nothing more than a chance to check the available credit on the card to make sure that the telemarketers are not wasting their time pitching Defendants’ service to consumers who cannot pay for it.¹²

⁷ PX 9, Braver ¶ 5 & Att. A p. 4; PX 13, Hayes ¶ 3; PX 14, Heck ¶ 3; PX 3, Morrison ¶ 22; PX 21, Seley ¶ 3.

⁸ PX 8, Bower ¶ 3 (though call was from her credit card company); PX 10, Bullock ¶ 3 (told the call was from Visa); PX 14, Heck ¶ 3 (though call was from her credit card company); PX 3, Morrison ¶ 24; PX 20, Robinson ¶ 4 (though call was from her credit card company).

⁹ In the last year, over 39,000 complaints have been filed against “account services,” “card services,” and “credit card services” on Consumer Sentinel, a database that compiles complaints received from various law enforcement agencies and private organizations. PX 2, McKenney ¶ 78. Although many of these complaints may be attributable to other similar schemes, at least some are likely connected to these Defendants.

¹⁰ PX 9, Braver ¶ 5 & Att. A p. 4-11; PX 11, Close ¶ 3; PX 12, Green ¶ 3; PX 3, Morrison ¶ 28; PX 20, Robinson ¶ 4; PX 21, Seley ¶ 4.

¹¹ PX 9, Braver ¶ 5 & Att. A p. 7 (“And the last thing I would need, sir, to verify the account is the account number beginning with a four.”); PX 3, Morrison ¶ 29 & Att. A.

¹² PX 12, Green ¶ 3; PX 3, Morrison ¶ 16, 28-31; PX 23, Woodhouse ¶ 5 (telemarketer hung up on her after she refused to give her credit card number).

2. Making the Sale

Once Defendants confirm that the consumers have sufficient available credit, Defendants' telemarketers begin their aggressive sales pitch. Consumers are told that Defendants can significantly reduce the interest rates on their existing credit cards, and are often told that their rates will get down to between 4% and 7%.¹³ While Defendants are intentionally vague about the amount of time it will take to lower the rates, consumers are led to believe the reductions will occur relatively quickly.¹⁴ One consumer, for example, was told that he could expect to see the reduced rates by the next billing period on his credit cards.¹⁵ Another consumer was assured the reduction would happen so quickly that she would see savings that same month.¹⁶ Of course, rates this low are generally impossible to negotiate, and certainly cannot be done quickly.¹⁷

In addition to quoting very low interest rates, Defendants take several other steps to convince consumers of the program's legitimacy. For example, Defendants tell consumers that they have special affiliations with financial institutions which allow them to negotiate such low

¹³ PX 6, Becker ¶ 3 (promised reductions to 6% to 6.99%); PX 8, Bower ¶ 4 (4% to 6%); PX 10, Bullock ¶ 3 (1% or less); PX 12, Green ¶ 5 (4%-6%); PX 14, Heck ¶ 4 (4%-6%); PX 15, Kamakani ¶ 3 (6.9%); PX 16, Lord ¶ 10 & Att. C (6% and 7.24% on her two cards); PX 3, Morrison ¶ 33 (former telemarketer, quoted rates of 4% to 7%); PX 21, Seley ¶ 6 (2.9% to 4.9%); PX 23, Woodhouse ¶ 5 ("single digits").

¹⁴ PX 6, Becker ¶ 3 (told reductions would happen within 60 days); PX 7, Bishop ¶ 3 (telemarketer "gave me the impression that Dynamic would do it right away"); PX 10, Bullock ¶ 3 (told she would be able to pay off her entire balance within 18 months); PX 14, Heck ¶ 4 (guaranteed savings of \$1500 in four months); PX 16, Lord ¶ 3 (led to believe it would occur relatively quickly); PX 3, Morrison ¶ 33 (former telemarketer, "we guaranteed that these lower interest rates would save consumers hundreds or thousands of dollars within two months, or two monthly billing cycles"); PX 20, Robinson ¶ 6 (led to believe rates reduced completely during first appointment); PX 21, Seley ¶ 6 (told she'd save \$5000 in 15 days); PX 2, McKenney ¶ 26 & Att. T (Defendant website: "When do I start receiving a rate reduction? Immediately! The interest rate reduction will be reflected in your monthly statement.").

¹⁵ PX 9, Braver ¶ 6 & Att. A p. 24 (told that the reductions will be negotiated for him during his first appointment, which will be 5 to 8 days after telemarketing call).

¹⁶ PX 21, Seley ¶ 6.

¹⁷ PX 4, Wilhelm ¶¶ 16-19 (credit card companies determine interest rates based on several factors and only after a careful assessment and the rates being promised by Defendants are nearly impossible to negotiate).

rates.¹⁸ One consumer was told that the Defendants “have relationships with all 551 nationwide lenders,” and have over 350,000 customers with these lenders, allowing them to use their customer base as leverage to get lower rates.¹⁹ Other consumers were told that the Defendants’ employees have banking experience and special insiders’ knowledge.²⁰ One telemarketer even told a consumer that the Defendants worked directly for American Express, and were hired to help people lower their interest rates and offer low-rate credit cards.²¹ In reality, Defendants have no relationship with financial institutions that enable them to procure reduced interest rates.²² Indeed, many banks will not even work with third party companies that are hired to negotiate lower interest rates for a consumer.²³ Defendants also tell consumers that they are closely regulated by the federal government, likely to convince consumers that Defendants are not running a scam.²⁴ There is no specific government oversight of the industry.

Defendants further attempt to put consumers at ease by offering multiple money-back “guarantees.” Defendants tell consumers that, because of the reduced credit card interest rates, consumers will achieve guaranteed savings of a certain amount, generally ranging from \$2500 up to at least \$5000.²⁵ Defendants also guarantee that, once they negotiate lower interest rates,

¹⁸ PX 6, Becker ¶ 4; PX 9, Braver ¶ 8; PX 12, Green ¶ 5; PX 16, Lord ¶ 9; PX 3, Morrison ¶¶ 26, 34; PX 20, Robinson ¶ 6; PX 21, Seley ¶ 7; PX 23, Turner ¶ 4.

¹⁹ PX 9, Braver ¶ 8 & Att. A p. 25-26.

²⁰ PX 21, Seley ¶ 7; PX 2, McKenney ¶ 25 & Att. S (Defendant website: “Each of our negotiators is a seasoned professional in the credit card world.”).

²¹ PX 12, Green ¶ 5. *See also* PX 10, Bullock ¶ 3 (told the service was provided by Visa).

²² PX 3, Morrison ¶ 27; PX 4, Wilhelm ¶ 20 (“Not only do third parties such as the FTC Defendants not have leverage, clout, or formal relationships with issuers, in fact, the involvement of a third party in negotiating a rate reduction is counterproductive for the consumer.”).

