

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

Case No. 1:16-cv-21528-FAM

**FEDERAL TRADE COMMISSION and
STATE OF FLORIDA,**

Plaintiffs,

v.

CONSUMER ASSISTANCE, LLC, also f/k/a
Back Office Law, LLC, also d/b/a Consumer
Assistance Project, a Florida limited liability
company; **CONSUMER ASSISTANCE
PROJECT, CORP.**, also f/k/a Non-Profit
Guardian Services, Inc. and Back Office Law
Project, Corp., a dissolved Florida corporation;
PALERMO GLOBAL, LLC, a Delaware limited
liability company; and **CHASTITY VALDES**, an
individual,

Defendants.

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND
SUPPORTING MEMORANDUM OF LAW**

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I. INTRODUCTION

Since at least 2013, Defendants have preyed on consumers' anxiety about student loans by falsely promising to eliminate their debt and improve their credit. Defendants' empty promises have convinced consumers to pay hundreds or thousands of dollars – money they could have used instead to pay their student loans – for worthless services. Defendants have pitched their scam with false promises that they will reduce consumers' loan balances by, “at a minimum” “50 to 70 percent,” and repair credit records. In fact, Defendants have not made any serious attempt to reduce student loan debt balances or repair credit. Rather, at most, they have mailed form letters that have no legal effect. After that, they have sat back and collected monthly fees until consumers caught on and canceled. To stop this scam, Plaintiffs request that this Court issue a preliminary injunction that would halt Defendants' unlawful activities and protect consumers.

II. DEFENDANTS' UNLAWFUL BUSINESS PRACTICES

A. Defendants

Chastity Valdes has controlled and operated the Corporate Defendants. She is the President, CEO, and Manager of Defendant Consumer Assistance, LLC; the President, Director, and CEO of Defendant Consumer Assistance Project, Corp.; and the sole manager of Defendant Palermo Global, LLC.¹ She has hired, fired, supervised, and trained the employees; set policy; directed telemarketing; reviewed complaints; overseen marketing; and authorized refunds.² A former employee referred to her as “owner, principal owner, [and] manager,” and agreed that “she was the main person.”³ She has been a signatory on all corporate bank accounts, signed paychecks, and served as the enterprise's contact for its telecommunications services, virtual of-

¹ PX11 Att. A at 447, 456, Att. B at 476, and Att. C at 480, 484; PX11 Att. F at 494.

² PX1 at 9:6-7, 37:17-19, 44:5-17, 59:8-13, 60:11-15, 60:23-25 to 61:1, 65:15-25 to 66:1, 68:12-20, 77:4-6, 79:18-25, and 81:9-14.

³ *Id.* at 45:6, 9-11.

fice space rental, and domain registries.⁴ She has responded to inquiries from Connecticut, Florida, and Iowa on the operation's behalf.⁵

Consumer Assistance, LLC ("**Consumer Assistance**"), a Florida company, is the most recent consumer-facing iteration of the enterprise. Valdes formed it in 2011 as Back Office Law, LLC.⁶ It became Consumer Assistance in early 2015, soon after Valdes formally dissolved Consumer Assistance Project.⁷ Consumer Assistance has used language similar to Consumer Assistance Project's language in its contracts, even leaving Consumer Assistance Project's abbreviated name ("CAP") in the contracts, and it has used Consumer Assistance Project's Facebook page.⁸ Consumer Assistance has marketed student loan debt relief and credit repair services through social media and on websites.⁹

Consumer Assistance Project Corp. ("**Consumer Assistance Project**" or "**CAP**"), a Florida corporation, was the enterprise's hub before it transitioned to Consumer Assistance. CAP was first incorporated as Non-Profit Guardian Services, Inc. in 2011 by a person unrelated to Valdes.¹⁰ Non-Profit Guardian Services never obtained federal non-profit status, and its founder dissolved it in December 2012.¹¹ However, in early 2013, the dissolution was revoked, and con-

⁴ *Id.* at 14:20-25 to 15:1-2; PX11 ¶ 14 at 424 and Att. T at 921-24, Att. U at 926-30, Att. V at 934-40, Att. W at 945-49, Att. X at 954-59, Att. Y at 964-69, Att. Z at 974-79, Att. AA at 984-91, Att. AB at 995-1002, Att. AC at 1006-13, and Att. AE at 1049; PX11 ¶¶ 6-10 at 420-22.

⁵ PX13 Exh. A at 1176; PX9 ¶ 19 at 385 and Att. D at 397-98; PX8 ¶¶ 12-13 at 368-69; PX11 ¶ 18 at 426 and Att. AH at 1150-51.

⁶ PX11 ¶ 5 at 419-20 and Att. C at 478-79.

⁷ *Id.* ¶ 13 at 423-24 and Att. B at 476, Att. C at 484-86, and Att. J at 526; PX2 ¶¶ 5-7 at 148 and Att. A at 184-86; PX11 Att. A at 436.

⁸ PX11 Att. N1 at 874-882; PX2 ¶¶ 5-7 at 148 and Att. A at 184-86; PX9 Att. A at 387-88.

⁹ PX2 ¶¶ 5-7 at 148 and Att. A at 152-193; PX11 Att. L at 612-38, Att. M at 640-71, and Att. N at 673-870.

¹⁰ PX11 Att. A at 430-35.

¹¹ *See* PX2 ¶ 13 at 150; PX11 Att. A. at 440, 472.

trol was transferred to Valdes, who renamed it, first as Back Office Law Project and then CAP.¹² At first, CAP sold mortgage assistance relief services but transitioned to student debt relief and credit repair towards the end of 2013.¹³ Valdes formally dissolved CAP on December 15, 2014, the same day that she responded on its behalf to a complaint filed with the State of Iowa.¹⁴

CAP held itself out as a nonprofit to inspire consumer confidence, but it never actually operated as a nonprofit.¹⁵ Former employees and bank records confirm that CAP operated to profit from consumer deception, with Valdes skimming tens of thousands of dollars.¹⁶ And contrary to what CAP represented to consumers, its fees were not tax-deductible “donations,” but were rather required payments for services.¹⁷

Valdes has used **Palermo Global, LLC**, a Delaware company, as a shell to place another level between her and the enterprise. Palermo Global has been Consumer Assistance’s sole “manager,” CAP’s sole officer, and both businesses’ registered agent.¹⁸ Valdes has transferred the scam’s proceeds to Palermo’s accounts, and then sent them to her other corporate shells or

¹² PX11 ¶¶ 5a at 419, 19 at 426 and Att. A at 438-58 and Att. AI at 1153; PX5 ¶ 7 at 325-26.

