

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

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 08 CV 5994
)	
v.)	Judge Rebecca R. Pallmeyer
)	
ADVANTAGE CREDIT REPAIR LLC, and)	Magistrate Judge Jeffrey Cole
)	
MARK D. SOLOMON,)	
)	
Defendants.)	
)	

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION
FOR TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE,
OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE
WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

I. INTRODUCTION

The FTC asks this Court to bring a speedy end to the illegal credit repair operation of Defendants Advantage Credit Repair LLC and Mark D. Solomon. These Defendants falsely assure consumers with financial difficulties that they can have truthful information removed from their credit reports. Not only does this not work, but also in at least some cases, Defendants take consumers’ money without doing anything at all. Moreover, the basic framework of the Defendants’ business – charging consumers up-front for their purported credit repair services – is absolutely prohibited by Section 404(b) of the Credit Repair Organizations Act (“CROA”), 15 U.S.C. § 1679b(b). This enterprise operates across the United States, and the FTC believes that hundreds of consumers have lost their money to this scam. These activities are especially troubling because the victims are often those that can least afford to be cheated out of their money. In fact, the Better Business Bureau recently revoked Advantage’s membership because of the company’s questionable business practices.

Defendants advertise that they can help consumers improve their credit histories by removing negative information from consumers’ credit reports. Defendants charge several hundred dollars for their “credit repair services,” and they tell consumers that any negative

information – from late payments and bankruptcies, to repossessions and judgments – can be removed permanently, regardless of whether those items are true and are being reported legally. Consumers are led to believe that their credit reports will be cleansed of negative information only to find, after parting with their money, that nothing happens.

These practices are not only deceptive, and thus in violation of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 41-58, they are exactly the type of activities the CROA was designed to prohibit. The FTC respectfully moves this Court for a temporary restraining order to bring Defendants’ ongoing and harmful practices to a swift end. The FTC also seeks a temporary freeze of Defendants’ assets to preserve the possibility of redress for victimized consumers who bought Defendants’ services.

II. THE PARTIES

A. The Federal Trade Commission

The FTC is an independent agency created by the FTC Act, 15 U.S.C. §§ 41-58. The FTC is charged with, *inter alia*, enforcement of 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, as well as Sections 404-407 of the CROA, 15 U.S.C. §§ 1679b-1679e. The FTC is authorized to initiate proceedings in any United States District Court, by its own attorneys, to enjoin violations of the FTC Act, and to secure such equitable relief as may be appropriate in each case, including consumer redress and disgorgement of ill-gotten gains. 15 U.S.C. §§ 53(b), 57b, 1679h(b).

B. Defendants

Advantage Credit Repair LLC is an Illinois limited liability company, created in June 2006.¹ The company lists its principal office as 500 North Michigan Avenue, Suite 300, Chicago, Illinois 60611.² A second Chicago office is located at 3166 North Lincoln Avenue, Suite 215, Chicago, Illinois 60657.³ Advantage is a “credit repair organization,” as that term is

¹ PX 1 (Long Dec. ¶ 4, Att. A).

² *Id.* at ¶ 4, Atts. A, B at FTC 00012.

³ PX 5 (Jodlowska (BBB) Dec. ¶ 9, Att. B); PX 7 (Kelly Dec. ¶ 4 (consumer met with Solomon at office)); PX 8 (Jimenez Dec. ¶ 4 (same)).

defined in Section 403(3) of the CROA, 15 U.S.C. § 1679a(3).⁴

Mark D. Solomon is the principal of Advantage. Solomon has identified himself to both the Better Business Bureau of Chicago and Northern Illinois and consumers as the president of Advantage.⁵ He has also referred to himself as the “Owner” of Advantage.⁶ Solomon regularly works directly with Advantage consumers. Consumers report speaking to Solomon over the telephone, as well as meeting with him in person at Advantage’s offices.⁷

III. BACKGROUND ON THE CREDIT REPORTING SYSTEM AND CREDIT REPAIR

Credit reports are an important part of modern life. Information about consumers’ credit histories is regularly collected by credit reporting agencies and compiled into consumer credit reports, which are sold to those with a “permissible purpose” for obtaining them. *See* 15 U.S.C. § 1681b. These reports contain not only payment histories, but also items of public record, such as judgments, tax liens, and bankruptcy filings. Lenders, such as car dealerships, departments stores, and credit card companies, often use credit reports to determine a consumer’s creditworthiness. In addition, credit reports frequently are used by others, including landlords, insurance companies, and employers.

