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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INNOVATIVE WEALTH BUILDERS, INC.;
CARLY JANENE PELLAND, a/k/a
CARLY ZURITA; TAMARA DAWN JOHNSON;
and SHERYL LEIGH LOPEZ,

Defendants.

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)
) Civ No. 8:13-CV-123-T-33CAJ
)
) **COMPLAINT FOR PERMANENT**
) **INJUNCTION AND OTHER**
) **EQUITABLE RELIEF**
) Under Seal
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)

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 6102(c) and 6105(b).

DEFENDANTS

6. Innovative Wealth Builders, Inc. ("IWB") is a Florida corporation with its principal place of business at 28059 US Hwy 19 North, Suite 300, Clearwater, FL 33761. IWB transacts or has transacted business in this district and throughout the United States.

7. Carly Janene Pelland, a/k/a Carly Zurita, is the President and an owner of IWB. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Pelland resides in this district and, in connection with

12. Defendants cold call consumers and claim that Defendants will reduce substantially the interest rates of consumers' credit cards, save them thousands of dollars, and help them pay off their debts much faster. Defendants then typically inform consumers they must pay a "one-time lifetime fee" generally ranging from \$500-\$2,000 to secure the deal.

13. Despite Defendants' promises, consumers do not receive lower interest rates, save thousand of dollars or pay off their debts faster as a result of Defendants' "service."

A. The Pitch

14. Defendants typically begin their calls with an alluring pitch. Defendants tell consumers that IWB is a company that can reduce consumers' existing credit card interest rates and save consumers thousands of dollars in a short period of time.

15. Defendants tell consumers that Defendants have been in business for many years and have developed close working relationships with tens of thousands of different lending institutions. Defendants say that these relationships give them superior bargaining power, allowing them to negotiate reduced credit card interest rates far better and more effectively than consumers can do for themselves. Defendants say that they have a proven record of success and that consumers can put their trust in IWB to help them reduce their credit card interest rates.

16. Defendants typically tell consumers that consumers will be able to pay off their debts "twice as fast" or "in half the time" without having to increase their monthly payments.

17. Without obtaining any detailed financial information from consumers,

Defendants then “guarantee” consumers a specific minimum dollar amount in savings.

18. The specific amount of savings guaranteed by Defendants typically ranges between \$1,500 and \$5,000. For example, in an telephone recording with a consumer, Defendants’ telemarketer states:

. . . we only have approximately 30 days to get the interest as low as possible and also show to you in black and white the guaranteed savings of 2,500 . . . just on this one account, ma’am, you’re going to save about \$2,500 to \$3,000 in interest just on this one card. Plus, it’s going to cut years off your payments. I can assure you, ma’am, we have over 15 years of experience for a reason, ma’am.

19. Similarly, in a telemarketing script used by Defendants, Defendants instruct their telemarketers to stress the “guaranteed” savings by saying:

we will guarantee to show you a minimum savings of \$3,000/\$1,500 interest;

we will show you a minimum savings of \$3,000/\$1,500 in interest; and

I am sure you already know what you could do with these kinds of savings.

20. Once consumers are assured that they are “guaranteed” to receive thousands of dollars in savings, Defendants then tell consumers they will be charged a “one-time, lifetime fee.”

21. The fee quoted by Defendants typically ranges between \$500 and \$2,000, and the amount a given consumer is charged appears to be largely based on the consumer’s reluctance or ability to pay.

22. In many instances, Defendants tell consumers that there is really no “out of pocket cost” or that the fee will be “offset” or “absorbed” by the thousands of dollars in

guaranteed, promised savings.

23. Consumers are further assured that there is “no risk” to them because Defendants guarantee consumers a full refund if Defendants fail to save consumers the minimum amount that has been promised within a very short period of time, usually within thirty days.

B. The Verification

24. Consumers are then typically transferred to a second representative who seeks to obtain a recorded verification of the consumers’ agreements to be charged.