¹³ PX1 at 10:16-20, 11:12-14, and 22:12-15; PX11 ¶ 19 at 426 and Att. AI at 1153; PX12 Composite Exh. A at 1161-66.

¹⁴ PX11 ¶ 5a at 419 and Att. A at 436; PX9 ¶ 19 at 385 and Att. D at 397-98. Dissolved companies can be sued pursuant to Florida corporate law. *See* Fla. Stat. § 607.1405(2)(e).

¹⁵ PX11 ¶ 19 at 426 and Att. L at 635 and Att. AI at 1153; PX3 Att. A at 210:5-15, 215:6-12, and 230:20-24; PX4 Att. A at 270:9-13 and 303:14-18; PX9 ¶ 7 at 383; PX8 Att. B at 376-77; PX1 at 61:7-9.

¹⁶ PX11 ¶¶ 13, 15-16 at 423-35 and Att. AF at 1051-53, Att. AF1 at 1078-1120; PX1 at 20:1-5.

¹⁷ PX13 Exh. A at 1176 (CAP provided “monthly service memberships . . . and [did] not solicit for charitable purposes”); PX5 ¶ 10 at 327 (donations to Section 501(c)(4) organizations not tax deductible); PX1 Exh. 12 at 144-45 (IRS letter explaining contributions are not tax-deductible).

¹⁸ PX11 Att. A at 469-70 and Att. B at 476; PX5 ¶ 5 at 325.

used them for personal expenses.¹⁹ Palermo Global has no apparent employees, owners, or managers besides Valdes, and appears to exist only to accept money from her scams.²⁰

B. Defendants Have Operated an Enterprise to Deceive Consumers.

Since 2013, Defendants have deceptively marketed student loan debt relief and credit repair services online and through telemarketing. Defendants' unlawful practices include: (1) false promises to reduce or eliminate loan balances; (2) false promises to dispute loan validity or balances; (3) false promises to provide credit repair; and (4) deceptive social media reviews. Once Defendants deceive consumers into signing up, they have then (5) unlawfully charged illegal advance fees and failed to provide required disclosures.

1. False Promises to Reduce or Eliminate Loan Balances

Loan forgiveness programs, offered through the Department of Education or state governments, have strict eligibility requirements, such as working in public service, having a permanent disability, or making payments for 20 or 25 years.²¹ But Defendants claim that most or all of their consumers are eligible for these programs and that Defendants will use the programs to reduce or eliminate consumers' loan balances. For example, Defendants' website, www.consumerassistanceproject.org, has prominently stated that it can "eliminate" a borrower's student loan debt in "three easy steps."²² The website has also promised that Defendants can reduce debts by "as much as 90%" through forgiveness programs:

One of the greatest opportunities for former students struggling with student loan debt are [sic] the reforms instituted for "Student Loan Forgiveness" or "Loan Repayment Programs." These programs offer to eliminate some or all of your student loans in return for choosing certain careers, military service, and even volunteer work. There are several plans available that you may qualify for and we can

¹⁹ PX11 ¶¶ 13, 15-16 at 423-25 and Att. AF at 1051-53, AD at 1017-35, and Att. AF1 at 1056-1120; PX14 ¶ 5 at 1178-79 and Att. B at 1185.

²⁰ PX11 Att. F at 494; PX14 ¶ 5 at 1178-79.

²¹ See PX6 ¶ 3 at 344; PX7 ¶¶ 53-54 at 358.

²² PX14 Att. A at 1181-82.

help. Many of our programs can eliminate as much as 90% of your outstanding balance, ranging anywhere from a few thousand dollars to over \$100,000 of student loan debt. At the Consumer Assistance Project, we'll discuss your options and submit all the paperwork. When you participate in one of these programs, portions of your debt are literally erased from your lender's books!²³

The same website has been littered with other unconditional promises, such as, "GET RID OF YOUR DEBT TODAY!," "Let Us Help Eliminate Your Debt," and "you have our personal guarantee that we have the right program to suit your needs."²⁴

Defendants have touted the same in press releases, including one from September 2013 announcing the corporate name change to "Consumer Assistance Project" and stating:

Due to extensive consumer demand, Consumer Assistance Project's main focus is on the elimination and reduction of all types of student loan debt. . . . Once a student loan portfolio has been analyzed, a determination is made from over 60 [forgiveness] programs varying by state²⁵

After seeing these online claims, many consumers have called Defendants to learn more. On these calls, Defendants' telemarketers have reiterated that Defendants can reduce or eliminate loan balances.²⁶ To further the ruse, the telemarketers have conducted specious qualification "assessments."²⁷ Indeed, when FTC staff called using undercover identities that would not qualify for forgiveness, the telemarketers represented that Defendants would reduce balances, including promises that the callers would "see [their] balance going down" if they purchased the program.²⁸ Like the online claims, Defendants' telemarketers have promised to reduce balances by 50 to 70 percent, "at a minimum."²⁹ One telemarketer represented that every one of Defendants'

²³ PX11 Att. L at 637 (emphasis in original).

²⁴ *Id.* Att. L at 613-14.

²⁵ *Id.* Att. AI at 1153.

²⁶ PX1 at 16:2-15 and 25:5-9; PX3 Att. A at 211:10-23; PX4 Att. A at 276:20-25 to 277:1-5.

²⁷ PX3 Att. A at 205:20-21 and 209:11-25; PX4 Att. A at 269:7-20.

²⁸ PX3 Att. A at 211:18-23. The undercover identities had some private loans, which are not eligible for forgiveness; did not work in public service; and did not have a disability. PX3 Att. A at 206:19-25 and 209:11-21; PX4 Att. A at 265:20-25 to 266:1-6, 266:19-22, and 269:7-17.