Consumers can develop bad credit reports for a variety of reasons. For example, those who have gone through divorces, lost their jobs, or had major medical expenses can get behind in paying their bills. Even though these setbacks may be temporary, negative information can

⁴ The CROA defines a “credit repair organization” to mean “any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of . . . improving any consumer’s credit record, credit history, or credit rating[.]” 15 U.S.C. § 1679a(3).

⁵ PX 5 (Jodlowska (BBB) Dec. ¶ 9, Atts. B, F); PX 8 (Jimenez Dec. ¶ 4 (Solomon introduces self as President to consumer)); PX 10 (Johnson Dec. ¶ 4 (same)); PX 12 (Smith Dec. ¶ 4 (same)); PX 13 (Stephens Dec. ¶ 3 (same)); PX 15 (Spiller Dec. ¶ 4 (same)).

⁶ PX 1 (Long Dec. ¶ 4, Att. C); PX 12 (Smith Dec. ¶ 4 (Solomon introduces self as President and Owner)).

⁷ PX 7 (Kelly Dec. ¶ 5); PX 8 (Jimenez Dec. ¶ 4); PX 9 (Jean-Pois Dec. ¶ 7); PX 11 (Dossous Dec. ¶¶ 4, 15); PX 12 (Smith Dec. ¶ 4); PX 13 (Stephens Dec. ¶¶ 3, 4); PX 14 (Tejani Dec. ¶ 3); PX 15 (Spiller Dec. ¶ 4).

typically be reported on credit reports for seven years.⁸ A bad credit report makes it more difficult or expensive for consumers to obtain credit, buy a house, rent an apartment, or even find a job. Credit repair scam operators try to take advantage of consumers with bad credit reports by claiming that they can use loopholes in the federal law governing credit reports, the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, to have truthful negative information removed from them.⁹

The FCRA governs the uses of credit reports, and it contains provisions that help to ensure that the information in such reports is accurate. Given the huge volume of information involved, it is not surprising that at times errors do occur on credit reports. For example, information about consumers’ credit transactions may be inaccurately reported, commingled with unrelated persons having similar names, or out-of-date.

The FCRA gives consumers the tools to have honest errors corrected by providing a mechanism to dispute such items. *See* 15 U.S.C. § 1681i. Under the FCRA, credit reporting agencies must investigate items of information disputed by consumers. 15 U.S.C. § 1681i(a)(1). The FCRA sets time limitations within which the credit reporting agency must conduct the investigation and report back to the consumer with the results. *See, e.g.*, 15 U.S.C. §§ 1681i(a)(1)(A)-(B).

If a consumer can show that information is inaccurate, the credit report must be corrected. Obsolete information that may no longer be reported must be deleted. Credit reporting agencies must, upon request, verify the accuracy of the data reported to them. Information that cannot be verified with the reporting creditor is deleted, whereas information that is verified as accurate remains on the consumer’s credit report. *See generally* 15 U.S.C.

⁸Accurate negative information can be reported on consumers’ credit reports for up to seven years, and up to ten years for bankruptcies. *See* 15 U.S.C. § 1681c. *See also* PX 3 (Lane (TransUnion) Dec. ¶ 4); PX 4 (Puckett (Experian) Dec. ¶ 3).