²³ PX 12, Green ¶ 17 (later called American Express and learned Dynamic Financial is not affiliated with it and American Express does not authorize outside sources to issue credit cards on its behalf); PX 23, Turner ¶ 8 (told bank will only reduce interest rates if consumer speaks to loan officer in person); PX 4, Wilhelm ¶ 20 (many banks will only work directly with consumers).

²⁴ PX 6, Becker ¶ 4; PX 9, Braver ¶ 7 & Att. A p. 19-24; PX 15, Kamakani ¶ 3 (told company was FDIC-insured); PX 18, Nalls ¶ 3; PX 20, Robinson ¶ 6.

²⁵ PX 5, Bader ¶ 3; PX 6, Becker ¶ 3 (\$3000 guarantee); PX 7, Bishop ¶ 3 (\$2500 per year); PX
(continued...)

consumers will be able to pay off their credit card debt three to five times faster.²⁶ If Defendants are unable to achieve either of these guarantees, consumers are told they will get their entire fee back.²⁷ Defendants' services sound appealing, and risk-free, to consumers paying high interest rates on their credit card debt.²⁸

For their credit card interest rate reduction services, Defendants charge consumers amounts ranging from \$495 to \$1995.²⁹ According to a former telemarketer for Defendants, the fee is based on the consumer's available credit and total debt.³⁰ Consumers who balk at the steep price are assured that the fee is quickly absorbed into the savings they will achieve through Defendants' program.³¹ One telemarketer even told a consumer that the program "doesn't cost you anything out of pocket" because the fee "is paid for completely by the interest and finance

²⁵(...continued)

8, Bower ¶ 7 (\$5000); PX 9, Braver ¶ 7 & Att. A p. 20 (\$2500, but told on phone it's "going be closer to" \$5500); PX 11, Close ¶ 4 (\$3000); PX 12, Green ¶ 6 (\$3500); PX 13, Hayes ¶ 4 (\$3000); PX 15, Kamakani ¶ 3 (\$2500); PX 16, Lord ¶ 3 (\$3500); PX 18, Nalls ¶ 5 (\$3000); PX 20, Robinson ¶ 5 (\$3000); PX 21, Seley ¶ (\$5000 guarantee); PX 23, Turner ¶ 4 (\$2500 guarantee).

²⁶ PX 8, Bower ¶ 7; PX 9, Braver ¶ 7 & Att. A p. 20; PX 15, Kamakani ¶ 3; PX 3, Morrison ¶ 33; PX 18, Nalls Att. A; PX 20, Robinson ¶ 5; PX 23, Turner ¶ 4.

²⁷ PX 9, Braver ¶ 7 & Att. A p. 20-22; PX 6, Becker ¶ 3; PX 8, Bower ¶ 4; PX 11, Close ¶ 4; PX 12, Green ¶ 6; PX 3, Morrison ¶ 32 & Att. C; PX 20, Robinson ¶ 5.

²⁸ PX 6, Becker ¶ 5 ("Because Dynamic Financial sounded so certain of its success, I decided to sign up...."); PX 15, Kamakani ¶ 4; PX 18, Nalls ¶ 5 (told representative she was signing up with the understanding that there was a money-back guarantee); PX 23, Turner ¶ 6.

²⁹ PX 5, Bader ¶ 4 (charged \$1995); PX 6, Becker ¶ 5 (charged \$990); PX 8, Bower ¶ 4 (\$1495); PX 9, Braver ¶ 7 (\$795); PX 10, Bullock ¶ 4 (\$890); PX 11, Close ¶ 4 (\$916); PX 12, Green ¶ 6 (\$790); PX 13, Hayes ¶ 4 (\$890); PX 14, Heck ¶ 5 (\$749); PX 15, Kamakani ¶ 5 (\$495); PX 18, Nalls ¶ 5 (\$895); PX 20, Robinson ¶ 7 (\$695); PX 23, Turner ¶ 5 (\$695).

³⁰ PX 3, Morrison ¶ 35.

³¹ PX 7, Bishop ¶ 5 (told the fee would be recovered in first few months); PX 9, Braver ¶ 7; PX 14, Heck ¶ 5 (told she would "easily and quickly recoup that amount"); PX 3, Morrison ¶¶ 28, 36 & Att. B; PX 21, Seley ¶ 4 (told that "any fee the company charged me would be absorbed into the savings I would realize within 30 days"); PX 23, Turner ¶ 5 (was told "this payment was not an out-of-pocket expense since the fee would be absorbed into the savings I would achieve through Easy Financial's program").

fees that we save you.”³² Some consumers are also assured that, if they change their mind about hiring Defendants, they have the right to cancel Defendants’ services within thirty days.³³ In reality, consumers’ payment to Defendants simply adds to the debt load they are already struggling with, and those consumers who try to cancel within thirty days do not automatically receive their money back.³⁴

Once consumers agree to pay the fee, Defendants proceed to record a verification.³⁵ This recording captures the consumer’s agreement to pay the fee by credit card, along with the credit card information necessary to bill the card.³⁶ Not surprisingly, the promises and other shenanigans used by Defendants to convince consumers to purchase the service are not recorded.³⁷

The entire fee is charged to the consumers’ credit cards within a day or two of the telemarketing phone call, before any services have been performed.³⁸

³² PX 9, Braver ¶ 7 & Att. A p. 21.

³³ PX 8, Bower ¶ 5; PX 10, Bullock ¶ 4; PX 14, Heck ¶ 5 (told she could call and cancel if she changed her mind); PX 18, Nalls ¶ 8 (“the representative told me several times that I would be able to cancel and get a refund with no problems”); PX 21, Seley ¶ 10.

³⁴ PX 5, Bader ¶ 10; PX 8, Bower ¶¶ 9, 11; PX 10, Bullock ¶¶ 7, 8; PX 20, Robinson ¶¶ 11-17; PX 21, Seley ¶¶ 18, 20, 21, 24.

³⁵ PX 7, Bishop ¶ 5; PX 9, Braver ¶ 9; PX 11, Close ¶ 5; PX 12, Green ¶ 7; PX 3, Morrison ¶ 18; PX 18, Nalls ¶ 6; PX 21, Seley ¶ 12.

³⁶ PX 8, Bower ¶ 7; PX 9, Braver ¶ 9 & Att. A p. 31-35; PX 12, Green ¶ 7; PX 13, Hayes ¶ 4; PX 20, Robinson ¶ 7.

³⁷ PX 8, Bower ¶ 7; PX 9, Braver ¶ 9 & Att. A p. 31-35; PX 3, Morrison ¶ 37. Defendants sometimes used these verification recordings as reasons to deny consumers’ refund demands. *See* PX 8, Bower ¶ 14 & Att. E; PX 16, Lord ¶ 9.