²⁹ PX9 ¶ 5 at 382; PX4 Att. A at 24:5-7 (reductions "anywhere from 70, 80 to 90 percent").

customers “has either gotten a significant reduction and/or an elimination” of their balances.³⁰ And call scripts confirm that Defendants told all consumers that they would qualify for balance reduction.³¹ Defendants have tried to get consumers to sign up immediately by creating “a sense of urgency so [the consumers] didn’t have time to research or back out.”³²

In all or almost all instances, however, Defendants have failed to obtain loan forgiveness. Most consumers who have spoken with Defendants are not eligible for debt reduction because they do not meet the forgiveness programs’ stringent requirements.³³ Indeed, a former employee of Defendants has stated that “to [his] knowledge, [the purported services, including loan forgiveness] never worked.”³⁴

2. *False Promises to Dispute Student Loan Validity or Balance*

Defendants have also falsely promised to “audit” and dispute the validity of consumers’ loans, and that, like forgiveness programs, Defendants’ auditing services will reduce or eliminate their balances.³⁵ For example, Defendants’ website has stated:

³⁰ PX3 Att. A at 226:19-25 to 227:1; *see also* PX4 Att. A at 293:6-8.

³¹ PX1 Exh. 9 at 132-33; PX12 Composite Exh. A at 1160 (“If we cannot completely eliminate the debt[,] it will be significantly reduced to a manageable balance . . .”).

³² PX1 at 27:2-4.

³³ *See, e.g.*, PX6 ¶ 3 at 344; PX7 ¶¶ 52-54, 56-62 at 358-59 (requirements for Teacher Loan Forgiveness); *id.* ¶¶ 63-66 at 359-60 (requirements for Public Service Forgiveness and no loans forgiven under program); *id.* ¶¶ 67-71 at 360-61 (no loans forgiven under PAYE or IBR Plans); *id.* ¶¶ 73-78 at 361 (requirements for closed school, false certification, and unpaid refund discharges and only 675 borrowers granted false certification discharge in 2015); *id.* ¶¶ 79-85 at 362 (requirements for death and disability discharges and only 51,000 borrowers granted a death discharge in FY 2015 and only 55,000 borrowers granted a disability discharge in FY 2012). Given that there were over 41.8 million federal student loan borrowers in 2015, a miniscule fraction of borrowers were granted loan forgiveness or discharge in 2015. *See id.* ¶ 23 at 354.

³⁴ PX1 at 47:11-13. *See also id.* at 9:2-5, 27:9-12, 38:17-20, 47:11-13, and 61:10-14; PX5 ¶¶ 13-14 at 328-39; *id.* ¶ 17 at 330-31; *id.* ¶ 22 at 333-34; *id.* ¶¶ 25, 29 at 335-37; PX6 ¶¶ 4-5 at 344-45; *id.* ¶ 11 at 347-48.

³⁵ PX1 at 48:14-18; PX2 Att. A at 185-86; PX3 Att. A at 212:5-18, 225:10-17, Att. B at 245, Att. D at 252; PX4 ¶ 11 at 257 and Att. A at 273:4-8, 280:20-25 to 282:7; PX5 ¶ 21 at 332-33; PX9 ¶¶ 4-5 at 382; PX10 ¶ 14 at 401; PX11 Att. L at 617, Att. N at 674, Att. AI at 1153.

LOAN DISPUTE AND ELIMINATION... Our expertise in the field of student loan analysis and restructuring has revealed that many student loans may have been mishandled or that proper procedures may not have been followed... Our investigative loan validation process is extreme and intrusive, forcing the parties involved in the handling of your loan to answer tough questions and produce documentation. Often times, their inability to do neither, is a significant step towards huge savings for YOU.³⁶

Defendants' telemarketers have likewise promised that Defendants will investigate loans and challenge their validity.³⁷ For example, one represented that Defendants routinely investigate loans, and have successfully reduced balances on the basis that the checks lenders sent to schools were not properly endorsed.³⁸ The telemarketer also claimed that they successfully challenge loans where schools improperly credited funds for classes "you did not need for [your] major."³⁹

But Defendants' promises are false. To begin with, problems with endorsements or application of student loan funds are not a basis for balance reductions.⁴⁰ And even if auditing loans could reduce balances, Defendants have not done it.⁴¹ Moreover, Defendants never sue consumers' student loan lenders, which they would likely have to do to challenge the loan's validity.⁴² At most, Defendants have sent ineffective form letters to loan servicers or applied for temporary forbearances or deferments that did not reduce consumers' loan principal.⁴³

³⁶ PX11 Att. L at 617-618.

³⁷ PX1 Exh. 9 at 133; PX3 Att. A at 212:5-18, 225:10-17; PX4 ¶ 11 at 257 and Att. A at 273:4-8, 280:20-25 to 282:7; PX5 ¶ 21 at 332-33; PX9 ¶¶ 4-5 at 382; PX10 ¶ 14 at 401.

³⁸ PX4 Att. A at 273:19-25, 280:20-25 to 281:12.

³⁹ *Id.* Att. A at 281:12-23; PX9 ¶ 4 at 382.

⁴⁰ *See* PX7 ¶¶ 74-78 at 361 (explaining false certification and unpaid refund discharge).

⁴¹ *See* PX1 at 73:16-22; PX6 ¶¶ 7-11 at 345-48; PX9 ¶ 15 at 384; PX10 ¶¶ 17, 20 at 402.

⁴² PX2 ¶ 14 at 150.

⁴³ PX6 ¶¶ 7-11 at 345-348 and Att. A at 350-51; PX9 ¶¶ 12-14 at 384 and Att. C at 394-95. In some cases, Defendants did not even obtain forbearance or deferment. PX10 ¶ 11 at 401.