⁹The FTC has a long history dealing with credit repair scams, and it publishes consumer education materials warning consumers to be wary of them. *See, e.g.*, “Credit Repair: Help Yourself First,” at www.ftc.gov/bcp/online/pubs/alerts/repralrt.htm, and “Building a Better Credit Report,” at www.ftc.gov/bcp/online/pubs/credit/bbcr.htm.

§§ 1681c(a), 1681i(a)(5).¹⁰ The FCRA requires that this service be provided to consumers free of charge. 15 U.S.C. § 1681i(a)(1)(A).

IV. DEFENDANTS' BUSINESS PRACTICES

Defendants are running a classic credit repair scam. Defendants advertise widely by maintaining a public Web site and placing advertisements in Yellow Page directories.¹¹ Advantage provides a toll-free telephone number for consumers to call and learn more about the company's credit repair services.¹²

Defendants claim that they can get *any* negative information removed from consumers' credit reports. Through their advertisements and in statements made to consumers, Defendants assure consumers that any negative information can be removed, even if that information is accurate and not obsolete. For example, Defendants' Web site contains statements such as the following:

Regardless of the type of negative item that appears on your report, we will legally challenge that item using our proprietary and highly effective dispute system. This includes any item - even if it [sic] the result of a mistake on your part!

Can Bankruptcies and Foreclosures Be Removed?

Yes. Any derogatory item on a credit report can be removed, depending on the circumstance and the skill of your credit repair company. These types of negative items, along with civil judgments, are more challenging to remove than standard late [sic] and collections. But be assured - it can be done! That is why you need a credit repair company that has the experience and methodology to get this accomplished.¹³

¹⁰ See also PX 3 (Lane (TransUnion) Dec. ¶¶ 4, 6, 8); PX 4 (Puckett (Experian) Dec. ¶¶ 3, 7-11).

¹¹ PX 1 (Long Dec. ¶ 4, Atts. B at FTC 00002, D, E).

¹² *Id.*; PX 2 (Polcari Dec. ¶ 4); PX 8 (Jimenez Dec. ¶ 3).

¹³ PX 1 (Long Dec. ¶ 4, Att. B at FTC 00018, 00026).

An advertisement Defendants posted in a Yellow Pages directory claims:

Advantage Credit Repair Can Remove Late Payments, Collections, Repossessions, Charge Offs, Judgments, Foreclosures, Bankruptcies, Tax Liens, Garnishments...and Much More...**GUARANTEED!**¹⁴

Consumers who call Defendants are similarly assured that any negative information can be removed. In July 2008, an FTC law clerk, posing as a consumer, called Advantage to inquire about the company's services and was told that Advantage can remove "[a]nything that is derogatory in your credit, to get your score higher," including "bankruptcies, foreclosures, debt claims, collections, late payments, judgments."¹⁵ When the undercover law clerk specifically asked about having a three-year-old discharged bankruptcy removed from his credit reports – a negative item of information the law clerk admitted was his – the Advantage representative told him that doing so would be "no problem."¹⁶ Contrary to Advantage's claims, however, accurate and verifiable negative information, including a three-year-old bankruptcy, cannot legally be deleted. Other consumers were similarly misled into believing that Advantage could remove any negative information from their credit reports. One consumer was told that Advantage could delete several outstanding unpaid bills from his report, and raise his credit score by 50-80 points.¹⁷ Solomon told a BBB secret shopper that Advantage could get late payments and "any other negative information" off her credit report.¹⁸

Defendants advertise that they have "a proprietary and highly effective system of dealing with the three major credit bureaus to get negative items deleted quickly."¹⁹ This system, according to Advantage's Web site and employee statements, is to dispute all of the negative

¹⁴ *Id.* at ¶ 4, Att. D.

¹⁵ PX 2 (Polcari Dec. ¶ 10, Att. A).

¹⁶ *Id.*

¹⁷ PX 8 (Jimenez Dec. ¶¶ 5, 6).