³⁸ PX 5, Bader ¶ 4 (charged same day); PX 6, Becker ¶ 6 (charged within a day); PX 8, Bower ¶ 8 (same); PX 9, Braver ¶ 11 (charged next day); PX 15, Kamakani ¶ 5 (charged same day); PX 16, Lord ¶ 6 (thought she would be able to review the paperwork before being charged, but charged same day); PX 18, Nalls ¶ 5 (same); PX 21, Seley ¶ 14 (charged next day); PX 23, Turner ¶ 7.

3. Defendants' Welcome Packages

Consumers receive a welcome package from Defendants about a week after being charged for Defendants' services.³⁹ The package includes several documents and forms, as well as some advertising materials about other services which Defendants claim to offer.⁴⁰ One of the included items is a "Personal Lender Profile,"⁴¹ which asks consumers to list each of their credit card accounts, and for each account, disclose the current balance, credit limit, interest rate or APR, suggested minimum payment, normal payment, and whether the payments are current. Consumers are instructed to mail the form back in "ASAP."

Other documents in the package explain what consumers are actually getting for their money. Consumers who read the paperwork closely learn that the services they thought they had agreed to over the telephone are far different than what the Defendants claim to provide in the documents.⁴² The service contract in the package explains that Defendants will give consumers a "customized analysis" and "optimized financial plan."⁴³ The interest rate negotiations that were the focus of the telemarketing calls, and were the service the consumers thought they were paying for, are only an added, free "bonus." The consumers also learn that the guaranteed savings being offered by the program are "realized over the course of paying off the balance of the credit cards." This is very different than the short-term savings that consumers had been assured over the telephone that they would receive.⁴⁴ Finally, the documents state that the thirty day cancellation policy is only valid if previously undisclosed conditions are satisfied – for example, if Defendants are "supplied with written documentation supporting the following

³⁹ PX 6, Becker ¶ 7; PX 8, Bower ¶ 8; PX 12, Green ¶¶ 11, 12, 15, 20 (did not receive welcome package for nearly three weeks, and only after calling Dynamic Financial several times to complain); PX 16, Lord ¶ 7; PX 18, Nalls ¶ 7; PX 23, Turner ¶ 11; PX 5, Bader ¶¶ 5-7, 10 (never received package).

⁴⁰ PX 6, Becker ¶ 7 & Att. B; PX 8, Bower ¶ 9 & Att. B; PX 12, Green ¶ 20 & Att. B; PX 13, Hayes ¶ 5 & Att. A; PX 16, Lord ¶ 7 & Att. B; PX 18, Nalls ¶ 8 & Att. D; PX 21, Seley ¶ 17 & Att. B.

⁴¹ PX 6, Becker ¶ 8 & Att. B; PX 8, Bower ¶ 9 & Att. B; PX 9, Braver ¶ 13 & Att. C.

⁴² PX 12, Green ¶ 22 & Att. D (welcome package "did not accurately reflect the promise that was made to me over the phone").

⁴³ PX 8, Bower ¶ 9.

⁴⁴ PX 21, Seley ¶ 18.

incidents: The early pay-off of accounts, balance transfers, the personal reduction of interest rates, bankruptcy, mental illness, power of attorney, and life changing events.”⁴⁵ Consumers who want to cancel also need to get a Return Merchandise Authorization number from the Defendants.⁴⁶ Over the phone, consumers had been told they could cancel within 30 days for any reason and receive a refund.⁴⁷

One consumer described herself as “mortified” after reading the documents and realizing she was not getting what she had been promised.⁴⁸ Another says she never would have signed up for the program if the telemarketer had told her of the company’s stringent cancellation policies.⁴⁹ A third consumer, with vision problems, admits she did not closely read the documents, but instead continued to rely on what she had been told by phone.⁵⁰

4. Defendants’ “Services”

Defendants are supposed to begin working on reducing the consumers’ credit card interest rates once consumers mail in their forms. One consumer, however, reported that she received a call from a company representative telling her that Defendants could not help lower her rates after all, and referring her to the company’s debt consolidation department - not the service she had signed up for.⁵¹ Another consumer complained that she would make appointments to talk with her negotiator, and then no one would call her at the appointed time.⁵²

⁴⁵ PX 8, Bower ¶ 9; PX 18, Nalls ¶ 8; PX 20, Robinson ¶ 13 & Att. B.

⁴⁶ PX 21, Seley ¶ 18.

⁴⁷ PX 8, Bower ¶ 5; PX 18, Nalls ¶ 8; PX 21, Seley ¶ 10.

⁴⁸ PX 21, Seley ¶ 18.

⁴⁹ PX 8, Bower ¶ 9.

⁵⁰ PX 6, Becker ¶ 8; PX 23, Turner ¶ 8.

⁵¹ PX 7, Bishop ¶ 6.

⁵² PX 21, Seley ¶¶ 15, 16, 20, 21, 23.

When Defendants finally do attempt to negotiate with the credit card companies, they do nothing that consumers could not have done themselves.⁵³ In essence, Defendants' representative initiates a three-way call with the consumer and the consumer's credit card companies.⁵⁴ Once all parties are on the line, Defendants' representative states that he represents the consumer and asks that the credit card company lower the consumer's interest rate.⁵⁵ Invariably, the credit card company declines, or at most only agrees to a very minor reduction, and the call ends.⁵⁶ The Defendants' representative then tells the consumer that he will try again in a few months.⁵⁷ It is usually apparent to consumers at this point that Defendants have no special relationship with credit card companies; in fact, one consumer noted that the Defendants' representative did not even identify the company he was calling from when he introduced himself to the credit card company.⁵⁸

After failing to achieve interest rate reductions, Defendants sometimes offer to transfer the consumer's balance to a new credit card with a low rate.⁵⁹ In most cases, the low rate on the new card is only an introductory rate that will go up significantly after a short time period.⁶⁰

⁵³ PX 8, Bower ¶ 10; PX 10, Bullock ¶ 5 (able to call and gets rates reduced on her own); PX 11, Close ¶ 6 (decided to call Visa on her own and reduced rate to 2.99% for 9 months); PX 12, Green ¶ 14; PX 15, Kamakani ¶ 7 (credit card company told consumer no one else can negotiate a reduction for her); PX 4, Wilhelm ¶ 20 ("In my experience, the involvement of a third party would not impact an issuer's decision to reduce an interest rate").

⁵⁴ PX 6, Becker ¶ 9; PX 8, Bower ¶ 10; PX 12, Green ¶ 13; PX 18, Nalls ¶ 11; PX 23, Turner ¶ 8.

⁵⁵ PX 6, Becker ¶ 9; PX 18, Nalls ¶ 11; PX 23, Turner ¶ 8.