3. *False Promises to Provide Credit Repair*

Defendants have also lured consumers by falsely claiming that they will repair their customers' credit. Specifically, Defendants' websites, press releases, and customer correspondence have touted that they will provide credit repair, leaving consumers "with a clean slate and improved financial health."⁴⁴ And Defendants' telemarketers have promised that after they successfully obtain debt relief, Defendants will review the consumers' credit reports and dispute any incorrect negative information at no cost, including student loan debts that Defendants' debt relief services have resolved.⁴⁵ One telemarketer has stated that "[a]nything that is or was reporting incorrectly on your credit report will, in fact, be fixed and it will increase your FICO score . . . [so] your credit will not be a hot mess, especially because of the student loan debt."⁴⁶

But Defendants have not repaired consumers' credit.⁴⁷ As described above, Defendants do not actually reduce loan balances, so they do not even begin to provide credit repair services. Furthermore, Defendants' purported credit repair services are not "at no cost" to consumers. Consumers must pay hefty upfront and monthly fees for the insincere promise of credit repair.⁴⁸

4. *Deceptive Social Media Reviews*

Defendants have also engaged in deceptive social media advertising. For example, Defendants' Facebook page has included star-rating reviews, which include 5-star reviews from Valdes herself as well as other employees and business associates.⁴⁹ But these reviews purport to

⁴⁴ PX3 Att. D at 252; PX4 Att. B at 314-15; PX5 ¶ 17 at 330-31; PX11 Att. L at 618, 628, Att. N at 686, Att. AI at 1153.

⁴⁵ PX1 Exh. 9 at 133; PX3 Att. A at 214:5-20; PX4 Att. A at 270:14-20, 271:5-22.

⁴⁶ PX3 Att. A at 214:12-20.

⁴⁷ See PX1 at 40:13-17; PX5 ¶¶ 14, 17 at 329-31; PX9 ¶ 20 at 385; PX10 ¶ 20 at 402.

⁴⁸ See, e.g., PX9 ¶¶ 9-10 at 383 (paid about \$1,000); PX10 ¶¶ 6-7 at 400 (paid about \$4,200).

⁴⁹ PX2 ¶¶ 8-9 at 148-49 and Att. B at 195; PX11 ¶ 17 at 425 and Att. H at 514-15 and Att. Q at 898-99. See also PX1 at 68:12-25 and 71:15-14 (CAP paid for fake testimonials).

be from Defendants' satisfied customers, of which there are apparently none, and provide no indication that they are from people related to the business.⁵⁰

5. *Unlawful Advance Fees and Failure to Make Required Disclosures*

Defendants have charged consumers initial and monthly fees before providing any results.⁵¹ The fees have typically been \$250 for the initial fee and hundreds of dollars per month.⁵² In one particularly egregious case, Defendants charged a consumer \$2,000 for the initial fee and signed him up for \$625 monthly payments for 24 months.⁵³

In addition, Defendants have failed to notify consumers regarding their rights and provide other information, as required by the Credit Repair Organizations Act. For example, Defendants do not provide a detailed description of their credit repair services, the time frame for such services, or a legally required statement telling consumers they can cancel within three days without penalty, along with a separate cancellation form.⁵⁴

III. THE COURT SHOULD ISSUE THE PRELIMINARY INJUNCTION.

As discussed below, Plaintiffs can obtain injunctions against illegal conduct, they are entitled to an injunction here, and the proposed injunction would effectively restrain Defendants.

A. Plaintiffs Can Seek Injunctions to Halt Illegal Conduct.

Section 13(b) of the FTC Act authorizes the FTC to seek injunctions in Federal courts.⁵⁵ Under Section 13(b), the Commission can obtain both preliminary and permanent injunctions.⁵⁶ Indeed, this Court has routinely issued preliminary relief in FTC actions, including actions

⁵⁰ PX1 at 38:17-20, 68:23-24, 72:1-4; PX2 ¶¶ 8-9 at 148-49 and Att. B at 195.

⁵¹ *See, e.g.*, PX1 at 40:24 to 41:10 and Exh. 1 at 97; PX9 ¶¶ 9-10 at 383; PX10 ¶¶ 6-7 at 400.

⁵² PX1 Exh. 1 at 97; PX3 Att. B at 246; PX4 Att. A at 284:21-22, 285:13-16; PX9 ¶ 9 at 383; PX10 ¶¶ 6-7 at 400.

⁵³ PX12 Composite Exh. A at 1167-71.

⁵⁴ PX3 Att. B at 244-246; PX9 Att. A at 387-88; PX10 Att. A at 405-06; PX11 Att. L at 628-31.

⁵⁵ 15 U.S.C. § 53(b).

⁵⁶ *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996).

brought jointly with the State of Florida.⁵⁷ Similarly, Florida Statute Section 501.207 allows Florida to seek injunctive relief.⁵⁸ In this Motion, Plaintiffs cite FTC Act cases because violations of Section 5 of the FTC Act are also violations of Section 501.204 of the FDUTPA.⁵⁹

B. Plaintiffs Meet the Standard for Issuing a Preliminary Injunction.

To obtain preliminary relief, Plaintiffs must show that they are likely to succeed on the merits and that the balance of equities favors issuing the injunction.⁶⁰ “The burden imposed on the FTC is lighter than the burden imposed on private litigants by the traditional equity standard, and the FTC need not show irreparable harm”⁶¹ And, in balancing the equities, the public interest should receive greater weight than private interests.⁶² As set forth below, Plaintiffs will succeed on their claims and the equities favor injunctive relief.

⁵⁷ See, e.g., *FTC v. Diversified Educ. Res., LLC*, No. 14-62116-CIV-COHN (S.D. Fla. Sept. 30, 2014); *FTC v. SouthEast Trust, LLC*, No. 12-62441-CIV-ZLOCH (S.D. Fla. Dec. 11, 2012); *FTC v. Prime Legal Plans LLC*, No. 12-61872-CIV, 2012 WL 4854762 (S.D. Fla. Oct. 12, 2012); *FTC v. U.S. Mortg. Funding, Inc.*, No. 11-80155-CIV-COHN, 2011 WL 810790 (S.D. Fla. Mar. 1, 2011); *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247 (S.D. Fla. 2007); *FTC v. Boost Software, Inc.*, No. 14-81397-CIV-MARRA (S.D. Fla. Nov. 12, 2014) (joint action with State of Florida); *FTC v. 7051620 Canada, Inc.*, No. 14-22132-CIV-MORENO (S.D. Fla. June 12, 2014) (joint action with State of Florida).