¹⁸ PX 7 (Kelly Dec. ¶ 6); *see also* PX 9 (Jean-Pois Dec. ¶ 7); PX 11 (Dossous Dec. ¶ 5); PX 12 (Smith Dec. ¶¶ 6, 7); PX 13 (Stephens Dec. ¶ 4); PX 14 (Tejani Dec. ¶ 3); PX 15 (Spiller Dec. ¶ 4).

¹⁹ PX 1 (Long Dec. ¶ 4, Att. B at FTC 00003).

information on consumers' credit reports with the major credit reporting agencies.²⁰ When consumers sign up for Defendants' services, they must provide Defendants with copies of their credit reports, which allows Defendants to begin the dispute process.²¹ Consumers are told that soon after the credit repair services begin, they will start receiving mailings from credit reporting agencies. This, according to Defendants, indicates that the process is working.²² The consumers are also told they can expect to see improvements to their credit reports in one to two months, and the reports should be completely clean within six months.²³ Of course, ultimately, none see any appreciable improvement to their credit reports. Furthermore, credit reporting agencies have made clear that the type of system Defendants use does not work.²⁴

For their credit repair services, Defendants have billed consumers various amounts, most recently charging \$495 for an individual and \$665 for a couple.²⁵ To pay for the services, Defendants always require an up-front payment – between \$219 and \$269 – and four or more subsequent monthly payments.²⁶ Upon signing up with the company, Advantage asks for the consumers' checking account information, and withdraws the subsequent payments directly from

²⁰ PX 1 (Long Dec. ¶ 4, Att. B at FTC 00006, 010); PX 2 (Polcari Dec. ¶ 4, Att. A).

²¹ PX 8 (Jimenez Dec. ¶ 4); PX 9 (Jean-Pois Dec. ¶ 9); PX 10 (Johnson Dec. ¶ 5); PX 11 (Dossous Dec. ¶ 5); PX 12 (Smith Dec. ¶ 5); PX 13 (Stephens Dec. ¶ 4). Some consumers also report that they signed a document entitled "How to Dispute Items?" The document requests the consumer to report why the items on his credit report should be disputed. However, consumers report that the document was filled out before it was given to them for their signature, and was not necessarily accurate. PX 8 (Jimenez Dec. ¶ 7); PX 13 (Stephens Dec. ¶ 7).

²² PX 8 (Jimenez Dec. ¶ 7); PX 15 (Spiller Dec. ¶ 9).

²³ PX 1 (Long Dec. ¶ 4, Att. B at FTC 00007, 010, 011, 027); PX 7 (Kelly Dec. ¶ 6); PX 8 (Jimenez Dec. ¶ 6); PX 9 (Jean-Pois Dec. ¶¶ 7, 18); PX 11 (Dossous Dec. ¶ 6); PX 14 (Tejani Dec. ¶ 3); PX 15 (Spiller Dec. ¶ 4).

²⁴ PX 3 (Lane (TransUnion) Dec. ¶¶ 10-12); PX 4 (Puckett (Experian) Dec. ¶¶ 14, 16-20).

²⁵ PX 1 (Long Dec. ¶ 4, Att. B at FTC 00027); PX 2 (Polcari Dec. ¶ 4, Att. A); PX 8 (Jimenez Dec. ¶ 6). Consumers have reported being charged other amounts, including \$72, PX 10 (Johnson Dec. ¶ 5), \$400, PX 12 (Smith Dec. ¶ 8), and \$439, PX 13 (Stephens Dec. ¶ 5).

²⁶ PX 1 (Long Dec. ¶ 4, Att. B at FTC 00027); PX 2 (Polcari Dec. ¶ 4, Att. A); PX 8 (Jimenez Dec. ¶ 6); PX 11 (Dossous Dec. ¶ 6).

those accounts.²⁷ The cost includes one year of Advantage's services, although, as the company claims on its Web site, "you will get the bulk of your results within a [sic] 30-45 business days...."²⁸ The service also offers a money back guarantee, promising consumers "[i]f we do not perform - you do not pay!"²⁹ While the cost of Advantage's services are steep, especially for people who are already experiencing financial difficulty, many consumers report that they felt comfortable paying the price because of that guarantee.³⁰