25. During the recorded verification portion of the calls, Defendants also attempt to qualify some of the guarantees made in the initial pitch by saying they cannot promise consumers how low their rates will go “today.” However, Defendants continue to promise consumers that consumers will save a specific minimum amount of savings on their credit card debts and will be able to pay off their debts much faster.

26. Consumers who ask questions during the verification are quickly transferred back to the original telemarketers who reassure the consumers with the same false promises as before. For example, in a recorded conversation with a consumer, Defendants’ telemarketer states:

And like I said, ma’am, you qualified today for no out-of-pocket expense, so you don’t have to mail us in a check or a money order for the 895, just maintain your payments to your credit card, just like you always do, because we only have approximately 30 days to get the interest as low as possible and also show to you in black and white that guaranteed savings of 2,500. I mean, obviously, ma’am, 2,500 is much greater than just 895, right? . . . And, Wilma, if we cannot save you 2,500, ma’am, then the 895, it gets credited back to your card in full,

no questions asked.

C. What Consumers Actually Receive

27. Consumers are almost immediately charged a fee ranging anywhere from \$500-\$2,000. In return, consumers do not receive what they are promised.

28. Instead, after the sales call, consumers may receive a “welcome packet” with forms for the consumers to fill out and return. The forms request consumers’ personal information and credit card information.

29. Once consumers fill out the forms and send them back, Defendants may send a document they call a “financial plan.”

30. Defendants’ “financial plan” includes nothing more than a comparison between (i) the total amount consumers would pay on their debts if they only paid the minimum monthly amount and (ii) the total amount consumers would pay on their debts if they paid some amount greater than their monthly minimum payment.

31. Further, in numerous instances, consumers are not provided full refunds when Defendants fail to fulfill their promises. Instead, Defendants either flatly refuse to refund consumers their money or waylay consumers with additional false promises that their refunds are being processed and will post “within 2-3 billing cycles.” Consumers are left saddled with even greater debts than before due to fees that Defendants charge consumers.

32. In numerous instances, after Defendants charge consumers an initial fee, Defendants make additional charges for hundreds of dollars to consumers’ credit cards without consumers’ express informed consent.

VIOLATIONS OF THE FTC ACT

33. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

34. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 15 U.S.C. § 45(a).

COUNT ONE

Misrepresenting Material Facts

35. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of credit card interest rate reduction services, Defendants have represented, directly or indirectly, expressly or by implication, that:

A. Consumers who purchase Defendants’ credit card interest rate reduction services will have their credit card interest rates reduced substantially;

B. Consumers who purchase Defendants’ credit card interest rate reduction services will save thousands of dollars in a short time as a result of lowered credit card interest rates; and

C. Consumers who purchase Defendants’ credit card interest rate reduction services will be able to pay off their debts much faster, typically twice as fast, as a result of lowered credit card interest rates.

36. In truth and in fact, the representations set forth in Paragraph 35 of this Complaint were false or not substantiated at the time the representations were made.

37. Therefore, Defendants’ representations as set forth in Paragraph 35 of this Complaint are false and misleading and constitute deceptive acts or practices in violation of

Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

Refund Misrepresentations

38. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of credit card interest rate reduction services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants will provide full refunds if consumers do not save thousands of dollars in a short time as a result of lowered credit card interest rates.

39. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 38 of this Complaint, Defendants do not provide full refunds when consumers do not save thousands of dollars in a short time as a result of lowered credit card interest rates.

40. Therefore, Defendants' representation as set forth in Paragraph 38 of this Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT THREE

Unauthorized Billing

41. In numerous instances, Defendants have caused billing information to be submitted for payment without having obtained previously consumers' express informed consent.

42. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by

countervailing benefits to consumers or competition.

43. Therefore, Defendants' practice as described in Paragraph 41 above constitutes an unfair act or practice in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

THE TELEMARKETING SALES RULE

44. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

45. As amended, effective September 27, 2010, and October 27, 2010, the TSR addresses the telemarketing of debt relief services. The amendments effective September 27, 2010, among other things, prohibit misrepresentations about material aspects of debt relief services. The amendments effective October 27, 2010, prohibit sellers and telemarketers from charging or collecting an advance fee before renegotiating, settling, reducing, or otherwise altering consumers' debts.