⁵⁶ PX 6, Becker ¶ 9 (called 10 credit card companies, none would lower her rates and one even raised the rate); PX 8, Bower ¶ 10 (got 6 month promotional rate on balance transfers, but transfer fee of \$300 also applied); PX 12, Green ¶ 13 (able to get rate reduced to variable 11.37%, not 4%-6% as promised); PX 18, Nalls ¶¶ 12, 14; PX 23, Turner ¶ 8 (told only way bank will consider lowering rates is if consumer talks to loan officer in person).

⁵⁷ PX 8, Bower ¶ 10; PX 12, Green ¶ 14.

⁵⁸ PX 12, Green ¶ 13.

⁵⁹ PX 6, Becker ¶ 10; PX 12, Green ¶ 14; PX 16, Lord ¶ 10; PX 18, Nalls ¶ 13; PX 23, Turner ¶ 8.

⁶⁰ PX 12, Green ¶ 14; PX 16, Lord ¶ 10 & Att. C (told that some of her debt "is a good candidate (continued...)

Furthermore, consumers realize that they did not need to pay Defendants hundreds or thousands of dollars to open up a new credit card account, which they could easily do on their own.⁶¹

Consumers who return their “Personal Lender Profile” also receive a “customized financial plan.”⁶² These plans generally instruct the consumers to continue paying the same amount of money that they are now paying to their credit card companies, even when the minimum payments on each card go down.⁶³ Thus, if a consumer is now paying \$1000 in total monthly payments to her credit cards, she should continue paying \$1000 per month until all of her cards are paid off.

Consumers complain that Defendants’ financial plans consist of nothing more than telling them they can save money over a period of several years if they pay off their credit card bills faster.⁶⁴ Some consumers claim they were using this tactic even before hiring the Defendants.⁶⁵ Furthermore, in some cases, the financial plans are not even accurate.⁶⁶

⁶⁰(...continued)

for 0% APR for 12 months, and depending on how good your credit is, after that it can start at 7.24% with one of our affiliate lenders.”); PX 18, Nalls ¶ 13 (offered one-year 0% rate card; not told what rate would be at end of first year and ultimately never received new card); PX 23, Turner ¶¶ 9, 10, 12 (offered one-year 0% rate card; asked what rate would be at end of first year and only got vague answer).

⁶¹ PX 6, Becker ¶¶ 9, 12; PX 23, Turner ¶ 11.

⁶² PX 6, Becker ¶ 13 & Att. D; PX 12, Green ¶ 21 & Att. C.

⁶³ PX 6, Becker ¶ 14; PX 8, Bower ¶ 13; PX 12, Green ¶ 21 & Att. C p. 3. Even if Defendants do not reduce consumers’ interest rates, their financial plan will allow a consumer to pay off their interest rates faster *if* the consumer otherwise would only pay the minimum monthly payments on his or her cards each month. Minimum monthly payments typically are a percentage of the total debt on the credit card. Thus, as a consumer pays off credit card debt, the minimum monthly payments get smaller. Defendants’ plan instructs consumers to pay more than the minimum monthly payments for their cards, thus paying off those debts more quickly. This plan, of course, is nothing that consumers could not figure out on their own.

⁶⁴ PX 6, Becker ¶¶ 14, 16 & Att. E.

⁶⁵ PX 6, Becker ¶ 15; PX 8, Bower ¶ 13; PX 12, Green ¶ 21.

⁶⁶ PX 8, Bower ¶ 13 (plan calculated her savings using a lower interest rate than what she actually had and misstated her current balances); PX 12, Green ¶ 21 & Att. C p. 9 (plan was based on variable interest rate staying fixed, when rate would likely rise).

5. Defendants' Failure to Provide Refunds

Once Defendants fail to negotiate the promised dramatically lower rates on their credit cards, consumers start demanding their money back.⁶⁷ Defendants, however, almost never provide the promised refund. Instead, Defendants claim that they fulfilled their guarantees, usually through their "customized financial plan."⁶⁸ According to Defendants, if followed, these financial plans would allow consumers to pay off their debt three to five times faster and save thousands of dollars over the course of paying off the balance on the credit cards.⁶⁹

At this point many consumers realize they have fallen victim to a scam. Based on the telemarketing calls, consumers believe that their savings will come from reduced credit card interest rates, and that those savings will come quickly.⁷⁰ Defendants' telemarketers do not disclose that the "customized financial plan" is the basis for the savings claims and that the promised savings may take decades to achieve.⁷¹

Consumers who press for a refund receive a run-around. They are given a multitude of different telephone numbers to call, put on hold and disconnected, transferred to various people, and given a variety of empty promises that result in nothing but more stalling.⁷² While some

⁶⁷ PX 6, Becker ¶¶ 12, 15, 16 & Atts. C, E; PX 7, Bishop ¶ 8; PX 8, Bower ¶¶ 11; PX 12, Green ¶ 15 (demanded refund and told "That's not gonna happen."); PX 15, Kamakani ¶ 8; PX 18, Nalls ¶ 16; PX 23, Turner ¶¶ 10, 11, 17 (told he was not eligible for a refund because he refused to take the 0% introductory rate offer).

⁶⁸ PX 6, Becker ¶ 15; PX 8, Bower ¶ 14 & Att. E.

⁶⁹ PX 6, Becker ¶¶ 13, 15 & Att. D; PX 8, Bower ¶ 14 & Att. E.

⁷⁰ PX 6, Becker ¶ 19; PX 8, Bower ¶¶ 9-11 & Att. C; PX 12, Green ¶ 22 & Att. D; PX 23, Turner ¶ 10.

⁷¹ PX 6, Becker ¶ 19.

⁷² PX 5, Bader ¶ 5-7, 9, 10 (spoke to various representatives, told different information, hung up on); PX 6, Becker ¶ 15 (wrote letters and made refund demands by phone that were ignored); PX 7, Bishop ¶ 8 (left several voicemails and emails without any responses); PX 8, Bower ¶ 11 (told she had "saved" \$5000 though only service was balance transfer that had \$300 transfer fee); PX 11, Close ¶¶ 8-11 (kept being told a credit would be issued, but never was); PX 12, Green ¶¶ 10, 15, 19, 22 (demanded refund several times, given excuses and refusals); PX 14, Heck ¶ 7 (told agreement was non-refundable); PX 15, Kamakani ¶ 8 (left several voicemail messages); PX 16, Lord ¶¶ 9-11 (told she was not eligible for a refund); PX 3, Morrison ¶ 40; PX 18, Nalls ¶¶ 9, 10, 16 (told that contract non-refundable and repeatedly promised results); PX 20, Robinson ¶¶ 11-17 (tried to comply with cancellation policy and still

(continued...)

consumers have managed to get refunds, many do not.⁷³ Typically, consumers have only gotten refunds after complaining to the Better Business Bureau or law enforcement.⁷⁴

B. Defendants Violate the TSR

The false claims Defendants use to induce consumers to purchase their credit card interest rate reduction services are just one of their many illegal practices. Defendants' random dialing practices inundate consumers with unwanted calls in direct violation of numerous provisions of the TSR, particularly Do Not Call regulations. Specifically, Defendants (1) blast their messages to consumers indiscriminately, without regard to whether the consumers are registered with the National Do Not Call Registry ("Registry") or previously made specific requests that Defendants cease the calls, (2) fail to connect consumers to live sales representatives promptly, (3) hide behind false caller ID information to conceal their blatant disregard of the Registry, and (4) do not promptly make the required disclosures in their prerecorded messages.⁷⁵

Defendants spare no one when blasting their recordings to consumers. Untold numbers of consumers on the Registry have received repeated prerecorded telemarketing calls on behalf

⁷²(...continued)

refused refund); PX 23, Turner ¶¶ 10, 12 (ignored requests).