Consumers who sign up and pay for Defendants' services do not get the results they are promised, and find Advantage unresponsive to their complaints. For example, one consumer contacted Advantage in March 2007 for help improving both her and her mother's credit reports.³¹ Solomon assured her that Advantage could remove the negative items on their reports. However, once the consumer paid the company, nothing happened and Advantage suddenly became non-responsive. The consumer called Advantage repeatedly, but her calls were never answered and her messages were not returned. She even went to the company's North Lincoln Avenue office, but no one was there.³² Now, over one year later, neither the consumer nor her mother has seen any improvement to their credit and, despite repeated requests, she has been unable to get a refund of the \$400 she paid the company.³³ Another consumer paid Solomon \$595 up-front to have Advantage improve her and her husband's credit; once the money was paid, however, Solomon became unreachable.³⁴ Moreover, certain previously-closed accounts

²⁷ PX 8 (Jimenez Dec. ¶ 8); PX 11 (Dossous Dec. ¶ 6); PX 13 (Stephens Dec. ¶¶ 5, 9); PX 14 (Tejani Dec. ¶ 5).

²⁸ PX 1 (Long Dec. ¶ 4, Att. B at FTC 00027).

²⁹ *Id.* at ¶ 4, Att. B at FTC 00002, 007, 011, 017, 027, 039.

³⁰ PX 8 (Jimenez Dec. ¶¶ 3, 11); PX 9 (Jean-Pois Dec. ¶ 8); PX 11 (Dossous Dec. ¶ 6); PX 12 (Smith Dec. ¶ 8); PX 13 (Stephens Dec. ¶ 5).

³¹ PX 12 (Smith Dec. ¶¶ 2, 3).

³² *Id.* at ¶ 9.

³³ *Id.* at ¶¶ 9, 10.

³⁴ PX 11 (Dossous Dec. ¶¶ 4, 6, 9, 11).

on her credit report were actually reopened as a result of hiring Advantage.³⁵ Other consumers also never received the promised services, and had their complaints and requests for refunds ignored.³⁶

As a result of its problematic business practices, the BBB revoked Advantage's membership in June 2008.³⁷ In fact, shortly after Advantage became a member of the BBB in May 2007, the BBB began investigating the company for several reasons. First, the BBB noticed that the company was routinely failing to resolve consumer complaints.³⁸ Additionally, the BBB became concerned about the company's practice of demanding up-front payments from consumers, and even sent a secret shopper to the company's office in July 2007 who confirmed this practice.³⁹ The BBB reported these concerns to Advantage, and asked the company to take immediate steps to remedy them.⁴⁰ When Advantage did not adequately do so, the BBB suspended Advantage's membership status.⁴¹ In June 2008, a hearing was conducted before the BBB Board of Directors' Ethics and Standards Committee to determine whether the company should retain its BBB membership, at which Solomon appeared on Advantage's behalf.⁴² The Committee determined that Advantage was in violation of several BBB accreditation standards, including a failure to comply with the CROA, and stripped Advantage of its BBB membership.⁴³

³⁵ *Id.* at ¶ 11.

³⁶ PX 8 (Jimenez Dec. ¶¶ 11-13); PX 9 (Jean-Pois Dec. ¶¶ 11-14); PX 13 (Stephens Dec. ¶ 10); PX 14 (Tejani Dec. ¶ 6); PX 15 (Spiller Dec. ¶¶ 9-14). One consumer did receive a full refund of \$72, but only after the BBB contacted the company multiple times on his behalf. PX 10 (Johnson Dec. ¶¶ 7-9).

³⁷ PX 5 (Jodlowska (BBB) Dec. ¶ 14).

³⁸ *Id.* at ¶¶ 10, 12, 13, Atts. C, E, G, I.

³⁹ *Id.* at ¶¶ 11-14, Atts. D, E, G, I; PX 7 (Kelly Dec. ¶¶ 2, 3).