⁵⁸ Fla. Stat. § 501.207(3).

⁵⁹ See *FTC v. Info. Mgmt. Forum, Inc.*, No. 6:12-cv-986-KRS, 2013 WL 3323635, at *5 (M.D. Fla. June 28, 2013) (“[A] ‘deceptive act or practice’ . . . under the FTC Act is a violation of [Section 501.204 of] FDUTPA.”); Fla. Stat. § 501.204 (in construing Section 501.204 “great weight shall be given” to the federal courts’ interpretations of the FTC Act).

⁶⁰ *FTC v. IAB Mktg. Assocs., LP*, 746 F.3d 1228, 1232 (11th Cir. 2014); *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1217 (11th Cir. 1991).

⁶¹ *U.S. Mortg. Funding, Inc.*, 2011 WL 810790, at *2; see also *IAB Mktg. Assocs.*, 746 F.3d at 1232; *Univ. Health, Inc.*, 938 F.2d at 1217-18.

⁶² *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989); *FTC v. USA Beverages, Inc.*, No. 05-61682 CIV, 2005 WL 5654219, at *5 (S.D. Fla. Dec. 6, 2005).

1. *Plaintiffs Are Likely to Succeed on the Merits.*

To show a likelihood of success, Plaintiffs only need to present evidence showing that they will likely prevail, rather than evidence that would justify a final determination on the merits.⁶³ That evidence can include “affidavits and hearsay materials.”⁶⁴ Here, Plaintiffs’ evidence shows systemic violations of the FTC Act, the TSR, CROA, and FDUTPA. Moreover, it shows that the Corporate Defendants are jointly liable as a common enterprise, and Valdes is liable for both monetary and injunctive relief.

a. Defendants’ Misrepresentations Have Violated the FTC Act.

The FTC Act prohibits “deceptive acts or practices in or affecting commerce.”⁶⁵ An act or practice is “deceptive” if it involves a material representation or omission likely to mislead consumers acting reasonably under the circumstances.⁶⁶ A misrepresentation is material if a reasonably prudent person would rely on it.⁶⁷ Moreover, courts presume that consumers rely on express or deliberately implied claims, like those Defendants made about their services.⁶⁸ Significantly, Plaintiffs need not prove that Defendants intended to deceive consumers.⁶⁹

In determining whether a representation is deceptive, courts examine its “net impression” on consumers.⁷⁰ So, “[a] solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.”⁷¹ In addition, “deception

⁶³ *Univ. Health*, 938 F.2d at 1218; *see also World Wide Factors*, 882 F.2d at 347.

⁶⁴ *Levi Strauss & Co. v. Sunrise Int’l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995).

⁶⁵ 15 U.S.C. § 45(a)(1).

⁶⁶ *See, e.g., FTC v. Wilcox*, 926 F. Supp. 1091, 1098 (S.D. Fla. 1995).

⁶⁷ *Transnet Wireless*, 506 F. Supp. 2d at 1266.

⁶⁸ *See McGregor v. Chierico*, 206 F.3d 1378, 1388 (11th Cir. 2000); *Transnet Wireless*, 506 F. Supp. 2d at 1267; *FTC v. RCA Credit Servs., LLC*, 727 F. Supp. 2d 1320, 1329 (M.D. Fla. 2010).

⁶⁹ *See, e.g., FTC v. Capital Choice Consumer Credit, Inc.*, No. 02-21050-CIV, 2004 WL 5149998, at *33 (S.D. Fla. Feb. 20, 2004).

⁷⁰ *RCA Credit Servs., LLC*, 727 F. Supp. 2d at 1329.

⁷¹ *Id.* (quoting *FTC v. Cyberspace.Com LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006)).

is evaluated from the perspective of the reasonable prospective purchaser, that is, a reasonable consumer in the audience targeted” by Defendants.⁷²

Representations are also deceptive if Defendants make them without a reasonable basis for believing that they are true.⁷³ Specifically, claims that Defendants’ services would likely work for consumers necessarily include an express or implied representation that Defendants had good reason to think they would.⁷⁴

Here, the evidence shows several categories of Defendants’ material misrepresentations:

Deceptive Student Loan Debt Relief Representations: Defendants have falsely claimed that they reduce student loan debt balances by as much as 90 percent through loan forgiveness and audits. They have made these claims expressly on their websites and in telemarketing.⁷⁵

The claims are false because, for all or almost all of their customers, Defendants could never reduce those balances,⁷⁶ and they have not done so for all or practically all of them.⁷⁷ Moreover, Defendants have not “audited” loans. At most, they have sent useless form dispute

⁷² *FTC v. Wash. Data Res.*, 856 F. Supp. 2d 1247, 1272 (M.D. Fla. 2012).

⁷³ *See* FTC Policy Statement Regarding Advertising Substantiation, 104 F.T.C. 648, 839 (1984) (appended to *Thompson Med. Co.*, 104 F.T.C. 648).

⁷⁴ *FTC v. Tashman*, 318 F.3d 1273, 1276 (11th Cir. 2003) (rendering judgment in favor of plaintiff, finding that “[u]nfortunately for [Defendant’s] customers, [Defendant] had no basis for many of its claims”); *FTC v. Nat’l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1190 (N.D. Ga. 2008); *Thompson Med. Co.*, 104 F.T.C. at 813 n.37.

⁷⁵ *See supra* Section II.B.1 and 2. *See also* PX11 Att. L at 613-14 and 617-18; PX3 Att. A at 210:16-19, 211:18-23, 212:1-18, 217:11-14, 226:19 to 227:4; PX4 Att. A at 276:20-23, 281:24 to 282:7; PX9 ¶ 5 at 382 (minimum 50-70% reduction and, in most cases, 70-90%); PX10 ¶¶ 4, 14 at 399, 401; PX12 Composite Exh. A at 1160 (“I can tell you all our clients receive significant relief if not full [and if not full] the debt it will be significantly reduced to a manageable balance and you will not pay more than you’re paying now.”).