⁷³ PX 5, Bader ¶¶ 5-7, 9, 10 (given different information every time she called and promised refunds she never received); PX 8, Bower ¶ 14 & Att. E (refund refused despite complaint to BBB); PX 11, Close ¶¶ 10, 11 (no refund despite complaint to BBB); PX 16, Lord ¶ 12; PX 18, Nalls ¶ 17 (no refund despite complaint to Illinois Attorney General's office); PX 21, Seley ¶ 24 (credit card company would not refund money because she did not have required RMA number, which Easy Financial refused to give her).

⁷⁴ PX 5, Bader ¶ 10 (only given clear refund information after complaining to BBB); PX 6, Becker ¶ 17 (refused refund until complained to BBB and Minnesota Attorney General's office); PX 7, Bishop ¶ 8 (only received refund after complaining to BBB); PX 10, Bullock ¶ 10 (only received refund after complaining to Illinois Attorney General's office); PX 12, Green ¶ 25 (refused refund until complained to Nebraska Attorney General's office); PX 13, Hayes ¶ 7 (refused refund until complained to BBB); PX 15, Kamakani ¶ 11 (refused refund until complained to BBB); PX 23, Turner ¶¶ 14, 15 (refused refund until complained to BBB and FTC).

⁷⁵ As of September 1, 2009, moreover, the TSR prohibits most prerecorded telemarketing telephone calls made without express written consent. 16 C.F.R. § 310.4(b)(1)(v)(A)(i)-(iv).

of the Defendants.⁷⁶ Moreover, consumers' specific do-not-call requests are ignored.⁷⁷ One former employee of a telemarketing company hired by the Defendants reported that most of the consumers she spoke to did not want to purchase the service, but instead demanded that they be removed from the company's calling list.⁷⁸ While there were forms where telemarketers could list the names and phone numbers of people who had asked not to receive any further calls, many of Defendants' telemarketers would simply hang up on these consumers instead.⁷⁹ When the former employee inquired as to where she should submit the form, her manager pointed to the garbage.⁸⁰ Forms that were kept sat in piles for weeks, and likely were never processed.⁸¹

Defendants also engage in other wholesale violations of the TSR. For example, Defendants' robocalls are never transferred to a live representative within two seconds of the call recipient's completed greeting.⁸² Similarly, because Defendants know that they are engaging in illegal activity by ignoring the Do Not Call laws, Defendants transmit phony caller ID information, known as "spoofing," making it impossible for consumers to determine the origin of a call.⁸³ Moreover, Defendants' telemarketers do not transmit or disclose their company name to enable consumers to identify the caller until it is clear that the consumer is interested in

⁷⁶ PX 2, McKenney ¶¶ 76, 78; PX 6, Becker ¶¶ 3, 20; PX 12, Green ¶ 26; PX 17, Makris ¶ 5; PX 3, Morrison ¶ 38; PX 21, Seley ¶ 3; PX 23, Turner ¶ 3; PX 23, Woodhouse ¶¶ 3, 4.

⁷⁷ PX 2, McKenney ¶ 76; PX 17, Makris Dec. ¶¶ 4, 5, 7; PX 22, Therrien ¶¶ 3, 6-10 (received between 25-30 calls despite attempts to opt-out).

⁷⁸ PX 3, Morrison Dec. ¶ 38.

⁷⁹ *Id.* at ¶ 39.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² PX 6, Becker ¶ 3; PX 8, Bower ¶ 4; PX 9, Braver ¶ 4 & Att. A; PX 12, Green ¶ 3; PX 17, Makris ¶¶ 4, 5; PX 20, Robinson ¶ 3; PX 24, Woodhouse ¶ 4.

⁸³ Telemarketers are prohibited from "failing to transmit ... the telephone number ... to any caller identification service in use by a recipient of a telemarketing call." 16 C.F.R. § 310.4(a)(7). PX 2, McKenney ¶¶ 76, 77; PX 22, Therrien ¶ 10 (would call phone number back, but numbers not in service).

buying Defendants' program.⁸⁴ By hiding behind false caller ID information and then failing to identify themselves, Defendants frustrate consumers' efforts to lodge complaints with law enforcement against Defendants.⁸⁵

III. DEFENDANTS

The parties responsible for the above-described practices are a group of six interrelated corporations and eight individuals. Four of these corporate entities are owned and controlled by the same individual. Several of the entities also operate from the same business premises, sharing business practices and operating a common scheme. Money flows between the corporate defendants' banks accounts routinely. The Commission's complaint alleges that at least five of the corporate entities (all but Thriller Marketing, LLC) are being operated as a common enterprise, and we expect that discovery will show that Thriller Marketing, LLC also is part of that enterprise. Entities operated as a common enterprise all are jointly and severally liable for their various law violations. *See FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993, 1011 (N.D. Ind. 2000), *aff'd*, 312 F.3d 259 (7th Cir. 2002) (citing *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973)); *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746-7 (2nd Cir. 1964)); *see also CFTC v. Wall Street Underground, Inc.*, No. 03-2193-CM, 2003 U.S. Dist. LEXIS 15865, at *23 (D. Kan. July 18, 2003).

Defendant **Joseph Register** owns and controls the following corporate defendants: **2145183 Ontario Inc.** ("DFR"); **The Dynamic Financial Group (U.S.A.) Inc.** ("DFG"); **R & H Marketing Concepts, Inc.** ("R&H"); and **America Freedom Advisors Inc.** ("AFA").⁸⁶ Three of these entities, DFG, R&H, and AFA, operate from the same location - a boiler room at

⁸⁴ PX 2, McKenney ¶ 78 (over 39,000 complaints filed about calls from generic company names like "card services"); PX 9, Braver ¶¶ 5,6 & Att. A; PX 17, Makris ¶¶ 5, 6; PX 19, Putnam ¶ 4; PX 12, Green ¶ 5; PX 23, Woodhouse ¶ 5.

⁸⁵ As of December 1, 2008, telephone calls that deliver prerecorded messages must, among other things, promptly disclose: a) the identity of the seller; b) that the purpose of the call is to sell goods or services; and c) the nature of the goods or services. 16 C.F.R. § 310.4(b)(1)(v)(B)(ii). These are the same disclosures required by Section 310.4(d) of the TSR, 16 C.F.R. § 310.4(d), which Defendants also violate.