⁴⁰ PX 5 (Jodlowska (BBB) Dec. ¶¶ 10, 11).

⁴¹ *Id.* at ¶¶ 12, 13, Atts. E, G.

⁴² *Id.* at ¶¶ 8, 14, Att. I.

⁴³ *Id.* at 14.

Despite losing its BBB status, Advantage has continued conducting business.⁴⁴

Advantage's current rating by the BBB is unsatisfactory "due to unanswered complaints."⁴⁵

V. ARGUMENT

The FTC asks that the Court bring this scam to an immediate halt by issuing a temporary restraining order that enjoins further violations of the CROA and FTC Act. The FTC also requests that the Court freeze Defendants' assets to preserve assets that will be needed if the Court determines that restitution should be made to consumer victims.

A district court may issue injunctions to enjoin violations of the FTC Act.⁴⁶ See 15 U.S.C. 53(b); *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1028 (7th Cir. 1988). To obtain a temporary restraining order, the FTC must merely demonstrate: (1) a likelihood of success on the merits, and (2) that the balance of the equities tips in its favor. *World Travel*, 861 F.2d at 1029. Courts in this district have repeatedly exercised their authority to grant TROs in FTC fraud actions,⁴⁷ and, as demonstrated below, the injunctive relief requested by the FTC is warranted in this case.

A. **There is a Likelihood That the FTC Will Prevail on the Merits.**

As shown above in Section IV, there is ample evidence that Defendants continue to engage in repeated deceptive acts in violation of the FTC Act, including making material misrepresentations about their services and charging consumers up-front for services in direct

⁴⁴ PX 2 (Polcari Dec. ¶ 4 (spoke with Advantage employee on July 16, 2008); PX 6 (Brockington (Network U.S.) Dec. ¶ 3, Att. (phone log showing calls made to 800 number after June 2008)).

⁴⁵ PX 5 (Jodlowska (BBB) Dec. ¶ 15).

⁴⁶ Pursuant to Section 410(b)(1) of the CROA, 15 U.S.C. § 1679h(b)(1), any violation of any requirement or prohibition of the CROA constitutes an unfair or deceptive act or practice in commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

⁴⁷ See, e.g., *FTC v. Data Business Solutions Inc., et al.*, No. 08 C 2783 (N.D. Ill. May 14, 2008) (Dow, J.); *FTC v. Spear Systems, Inc., et al.*, No. 07 C 5597 (N.D. Ill. Oct. 3, 2007) (Andersen, J.); *FTC v. Sili Neutraceuticals, LLC*, No. 07 D 4541 (N.D. Ill. Aug. 13, 2007) (Kennelly, J.); *FTC v. 120194 Canada, Ltd., et al.*, No. 04 C 7204 (N.D. Ill. Nov. 8, 2004); *FTC v. Phoenix Avatar LLC, et al.*, No. 04 C 2897 (N.D. Ill. April 23, 2004) (Holderman, J.); *FTC v. 9094-5114 Quebec Inc., et al.*, No. 03 C 7486 (N.D. Ill. Oct. 23, 2003) (Leinenweber, J.); *FTC v. QT Inc., et al.*, No. 03 C 3578 (N.D. Ill. May 29, 2003) (St. Eve, J.).

violation of the CROA. Through their fraudulent scheme, Defendants are cheating consumers out of what likely amounts to hundreds of thousands of dollars.

1. Defendants are making material misrepresentations about their credit repair services.

Defendants make false and misleading statements to consumers about their services. The FTC Act prohibits “deceptive acts or practices.” 15 U.S.C. § 45(a). A material representation or omission that “likely would mislead” consumers acting reasonably under the circumstances is “deceptive” and violates the FTC Act. *See World Travel*, 861 F.2d at 1029. Express claims are presumed to be material. *See Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir.1992); *FTC v. Febre*, 1996 WL 396117, at *2 (N.D. Ill. July 3, 1996). The “misrepresentation or practice need not be made with an intent to deceive” to violate the FTC Act. *World Travel*, 861 F.2d at 1029.