⁷⁶ PX6 ¶¶ 3, 8-9 at 344, 346-47.

⁷⁷ PX1 at 47:11-13, 61:10-14, 84:14-16; PX5 ¶ 14 at 329; PX9 ¶ 20 at 385; PX10 ¶ 20 at 402.

letters.⁷⁸ In any event, the errors that Defendants claimed were frequently in student loan documents would not entitle consumers to balance reductions.⁷⁹

The claims were also unsubstantiated because Defendants had no basis for believing that they could reduce balances. In fact, their dismal track record showed precisely the opposite.⁸⁰

Consumers reasonably relied on these claims when deciding to buy Defendants' services, and, as express claims, they are presumptively material. Indeed, a consumer would purchase these services only if doing so would reduce their debt.⁸¹

Deceptive Credit Repair Representations: Defendants also lured consumers into paying fees by falsely promising "complete credit repair" to anyone "successfully" reducing their loan balances.⁸² But Defendants did not reduce balances for all or almost all of their customers, and they never improved their customers' credit.⁸³ Therefore, these representations were false or unsubstantiated. And, as express claims, they were presumptively material.

Deceptive Social Media Endorsements: In an attempt to combat their well-earned reputation for fraud,⁸⁴ Defendants' employees and associates gave the business favorable reviews on social media sites.⁸⁵ These reviews were indistinguishable from other reviews and communicated that Defendants had received positive reviews from satisfied consumers. These claims were material because they communicated that Defendants could help consumers with their debt.⁸⁶

⁷⁸ PX6 ¶¶ 7-10 at 345-47.

⁷⁹ See PX7 ¶¶ 53-54, 74-78 at 358, 361.

⁸⁰ PX1 at 40:13-17, 61:10-14; PX5 ¶ 14 at 329.

⁸¹ See PX9 ¶ 9 at 383; PX10 ¶ 6 at 400.

⁸² See *supra* Section II.B.3.

⁸³ See PX5 ¶¶ 14, 17 at 329-31; PX9 ¶ 20 at 385; PX10 ¶ 20 at 402.

⁸⁴ PX1 at 68:8-25; PX11 ¶ 18 at 426 and Att. AH at 1148-51.

⁸⁵ PX2 ¶ 9 at 149 and Att. B at 195; PX11 ¶ 17 at 425 and Att. H at 514-15, Att. Q at 898-99.

⁸⁶ See 16 C.F.R. § 255.5.

Defendants' entire marketing scheme has been to convince consumers into paying exorbitant fees because Defendants could reduce their debt burdens and fix their credit. But Defendants did not and, in almost all cases, could not provide either service. Accordingly, the FTC will likely prevail on its Section 5 claims, and Florida will likely prevail on its 501.204(1) claims.

b. Defendants' Misrepresentations and Upfront Fees Violate the TSR.

The TSR prohibits abusive and deceptive telemarketing practices, and specifically addresses debt-relief operations. The TSR applies to any "seller"⁸⁷ or "telemarketer"⁸⁸ of "debt relief services," which it defines as "any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter" debt between a consumer and unsecured creditors, including "a reduction in the balance."⁸⁹ Companies selling debt relief through telemarketing cannot, under the TSR, collect advance fees, i.e., fees collected before the seller successfully renegotiates or settles one of the consumer's debts.⁹⁰ In addition, the TSR prohibits material misrepresentations about debt relief services.⁹¹

Because Defendants have marketed their scheme through telemarketing, they are subject to the TSR and have violated it because they have collected fees before renegotiating or settling their customers' debts and have materially misrepresented their services.

The Telemarketing Act provides that any violation of the TSR constitutes a violation of Section 5 of the FTC Act.⁹² Similarly, TSR violations constitute violations of FDUTPA.⁹³ So, Plaintiffs are likely to prevail on their TSR claims.

⁸⁷ 16 C.F.R. § 310.2(dd).

⁸⁸ 16 C.F.R. § 310.2(ff).

⁸⁹ 16 C.F.R. § 310.2(o).

⁹⁰ 16 C.F.R. § 310.4(a)(5)(i).

⁹¹ 16 C.F.R. § 310.3(a)(2)(x).

⁹² 15 U.S.C. § 57a(d)(3).

⁹³ Fla. Stat. §§ 501.203(3); 501.204(1)-(2).

c. Defendants' Misrepresentations and Upfront Fees Violate CROA.

Like the TSR, CROA prescribes affirmative requirements and bans misrepresentations in the credit-repair industry. CROA requires any business selling services that purport to “improv[e] any consumer’s credit record, credit history, or credit rating” to “fully perform[]” the credit repair services before collecting fees.⁹⁴ In addition, before the consumer agrees to purchase the credit repair services, the seller must provide a disclosure with prescribed language explaining the consumer’s rights.⁹⁵ And sellers’ contracts must include: a detailed description of the services; a conspicuous statement near the signature line advising that the consumer can cancel without penalty within three business days; and an attached “Notice of Cancellation” form with language prescribed by CROA.⁹⁶ Finally, CROA bans making any “untrue or misleading representation of the services of [a] credit repair organization.”⁹⁷

Defendants have violated these provisions. Defendants have collected advance fees. They have not provided the required disclosures, and their contracts have not contained the required terms or cancellation form.⁹⁸ Finally, they have falsely promised credit repair services, violating CROA’s prohibition on untrue and misleading representations.⁹⁹

CROA declares any violation of its provisions to be a violation of Section 5 of the FTC Act.¹⁰⁰ Similarly, CROA violations constitute violations of FDUTPA.¹⁰¹ So, Plaintiffs are likely to prevail on their CROA claims.

⁹⁴ 15 U.S.C. §§ 1679a(3)(A); 1679b(b).

⁹⁵ 15 U.S.C. § 1679c(a).

⁹⁶ 15 U.S.C. §§ 1679c(a) and (b); 1679e(b).

⁹⁷ 15 U.S.C. § 1679b(a)(3).