⁸⁶ PX 2, McKenney ¶¶ 6, 9, 12, 19, 23, 31, 35-40, 45-47, 49, 59, 62, 65, 72.

8413 Laurel Fair Circle in Tampa, Florida.⁸⁷ Joseph Rogister is an officer and/or director of DFR, DFG, R&H, and AFA.⁸⁸ Joseph Rogister's brother, **Sean Rogister**, is an officer and majority shareholder of AFA.⁸⁹ **Philip Constantinidis** and **Michael Falcone** are officers of DFR.⁹⁰ Falcone is also an officer of DFG.⁹¹ **Christopher Hayden** is an officer of R&H.⁹²

The corporate papers for **Alpha Financial Debt Group Inc.** ("Alpha") list **Frank Porporino Jr.** as the company's sole officer.⁹³ However, other evidence also ties Joseph Rogister to this corporation. Alpha's phone number can be traced to an account in Joseph Rogister's name, and a maildrop used by Alpha lists Joseph Rogister as its contact.⁹⁴ Porporino is also an officer on AFA's corporate papers.⁹⁵

Thriller Marketing, LLC ("Thriller") was incorporated in March 2009 by **Dwayne J. Martins** and **John L. Franks**.⁹⁶ Thriller operates out of an office at 4862 W. Gandy Boulevard in Tampa, Florida.⁹⁷ In documents filed with the Florida Department of Agriculture and Consumer Services, 4862 W. Gandy Boulevard is listed as the second location for the telemarketing operation run out of 8413 Laurel Fair Circle, the address where DFG, R&H, and

⁸⁷ *Id.* at ¶¶ 9, 19, 32-34, 38, 39, 40-42, 59, 61.

⁸⁸ *Id.* at ¶¶ 6, 9, 12, 49 & Atts. A, G, D, OO.

⁸⁹ *Id.* at ¶¶ 9, 19, 65.

⁹⁰ *Id.* at ¶¶ 6, 44.

⁹¹ *Id.* at ¶ 56.

⁹² *Id.* at ¶¶ 12, 72.

⁹³ *Id.* at ¶ 7.

⁹⁴ *Id.* at ¶¶ 31, 38.

⁹⁵ *Id.* at ¶ 8. Porporino is also identified as the president of DFG on several merchant processing accounts. PX 2, McKenney ¶¶ 45-47, 49, 51.

⁹⁶ *Id.* at ¶ 14.

⁹⁷ *Id.* at ¶¶ 15, 22, 29, 30, 52.

AFA are located.⁹⁸ The FTC suspects that Thriller was formed at the direction of Joseph Rogister in order to provide a merchant processing account for the enterprise after the Defendants' other merchant accounts were shut down due to excessive chargebacks.

The roles of the six entities overlap significantly. The Defendants' telemarketing calls are handled at boiler rooms operated by AFA and Thriller.⁹⁹ DFR, DFG, R&H, and Thriller have, at various points over the course of the enterprise, handled customer service calls and consumer complaints.¹⁰⁰ The welcome packages sent to consumers are mailed out by AFA, and the mail sent back in by consumers is collected by R&H.¹⁰¹ At various points in the scheme, consumers' credit card payments have been processed through merchant accounts held by DFR, DFG, Alpha, and, currently, Thriller.¹⁰² Defendants' invoices and payroll are paid out of AFA bank accounts, while consumer refunds come from a DFG account.¹⁰³

IV. ARGUMENT

Defendants have bilked millions of dollars from U.S. consumers with their deceptive business practices, which clearly violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and multiple provisions of the TSR, 16 C.F.R. Part 310. To prevent any further injury to innocent consumers, the Commission seeks a temporary restraining order and a preliminary injunction prohibiting Defendants' ongoing deceptive and illegal practices. The Commission also asks that the Court freeze Defendants' assets, both corporate and personal, to preserve them for restitution to victims, and appoint a temporary receiver to both preserve assets and manage the affairs of this enterprise. Courts in this district have repeatedly granted *ex parte* TROs that include these types of relief in FTC actions.¹⁰⁴

⁹⁸ *Id.* at ¶ 23.

⁹⁹ *Id.* at ¶¶ 19-23.

¹⁰⁰ *Id.* at ¶¶ 25-29, 31-34.

¹⁰¹ *Id.* at ¶¶ 39, 41.

¹⁰² *Id.* at ¶ 43-52.

¹⁰³ *Id.* at ¶¶ 61, 62, 65.

¹⁰⁴ *See, e.g., FTC v. 6555381 Canada Inc., et al.*, No. 09 C 3158 (N.D. Ill. May 27, 2009)

(continued...)

A. This Court Has the Authority to Grant the Relief Requested

The FTC Act provides that “in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction.” 15 U.S.C. § 53(b). The practice of defrauding consumers by misrepresenting or omitting material facts in violation of Section 5(a) of the FTC Act presents a “proper case” for injunctive relief under 15 U.S.C. § 53(b). *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1028 (7th Cir. 1988). Once the Commission invokes the federal court’s equitable powers, the full breadth of the court’s authority is available, including the power to grant such ancillary final relief as rescission of contracts and restitution. *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir.), *cert. denied*, 493 U.S. 954 (1989). The court may also enter a temporary restraining order, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief. *World Travel*, 861 F.2d at 1026; *see also Amy Travel*, 875 F.2d at 571. Such ancillary relief may include a freeze of defendants’ assets to preserve them for eventual restitution to victims, and the appointment of a receiver. *U.S. Oil & Gas*, 748 F.2d 1431, 1432-34 (11th Cir. 1984); *see also World Travel*, 861 F.2d at 1031; *FTC v. Am. Nat’l Cellular, Inc.*, 810 F.2d 1511, 1512, 1514 (9th Cir. 1987).