Here, Defendants have consistently made false claims about their credit repair services. Defendants represent to consumers that they can have negative information removed from consumers’ credit reports, even where such information is accurate and not obsolete. As mentioned in Section III, the FCRA requires that accurate and not obsolete negative information contained on a consumer’s credit report be verifiable; that is, the credit reporting agencies reporting the information must be able to verify the information with the original furnisher of the information. *See* 15 U.S.C. § 1681i. In the event that information can not be verified, it must be deleted. 15 U.S.C. § 1681i(a)(5)(A). Defendants’ business practices suggest that they attempt to exploit this provision of the FCRA by disputing *all* negative information contained in consumers’ credit reports in the hopes that the information will not be verified and thus deleted.⁴⁸ Of course, consumers do not receive the results they are told they will receive.⁴⁹

In this case, Defendants’ deception is not only “likely” to mislead consumers, it in fact *has* caused significant monetary loss to consumers.⁵⁰ Consumers simply would not pay \$500 or

⁴⁸ *See, e.g.*, PX 1 (Long Dec. ¶ 4, Att. B at FTC 00006, 010); PX 2 (Polcari Dec. ¶ 4, Att. A); PX 8 (Jimenez Dec. ¶ 7); PX 13 (Stephens Dec. ¶ 7); PX 15 (Spiller Dec. ¶ 4).

⁴⁹ PX 8 (Jimenez Dec. ¶ 13); PX 9 (Jean-Pois Dec. ¶ 13); PX 10 (Johnson Dec. ¶ 9); PX 12 (Smith Dec. ¶ 10); PX 13 (Stephens Dec. ¶¶ 11, 12); PX 14 (Tejani Dec. ¶ 7); PX 15 (Spiller Dec. ¶¶ 9, 14).

⁵⁰ *See, e.g.*, PX 8 (Jimenez Dec. ¶ 13); PX 11 (Dossous Dec. ¶ 8); PX 13 (Stephens Dec. ¶ 12); PX 15 (Spiller Dec. ¶ 10).

more for Defendants' credit repair services unless they believed Defendants' claims that the negative information contained in their credit reports could be removed permanently.

Accordingly, the FTC has demonstrated a likelihood of success on the merits, and a temporary restraining order against Defendants is warranted.

2. Defendants violate the CROA by making untrue or misleading statements about their credit repair services.

As discussed above, Defendants make false claims to consumers about their credit repair services and their ability to have negative information deleted from consumers' credit reports. These false claims also violate Section 404(a)(3) of the CROA, 15 U.S.C. § 1679b(a)(3), which prohibits any person from "mak[ing] or us[ing] any untrue or misleading representation of the services of the credit repair organization[.]" Thus, the Court should also restrain Defendants from making such claims.

3. Defendants violate the CROA by charging consumers up-front for credit repair services.

Section 404(b) of the CROA, 15 U.S.C. § 1679b(b), specifically prohibits a credit repair organization from "charg[ing] or receiv[ing] any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed." Defendants routinely require consumers to pay for credit repair services up-front, long before any credit repair services have been performed. In fact, Defendants currently require consumers to pay nearly one-half of the total fee up-front (usually \$219 for an individual and \$269 for a couple), with the remaining balance due in subsequent monthly payments.⁵¹ Defendants' practice of charging consumers and receiving payment up-front is a blatant violation of the CROA, and thus warrants the action requested by the FTC.

4. Mark D. Solomon is individually liable.

Solomon is individually liable for the violations described above. An individual may be held liable for FTC Act violations if the court finds that the individual: (1) actively participated in or had authority to control the deceptive practices, and (2) had or should have had knowledge

⁵¹ PX 1 (Long Dec. ¶ 4, Att. B at FTC 00027); PX 2 (Polcari Dec. ¶ 4, Att. A).

or awareness of the practices. *See FTC v. Amy Travel*, 875 F.2d 564, 573-74 (7th Cir. 1989); *FTC v. Febre*, 1996 WL 396117, at *8 (N.D. Ill. July 3, 1996). Authority to control can be evidenced by “active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer.” *Amy Travel*, 875 F.2d at 573. In addition, the defendant’s “degree of participation in business affairs is probative of [his] knowledge.” *Id.* at 574.