⁹⁸ PX3 Att. B at 244-246; PX9 Att. A at 387-88; PX10 Att. A at 405-06; PX11 Att. L at 628-31.

⁹⁹ See PX5 ¶¶ 14, 17 at 329-31; PX9 ¶ 20 at 385; PX10 ¶ 20 at 402.

¹⁰⁰ 15 U.S.C. § 1679h(b).

¹⁰¹ Fla. Stat. §§ 501.203(3); 501.204(1)-(2).

d. Defendants' Fees Violate FDUTPA.

In addition to Defendants' violations of FDUTPA as described above, they also violate FDUTPA because they charge fees for "credit counseling services" and/or "debt management services" in excess of the statutory maximums in Florida Statute § 817.802(1).¹⁰² A violation of Florida Statute § 817.802(1) is an unfair or deceptive trade practice.¹⁰³ Defendants' acts and practices are therefore unfair or deceptive and constitute per se violations of FDUTPA.

e. The Corporate Defendants Operate as a Common Enterprise.

Because the Corporate Defendants operate as a common enterprise, they are jointly and severally liable for the consumer injury they caused.¹⁰⁴ To determine whether a common enterprise exists, "the pattern and frame-work of the whole enterprise must be taken into consideration."¹⁰⁵ Factors that show a common enterprise include: common control, shared officers, shared office space, commingling of funds, unified advertising, and whether the business was transacted through a maze of interrelated companies.¹⁰⁶ No single factor is dispositive and not all factors need be present.¹⁰⁷

¹⁰² Fla. Stat. §§ 817.801(2) (definition of "credit counseling services" as "confidential money management, debt reduction, and financial educational services"); 817.801(4)(a) (definition of "debt management services" as "services provided to a debtor by a credit counseling organization for a fee to [among other things]: effect the adjustment, compromise, or discharge or any unsecured account, note, or other indebtedness of the debtor"); 817.802(1) (prohibiting fees greater than \$50 for initial setup or consultation and greater than \$120 per year for additional consultations).

¹⁰³ Fla. Stat. § 817.806(1).

¹⁰⁴ *Capital Choice Consumer Credit*, 2004 WL 5149998, at *42; *FTC v. Wolf*, No. 94-8119-CIV-FERGUSON, 1996 WL 812940, at *8 (S.D. Fla. Jan. 31, 1996).

¹⁰⁵ *Del. Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964) (citation omitted).

¹⁰⁶ *Wolf*, 1996 WL 812940, at *7; *Capital Choice Consumer Credit*, 2004 WL 5149998, at *42.

¹⁰⁷ *FTC v. Kennedy*, 574 F. Supp. 2d 714, 722 (S.D. Tex. 2008).

The Corporate Defendants are a common enterprise. As explained above, Consumer Assistance is the successor to CAP.¹⁰⁸ Palermo Global exists to shield Valdes from liability by acting as Consumer Assistance's manager and CAP's sole officer.¹⁰⁹ The Corporate Defendants have shared business locations, and they are all owned and controlled by Valdes.¹¹⁰ The companies have also shared employees.¹¹¹ Furthermore, they have routinely commingled funds. For example, Palermo's pass-through bank accounts have received money taken from consumers, and then funneled that money to other Valdes-controlled entities.¹¹² Therefore, the businesses have operated as a common enterprise and are jointly and severally liable.

f. Defendant Valdes Is Liable for Monetary and Injunctive Relief.

Individuals are liable for injunctive relief under the FTC Act and the FDUTPA if they participated in the unlawful conduct or had the authority to prevent it.¹¹³ Therefore, a corporate officer is presumptively liable for injunctive relief for that corporation's violations.¹¹⁴ Furthermore, when individuals like Valdes obscure their roles by not officially designating themselves as officers, courts will hold those individuals liable if they "actually exercise[]" control over the corporation.¹¹⁵ Among other things, control of bank accounts shows authority to control.¹¹⁶

¹⁰⁸ See *supra* Section II.A.

¹⁰⁹ PX11 Att. A at 469-70, Att. B at 476.

¹¹⁰ PX1 at 45:2-11; PX5 ¶¶ 5-6 at 325; PX11 Att. A at 469-70, Att. B at 476, Att. C at 480, 482, 484, Att. F at 494; PX12 Composite Exh. A at 1161.

¹¹¹ PX11 Att. Q at 898-99; PX14 ¶ 5 at 1178-79.

¹¹² PX11 ¶¶ 13, 15 at 424-25.

¹¹³ See *Gem Merch. Corp.*, 87 F.3d at 470; *FTC v. 1st Guar. Mortg. Corp.*, No. 09-61840-CIV, 2011 WL 1233207, at *15 (S.D. Fla. Mar. 30, 2011); *Office of the Attorney Gen. v. Wyndham Int'l, Inc.*, 869 So. 2d 592, 598 (Fla. 1st DCA 2004).

¹¹⁴ *Transnet Wireless*, 506 F. Supp. 2d at 1270.

¹¹⁵ *FTC v. Windward Mktg., Ltd.*, No. 1-96-CV-615F, 1997 WL 33642380, at *5 (N.D. Ga. Sept. 30, 1997).

¹¹⁶ *FTC v. USA Fin., LLC*, 415 F. App'x 970, 974-75 (11th Cir. Feb. 25, 2011).

Individuals are liable for monetary relief if they are liable for injunctive relief and knew about the illegal conduct, were recklessly indifferent to it, or knew of a high probability of fraud and intentionally avoided learning about it.¹¹⁷ Participation in corporate affairs can show knowledge.¹¹⁸

Here, Valdes' operation of Defendants' scheme makes her liable for injunctive and monetary relief. Although she has tried at times to obscure her role, she has been the sole operator of this scheme, setting policy, instructing telemarketers what to tell consumers, and directing the flow of funds.¹¹⁹ She is the President, CEO, and Manager of Consumer Assistance and the President, Director, and CEO of CAP, and she is the sole manager of Palermo Global.¹²⁰ She has also responded to consumer complaints, of which there were many,¹²¹ and state investigations.¹²² In addition, she is a signatory on all corporate bank accounts,¹²³ and the contact for telecommunications services, virtual office space rental, and domain registries.¹²⁴ Valdes has controlled and directed the enterprise, so she is liable for injunctive and monetary relief.