The FTC is empowered to enforce the TSR with the same functions and powers as the FTC Act. *See* 15 U.S.C. § 6105(b). Courts are authorized to enter any relief necessary to redress injury to consumers caused by the TSR violation, including the “rescission or

¹⁰⁴(...continued)

(Gettleman, J.) (*ex parte* TRO and asset freeze for violations of FTC Act); *FTC v. Integration Media Inc., et al.*, No. 09 C 3160 (N.D. Ill. May 27, 2009) (Bucklo, J.) (same); *FTC v. Atkinson, et al.*, No. 08 C 5666 (N.D. Ill. Oct. 6, 2008) (Kendall, J.) (*ex parte* TRO and asset freeze for violations of FTC Act and CAN-SPAM); *FTC v. Data Business Solutions Inc., et al.*, No. 08 C 2783 (N.D. Ill. May 14, 2008) (Dow, J.) (*ex parte* TRO and asset freeze for violations of FTC Act); *FTC v. Spear Systems, Inc. et al.*, No. 07 C 5597 (N.D. Ill. Oct. 9, 2007) (Andersen, J.) (*ex parte* TRO and asset freeze for violations of FTC Act and CAN-SPAM); *FTC v. Sili Neutraceuticals, LLC, et al.*, No. 07 C 4541 (N.D. Ill. Aug. 13, 2007) (Kennelly, J.) (same); *FTC v. Select Personnel Management, Inc., et al.*, No. 07 C 0529 (N.D. Ill. Jan. 29, 2007) (Norgle, J.) (*ex parte* TRO and asset freeze for violations of FTC Act and TSR); *FTC v. 1522838 Ontario, Inc.*, No. 06 C 5378 (N.D. Ill. Oct. 4, 2006) (Gettleman, J.) (*ex parte* TRO and asset freeze for violations of FTC Act); *FTC v. Datacom Marketing*, No. 06 C 2574 (N.D. Ill. May 9, 2006) (Holderman, J.) (same).

reformation of contracts [and] the refund of money or return of property.” 15 U.S.C. § 57b(a)(1) & (b).

B. The FTC Meets the Applicable Standard for Injunctive Relief

To grant preliminary injunctive relief in an FTC Act case, the district court must “(1) determine the likelihood that the Commission will ultimately succeed on the merits and (2) balance the equities.” *World Travel*, 861 F.2d at 1029 (quoting *FTC v. Warner Commc’ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)). Under this “public interest” test, “it is not necessary for the FTC to demonstrate irreparable injury.” *Id.* Unlike a private litigant, who generally must show a strong or substantial likelihood of success on the merits, the Commission need only make the statutory showing of a likelihood of ultimate success. *Id.* And when the court balances the equities, the public interest “must receive far greater weight” than any private concerns. *Id.* Preliminary injunctive relief is therefore appropriate if the Commission shows a likelihood of success on the merits and that a balancing of the equities, giving greater weight to the public interest, favors such relief.

C. The FTC has Demonstrated a Likelihood of Success on the Merits

1. Defendants are Violating the FTC Act and the TSR

There is no doubt that Defendants’ activities qualify as deceptive acts or practices under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances. *FTC v. Bay Area Bus. Council*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. World Media Brokers*, 415 F.3d 758, 763 (7th Cir. 2005); *World Travel*, 861 F.2d at 1029. The materiality requirement is satisfied if the misrepresentation or omission involves information that is likely to affect a consumer’s choice of, or conduct regarding, a product or service. *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992), *cert. denied*, 507 U.S. 909 (1993). In deciding whether particular statements are deceptive, courts must look to the “overall net impression” of consumers. *See id.*

The same conduct that violates the FTC Act violates the TSR. The TSR prohibits sellers and telemarketers from (1) misrepresenting any material aspects of the goods or services for sale,

and (2) misrepresenting any material aspects of the nature or terms of the seller's refund or cancellation policies. 16 C.F.R. § 310.3(a)(2)(iii), 16 C.F.R. § 310.3(a)(2)(iv).¹⁰⁵

In this case, Defendants violate the FTC Act and the TSR by making a series of false claims that are designed to induce consumers to purchase or pay for credit card interest rate reduction services. As described above, Defendants misrepresent that they will be able to substantially reduce consumers' credit card interest rates, and as a result will be able to, in a short time, save them thousands of dollars and cause them to pay off their credit card debt much faster. Defendants further misrepresent that they will provide a full refund if they are unable to save consumers thousands of dollars as a result of dramatically reduced interest rates, and that they will also allow consumers to cancel within 30 days for any reason. The Commission's sworn consumer declarations demonstrate that these lies often succeed in misleading consumers to purchase Defendants' credit card interest rate reduction services when they otherwise would not have. The misrepresentations are clearly material, in that they are likely to and do affect consumers' conduct.

As described above, Defendants' conduct also violates a series of specific provisions in the TSR.¹⁰⁶ In addition to prohibiting misrepresentations and material omissions, the TSR imposes requirements that apply to specified practices:

TSR Sections 310.4(b)(1)(iii)(A) & (B): These provisions prohibit telemarketers from initiating outbound telephone calls to: 1) a consumer who previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered; and 2) to a consumer's telephone number on the National Do Not Call Registry. 16 C.F.R. § 310.4(b)(1)(iii)(A) & (B). Defendants' telephone calls are associated with thousands of Do Not Call complaints received by the FTC. By indiscriminately dialing millions of consumers, Defendants pay no attention to the Registry, or to consumers' removal requests conveyed to Defendants or their telemarketers.

¹⁰⁵ The Defendants qualify as "sellers" or "telemarketers" as defined by the Rule and are engaged in "telemarketing" as defined in the Rule. 16 C.F.R. § 310.2(r), (t), and (u).

¹⁰⁶ At this point, the FTC has not alleged that Thriller or its principals participated in the illegal robocalling at issue in this matter. Therefore, the TSR counts related to the robocalling and Do Not Call violations do not include those Defendants.

TSR Section 310.4(b)(1)(iv): This provision prohibits call abandonment, which occurs when telemarketers fail to connect a call to a sales representative within two (2) seconds of the completed greeting of the person answering the call. 16 C.F.R. § 310.4(b)(1)(iv). By definition, the practice of robocalling violates this provision. Consumers who receive Defendants' robocalls are subjected to a prerecorded message before being transferred to a live representative. Because Defendants do not connect calls to a sales representative within two seconds of the person's completed greeting, they necessarily run afoul of this provision.

TSR Section 310.4(a)(7): This provision requires telemarketers to transmit or cause to be transmitted the telephone number and name of the telemarketer or seller to any caller identification service in use by a recipient of a telemarketing call. 16 C.F.R. § 310.4(a)(7). Defendants do not transmit a telephone number or their name to consumers' caller ID services. Defendants instead spoof or omit such information, in clear violation of the TSR.

TSR Section 310.4(d): This provision requires telemarketers to disclose "truthfully, promptly, and in a clear and conspicuous manner" the identity of the seller, that the purpose of their telemarketing call "is to sell goods or services," and the nature of those goods or services. 16 C.F.R. § 310.4(d)(1), (2) & (3). Defendants' robocalls never disclose their identities, nor that they are selling a credit card interest rate reduction service. This conduct also violates the newly enacted TSR Section 310.4(b)(1)(v)(B)(ii), which mandates that these disclosures be made at the outset of all outbound telephone calls delivering prerecorded messages. 16 C.F.R. § 310.4(b)(1)(v)(B)(ii). As of September 1, 2009, moreover, the TSR has been amended to ban robocalls like those made by Defendants here without the prior express written consent of the consumer being called. 16 C.F.R. § 310.4(b)(1)(v)(A)(i)-(iv).¹⁰⁷

TSR Section 310.3(b): This provision prohibits a person from providing substantial assistance or support to any seller or telemarketer if the person knows or consciously avoids knowing that the seller is engaged in certain practices which violate the TSR. 16 C.F.R. § 310.3(b). Thriller and its principals allowed all of the enterprise's credit card charges to be run through Thriller's merchant account for a period of time, despite knowledge that the other

¹⁰⁷ Despite the TSR amendment going into effect on September 1, 2009, Defendants continue to use robocalls to contact consumer. *See* PX 20, Robinson ¶¶ 3, 4 (received robocall from Defendants on September 21, 2009).