46. Defendants are "seller[s]" and/or "telemarketer[s]" engaged in "telemarketing," and Defendants have initiated, or have caused telemarketers to initiate, "outbound telephone call[s]" to consumers to induce the purchase of goods or services, as those terms are defined in the TSR, 16 C.F.R. § 310.2(v), (aa), (cc), and (dd). Defendants also are sellers or telemarketers of "debt relief service[s]," as defined by the TSR, 16 C.F.R. § 310.2(m).

47. The TSR prohibits sellers and telemarketers from misrepresenting, directly or

by implication, in the sale of goods or services, any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

48. As amended, effective September 27, 2010, the TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of any debt relief service. 16 C.F.R. § 310.3(a)(2)(x).

49. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv).

50. As amended, effective October 27, 2010, the TSR prohibits sellers and telemarketers from requesting or receiving payment of any fee or consideration for any debt relief service until and unless:

A. The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;

B. The consumer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and

C. To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either (1) bears the

same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount; or (2) is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration.

16 C.F.R. § 310.4(a)(5)(i).

51. The TSR prohibits sellers and telemarketers from causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the consumer. 16 C.F.R. § 310.4(a)(7).

52. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT FOUR

Misrepresentations in Violation of the TSR

53. In numerous instances, in connection with the telemarketing of goods and services, Defendants have misrepresented, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of such goods and services, including, but not limited to, that:

- A. Consumers who purchase Defendants' credit card interest rate reduction services will have their credit card interest rates reduced substantially;
- B. Consumers who purchase Defendants' credit card interest rate

reduction services will save thousands of dollars in a short time as a result of lowered credit card interest rates; and

C. Consumers who purchase Defendants' credit card interest rate reduction services will be able to pay off their debts much faster, typically twice as fast, as a result of lowered credit card interest rates.

54. Defendants' acts and practices, as described in Paragraph 53 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT FIVE

Misrepresentations of Debt Relief Services in Violation of the TSR

55. In numerous instances on or after September 27, 2010, in connection with the telemarketing of debt relief services, Defendants have misrepresented, directly or by implication, material aspects of the debt relief services, including, but not limited to, that:

A. Consumers who purchase Defendants' credit card interest rate reduction services will have their credit card interest rates reduced substantially;

B. Consumers who purchase Defendants' credit card interest rate reduction services will save thousands of dollars in a short time as a result of lowered credit card interest rates; and

C. Consumers who purchase Defendants' credit card interest rate reduction services will be able to pay off their debts much faster, typically twice as fast, as a result of lowered credit card interest rates.

56. Defendants' acts and practices, as described in Paragraph 55 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(x).

COUNT SIX

Refund Misrepresentations in Violation of the TSR

57. In numerous instances, in the course of telemarketing goods and services, Defendants have misrepresented, directly or by implication, that Defendants will provide full refunds if consumers do not save thousands of dollars in a short time as a result of lowered credit card interest rates.

58. Defendants' acts and practices, as described in Paragraph 57 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

COUNT SEVEN

Charging or Receiving a Fee in Advance of Providing Debt Relief Services

59. In numerous instances on or after October 27, 2010, in the course of telemarketing debt relief services, Defendants have requested or received payment of a fee or consideration for a debt relief service before (a) they have renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer; and (b) the customer has made at least one payment pursuant to that agreement.

60. Defendants' acts or practices, as described in Paragraph 59 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(a)(5)(i).

COUNT EIGHT

Unauthorized Billing

61. In numerous instances, in the course of telemarketing goods and services, Defendants have caused billing information to be submitted for payment without the express

informed consent of the consumer.

62. Defendants' acts and practices, as described in Paragraph 61 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(a)(7).

CONSUMER INJURY

63. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

64. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

65. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15

U.S.C. § 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions, an order freezing assets, immediate access, and the appointment of a receiver;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;


C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

DAVID C. SHONKA
Acting General Counsel

Dated: January 10, 2013



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