Here, as described in Section II.B, Solomon is actively involved in the business affairs of this operation. Solomon has identified himself repeatedly as the president and owner of Advantage. On Advantage’s behalf, he filled out the BBB membership application, responded to BBB inquiries, and appeared at the hearing before the Standards and Ethics Committee. Moreover, Solomon regularly communicates with consumers, and misleads them about the services that Advantage can provide. Several consumers have reported that as soon as they began calling Solomon to complain or request refunds, he stopped taking their calls and would not return messages.⁵² In sum, Solomon has actively participated in or is in a position to control Defendants’ practices, and had or should have had knowledge of the practices.

B. The Balance of Equities Favors the FTC.

In addition to demonstrating a likelihood of success on the merits, the balance of equities tips strongly in the FTC’s favor here. In balancing the equities, the Court must assign greater weight to the public interest advanced by the FTC than to any of Defendants’ private concerns. *World Travel*, 861 F.2d at 1030-31. Here, the public has a strong interest in preventing further misrepresentations and sales of fraudulent credit repair services. In contrast, Defendants have no legitimate interest in continuing to defraud consumers as part of their business. The balance of the equities even further favors the FTC because of the strong likelihood of success on the merits of its claims. *See FTC v. Sabal*, 32 F. Supp. 2d 1004, 1009 (N.D. Ill. 1998).

C. The TRO Should Include An Asset Freeze and Other Ancillary Relief.

In issuing injunctive relief under the FTC Act, district courts have authority “to grant any ancillary relief necessary to accomplish complete justice[.]” *World Travel*, 861 F.2d at 1026

⁵² PX 8 (Jimenez Dec. ¶ 11); PX 9 (Jean-Pois Dec. ¶¶ 10, 11); PX 11 (Dossous Dec. ¶¶ 8, 9, 11); PX 12 (Smith Dec. ¶ 9); PX 13 (Stephens Dec. ¶ 10); PX 14 (Tejani Dec. ¶ 6); PX 15 (Spiller Dec. ¶¶ 10, 12).

(quoting *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982)). See also *Febre*, 128 F.3d at 534 (district court has authority in FTC action to “order any ancillary equitable relief necessary to effectuate the exercise of the granted powers”). Here, the FTC requests that the Court issue a TRO that includes ancillary equitable relief narrowly tailored to stop Defendants’ scam immediately and preserve the possibility to refund victimized consumers.⁵³

A district court has “a duty to ensure that . . . assets . . . [are] available to make restitution to injured customers” where the court determines that it is “probable that the FTC [will] prevail in a final determination of the merits.” *World Travel*, 861 F.2d at 1031. See also *FTC v. World Wide Factors*, 882 F.2d 344, 347 (7th Cir. 1989) (upholding finding of “no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment”); *Sabal*, 32 F. Supp. 2d at 1009 (same). Here, Defendants’ assets should be preserved to ensure that they are available to make restitution to injured consumers.

The FTC’s proposed TRO includes additional narrowly tailored ancillary equitable relief. The proposed order enjoins Defendants from violating the FTC Act and the CROA, and additionally would require Defendants’ Web site be disabled, with notice of this lawsuit posted so as to prevent Defendants from preying on unsuspecting consumers during the pendency of this case. (See Proposed TRO §§ I-IV.)

VI. CONCLUSION

Defendants have caused and are likely to continue to cause consumer injury because of their FTC Act and CROA violations. This Court should issue the requested relief to prevent ongoing consumer harm and to help ensure the possibility of effective final relief.

⁵³ The FTC has submitted a Proposed Temporary Restraining Order with its papers.

Respectfully submitted,

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