¹¹⁷ *Gem Merch. Corp.*, 87 F.3d at 467-68 (individual liable because “[h]e was aware that salespeople made material representations to consumers to induce sales” and could control their behavior”); *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1234 (9th Cir. 1999).

¹¹⁸ *IAB Mktg. Assocs.*, 746 F.3d at 1233.

¹¹⁹ PX1 at 9:6-7, 37:17-19, 44:12-17, 60:23-25 to 61:1, 65:15-25 to 66:1, 77:4-6, 81:9-14; PX11 ¶ 14 at 424.

¹²⁰ PX11 Att. B at 476, Att. C at 480, Att. F at 494.

¹²¹ PX9 ¶ 19 at 385 and Att. D at 397-98. PX1 at 33:7-9, 34:18-20, 35:6-15, 36:1-3 (Valdes aware of consumer complaints).

¹²² PX9 ¶ 19 at 385 and Att. D at 397-98; PX11 Att. AH at 1150-51; PX13 Exh. A at 1176.

¹²³ See generally PX11 Atts. T-AC at 920-1015.

¹²⁴ PX11 ¶¶ 8-10 at 421-22.

2. *The Equities Favor Granting the Injunction.*

The benefit from protecting consumers far outweighs Defendants' desire to con people out of their money. Indeed, courts have long recognized that in FTC-enforcement actions "public equities must receive far greater weight."¹²⁵

The proposed injunction will benefit the public by preventing further harm and requiring Defendants to follow the law. Absent an injunction, Defendants will likely continue to deceive the public.¹²⁶ Section I of the Order would bar Defendants from continuing to collect illegal advance fees. Section II would require them to cease deceptive marketing that violates the FTC Act, the TSR, CROA, and the FDUTPA. Section III would require them to provide the disclosures and contract provisions required by CROA.

The injunction would also require that Defendants preserve records and produce financial data necessary for possible consumer redress. Sections IV and VIII would require Defendants and affiliated businesses and persons to maintain records. Section V would require Defendants to submit financial disclosure forms. Section VII would prohibit Defendants from profiting from the consumer information they obtained through deceptive marketing. Finally, the injunction has provisions that would allow Plaintiffs to monitor Defendants' compliance. Defendants' history of deception justifies these provisions,¹²⁷ and issuing them is within the Court's power to depart from the ordinary discovery rules where necessary.¹²⁸ Courts, including this Court, have routine-

¹²⁵ *USA Beverages*, 2005 WL 5654219, at *5.

¹²⁶ *Id.* at *8 ("[P]ast misconduct gives rise to the inference that there is a reasonable likelihood of future violations"); *SEC v. R.J. Allen & Assocs., Inc.*, 386 F. Supp. 866, 877 (S.D. Fla. 1974) (same). Defendants have already shown dishonesty by telling Connecticut that they had not served any Connecticut consumers since 2009 when, in fact, they had at least one in 2013. *See* PX11 Att. AH at 1149; PX12 Composite Exh. at 1172. Defendants also marketed to Connecticut consumers after Connecticut's cease and desist order was entered. *See* PX3 Att. A at 205:6-11.

¹²⁷ *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990).

¹²⁸ *See Fed. R. Civ. P.* 1, 26, 33, and 34; *Fed. Express Corp. v. Fed. Expresso, Inc.*, Civ.A.97CV1219RSPGJD, 1997 WL 736530, at *2 (N.D.N.Y. Nov. 24, 1997).

ly granted this relief, often on an *ex parte* basis, in actions brought by the FTC and the State of Florida.¹²⁹

By contrast, the proposed injunction would place minimal burdens on Defendants. It would require them to act lawfully, but compliance with the law is not a legitimate “burden.” It would also require them to preserve records, but that is no more burdensome than what the Federal Rules of Civil Procedure require.¹³⁰ Finally, the requirement that Defendants disclose limited financial information would involve no more than producing readily available information.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the proposed preliminary injunction.

Respectfully submitted,

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Dated: May 19, 2016

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¹²⁹ See, e.g., *Diversified Educ. Res.*, No. 14-62116-CIV-COHN (S.D. Fla. Sept. 16, 2014); *Prime Legal*, No. 12-61872-CIV, 2012 WL 4854762 (S.D. Fla. Sept. 25, 2012); *Timeshare Mega Media & Mktg. Grp.*, No. 10-62000-CIV (S.D. Fla. Oct. 20, 2010); *Boost Software*, No. 14-81397-CIV-KLR (S.D. Fla. Nov. 12, 2014); *7051620 Canada*, No. 14-cv-22132 (S.D. Fla. Jun. 12, 2014); *SouthEast Trust*, No. 12-cv-62441-CIV-ZLOCH (S.D. Fla. Dec. 11, 2012); *FTC v. A+ Fin. Ctr., LLC*, No. 12-cv-14373-GRAHAM (S.D. Fla. Oct. 24, 2012).

¹³⁰ *World Wide Factors*, 882 F.2d at 347; Fed. R. Civ. P. 37(e) (commentary noting that “litigants have a duty to preserve relevant information”).

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CERTIFICATE OF SERVICE

I, Adam M. Wesolowski, hereby certify that on May 19, 2016, I arranged for service of a true and correct copy of the Plaintiffs' Motion for a Preliminary Injunction and Supporting Memorandum of Law, Exhibits to Plaintiffs' Motion, and the Proposed Preliminary Injunction upon all Defendants via FedEx to the addresses specified below:

CONSUMER ASSISTANCE, LLC
c/o Palermo Global, LLC (Registered Agent)
c/o The Company Corporation (Registered Agent of Palermo Global)
2711 Centerville Rd., Ste. 400
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CHASTITY VALDES (Individually and as Officer of Consumer Assistance, LLC; Consumer Assistance Project, Corp.; and Palermo Global, LLC)
812 West Village Circle
Davie, FL 33325

/s/Adam M. Wesolowski
Adam M. Wesolowski