Defendants in this enterprise were making misrepresentations about material aspects of their services in violation of 16 C.F.R. § 310.3(a)(2)(iii) & (iv).

2. The Equities Tip Decidedly in the Commission's Favor

Once the Commission has shown a likelihood of success on the merits, the Court must balance the equities, assigning greater weight to the public interest than to any of Defendants' private concerns. *World Travel*, 861 F.2d at 1029. The public equities in this case are compelling, as the public has a strong interest in halting the deceptive scheme, and in preserving the assets necessary to provide effective final relief to victims. *See FTC v. Sabal*, 32 F. Supp. 2d 1004, 1009 (N.D. Ill. 1998). Defendants, by contrast, have no legitimate interest in continuing to deceive U.S. consumers and persisting with conduct that violates federal law. *See Sabal*, 32 F. Supp. 2d at 1009. An injunction is therefore required to ensure that Defendants' scheme does not continue while the case is pending.

3. The Individual Defendants are Personally Liable

The individual defendants – Joseph G. Rogister, Sean Rogister, Philip N. Constantinidis, Michael Falcone, Frank Porporino Jr., Christopher M. Hayden, Dwayne J. Martins, and John L. Franks Jr. – are responsible for the deceptive and unfair practices of the companies they control and thus should be subject to the TRO and asset freeze. An individual defendant may be held liable for injunctive relief and monetary restitution under the FTC Act if the Court finds (1) that he participated directly in or had some measure of control over a corporation's deceptive practices and (2) that he had actual or constructive knowledge of the practices. *World Media Brokers*, 415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 573-74. Authority to control may be evidenced by "active involvement in the corporate affairs, including assuming the duties of a corporate officer." *World Media Brokers*, 415 F.3d at 764 (citing *Amy Travel*, 875 F.2d at 573). The knowledge requirement is satisfied by a showing that the defendant (1) had actual knowledge of the deceptive acts or practices, (2) was recklessly indifferent to the truth or falsity of the representations, or (3) had an awareness of a high probability of fraud coupled with an intentional avoidance of the truth. *Id.*; *Bay Area Bus. Council*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 573. An individual's "degree of participation in business affairs is probative of knowledge." *Id.* The Commission does not need to prove subjective intent to defraud. *Id.*

The Commission is likely to succeed in showing that all eight individual defendants are liable under the above standards. Each individual defendant is an owner or officer of at least one of the corporate defendants. These authority positions alone establish their ability to control corporate acts and practices. *See, e.g., World Media Brokers*, 415 F.3d at 764-65 (corporate officer “hard-pressed to establish that he lacked authority or control” over corporate entity); *Amy Travel*, 875 F.2d at 574.

D. Ex Parte Relief is Necessary

Ex parte relief is necessary here. An *ex parte* TRO is warranted where facts show that irreparable injury, loss, or damage may result before defendants may be heard in opposition. See Fed. R. Civ. P. 65(b). Here, as in other FTC actions in this district where courts have granted *ex parte* TROs (*see supra* p.18, n. 104), there is a tangible risk that assets and evidence stemming from the illegal activity will disappear if Defendants receive prior notice. Defendants have already shown their ability to hide their identities. They use spoofed telephone numbers for their telemarketing calls to prevent consumers from identifying them. Their telemarketers also initially claim to be calling from “credit card services” or “account services,” rather than disclosing the company name. Defendants have switched the company name under which they work at least once, likely in response to consumer complaints, and one of the corporate defendants, DFG, was incorporated through a third party, presumably to hide the true principals’ identities. Defendants have also used several different mail drops and a virtual office to hide their location. Moreover, several of the individual defendants and one of the corporate defendants are located outside the United States, and proceeds from the scheme are regularly transferred to Canadian bank accounts. In sum, *ex parte* relief is necessary to preserve the *status quo* and ensure that Defendants cannot destroy records and dissipate assets, including by moving assets outside the U.S.

E. An Asset Freeze is Necessary to Preserve Assets for Effective Consumer Redress

Part of the relief sought by the FTC in this case is restitution to consumers who were defrauded by Defendants' misrepresentations. To preserve the possibility for such relief, the Commission seeks a freeze of Defendants' assets and an immediate accounting to prevent concealment or dissipation of assets pending a final resolution of this litigation.

An asset freeze is appropriate once the Court determines that the Commission is likely to prevail on the merits and that restitution would be an appropriate final remedy. *See World Travel*, 861 F.2d at 1031 & n.9. In the words of the Seventh Circuit, the district court at that juncture has “a duty to ensure that the assets of the corporate defendants [are] available to make restitution to injured consumers.” *Id.* at 1031. In a case such as this, where the Commission is likely to succeed in showing that corporate officers are individually liable for the payment of restitution, the freeze should extend to individual assets as well. *Id.* (affirming freeze on individual assets). This Court has authority to order a party to “freeze” property under its control, whether the property is within or outside the United States. *U.S. v. First Nat’l City Bank*, 379 U.S. 378, 384 (1965). Such an order is necessary and appropriate here to ensure the possibility of effective final relief.

F. Appointment of a Receiver is Necessary to Ensure Effective Relief

The appointment of a temporary receiver over the corporate Defendants is necessary to preserve the potential for a complete remedy. Such an appointment is particularly appropriate where defendants’ pervasive fraud presents the likelihood of continued misconduct. If Defendants here are allowed to remain in control of their business, it is likely that evidence will be destroyed and the fruits of their fraud will be dissipated. By taking custody of the business, a neutral receiver would prevent further harm to consumers and prevent destruction or concealment of assets and records without disrupting any legitimate business activity. At the same time, a temporary receiver would be helpful to the court in assessing the extent of Defendants’ fraud, tracing the proceeds of that fraud, preparing an accounting, and making an independent report of Defendants’ activities to the Court.

V. CONCLUSION

Defendants have caused and are likely to continue to cause substantial injury to the public through their violations of the FTC Act and the TSR. The Commission respectfully requests that the Court issue the proposed TRO to protect the public from further harm and to help ensure the possibility of effective final relief for defrauded consumers.¹⁰⁸

Respectfully Submitted,

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DATED: November 30, 2009

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¹⁰⁸ The FTC has submitted a proposed Temporary Restraining Order with its papers.