UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. **FINANCIAL FREEDOM PROCESSING, INC. formerly known as FINANCIAL FREEDOM OF AMERICA, INC., a corporation,** **COREY BUTCHER, individually and as an officer of the corporation, and** **BRENT BUTCHER, individually and as an officer of the corporation,** Defendants.	Case No. 3:10-cv-2446

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

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

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain 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).

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) and 53(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.

5. The FTC is authorized to initiate federal district court proceedings, 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 rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

DEFENDANTS

6. **Defendant Financial Freedom Processing, Inc., formerly known as Financial Freedom of America, Inc.**, ("FFA") is a Texas for-profit corporation with its principal place of business at 8140 Walnut Hill Lane, Suite 400, Dallas, Texas 75231. FFA transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, FFA has advertised, marketed, distributed, or sold debt relief services to consumers throughout the United States.

7. **Defendant Corey Butcher** is President, Chief Executive Officer, and 44 percent owner of FFA. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had authority to control, or participated in the acts and practices of FFA, including the acts and practices set forth in this Complaint. Defendant Corey Butcher resides in this district and, in connection with the matters alleged, transacts or has transacted business in this district and throughout the United States.

8. **Defendant Brent Butcher** is 22 percent owner of FFA. He became Vice President and Chief Operating Officer in November 2008, and has been a significant shareholder since the beginning of FFA. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had authority to control, or participated in the acts and practices of FFA, including the acts and practices set forth in this Complaint. Defendant Brent Butcher, in connection with the matters alleged, transacts or has transacted business in this district and throughout the United States.

COMMERCE

9. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

10. Since at least December 2005, and continuing thereafter, Defendants FFA, Corey Butcher, and Brent Butcher have offered a debt relief service to consumers having difficulty with their personal finances. Defendants target consumers with substantial amounts of unsecured debt, often claiming that participation in their debt relief service will result in the elimination of 30 to 60 percent of consumers' debts and that participating consumers will be debt free in 18 to 36 months.

Defendants' Marketing and Advertising

11. Defendant FFA markets or has marketed its debt relief service on its Web sites, including www.financialfreedomofamerica.com and www.financialfreedomprocessing.com, and through national radio and television advertisements.

12. In both radio and television advertisements, Defendants make or have made claims such as, "stop never ending late fees and outrageous interest rates," and, "Be debt free in as little as thirty to thirty six months." Defendants also frequently promise to help consumers "wipe out 30 to 60% of [their] credit card debt" and "avoid bankruptcy, save thousands and get more cash back in [their] pocket every month." Defendants assure consumers that it uses "secret programs most credit card companies won't tell you about" to reduce consumer debt. Defendants' radio and television advertisements urge interested consumers to call a toll-free number for a free consultation and to enroll in their debt relief service.

13. Defendants' Web sites characterize or have characterized its debt relief service as the best solution for consumers who want to get out of debt, and as a better alternative than bankruptcy. Defendants' Web sites encourage consumers to call a toll-free number to learn more about the debt relief service.

The Sales Call

14. Consumers who call Defendants' toll-free number are connected to a sales representative. Defendants require their sales representatives to follow, and the sales representatives do follow, a script when speaking with consumers. Following the script, Defendants' sales representatives promise to reduce consumers' debt by negotiating on their behalf with consumers' creditors. Defendants' sales representatives often tell consumers that Defendants' debt relief service will enable consumers to pay off all of their unsecured debt in 18 to 36 months. For example, one script used by Defendants instructs sales representatives to tell consumers that FFA's negotiations "averaged a savings of 58% of the debt." That script then instructs the sales representative to calculate the consumer's "payoff" by calculating a payment of 45 cents on the dollar of the consumer's total debt amount.

15. Defendants' sales representatives typically tell consumers that creditors will not settle their accounts unless the consumers stop making payments to and cease communications with their creditors. Defendants further represent to consumers that allowing their accounts to become delinquent will motivate creditors to settle with them for a substantially reduced amount.

Client Enrollment Agreement

16. Defendants send consumers who agree to enroll in the debt relief service an initial set of enrollment documents from FFA. Included in these documents are: (a) a Client Enrollment Agreement (the "Agreement"), (b) a form for consumers to open a special purpose account with a bank selected by Defendants, (c) a form authorizing automatic transfers from consumers' personal bank accounts into that special purpose account, and (d) a form to identify the amounts owed by consumers to various creditors.

17. During the telephone sales call, Defendants' sales representatives encourage consumers to fill out the enrollment documents and return the papers as quickly as possible. Defendants instruct their sales representatives to discourage consumers from carefully reading the Agreement by stating that the Agreement "has everything we have talked about on paper."

18. The Agreement is a single-spaced document in approximately eight-point font. The Agreement contains provisions that are often contrary to the representations in the sales call or are not addressed in the sales call. For example, the Agreement contains the following statement in an attempt to disclaim the savings claims made to consumers in FFA's advertisements and sales calls: "FFA's expressions about the outcome of any matter are its best professional estimates, and are limited by present policies, cash advances, balance transfers, and Client's financial resources at the time negotiations are obtained with Client's creditors

(estimated savings do not include all applicable fees)." The Agreement also provides additional information about Defendants' fees.

19. As indicated above, consumers open a special purpose bank account into which funds are automatically transferred from the consumer's personal bank account. The special purpose account, which is maintained at a separate financial institution, is purportedly maintained to accumulate funds for the purpose of repaying consumers' enrolled debts. However, the forms completed by the consumer authorize the Defendants to withdraw their fees automatically from this account.

Defendants' Fees

20. Defendants charge their clients fees, including administrative fees, monthly maintenance fees, negotiation fees, and, in some instances, a cancellation fee. Defendants' fees are withdrawn automatically from the consumers' special purpose account each month. From the inception of the business through May 2009, all fees were non-refundable unless consumers cancelled their enrollment in the debt relief service before the end of the three-day Right of Refusal period provided for in the Agreement. Defendants collected a $299 cancellation fee from numerous consumers who submitted a cancellation request after the Right of Refusal period.

21. Defendants charge consumers an up-front administrative fee that is calculated as 10 percent of the amount of debt that consumers owe their unsecured creditors at the time of their enrollment in Defendants' debt relief service. The administrative fee varies by consumer based on the amount of debt enrolled, but typically ranges from $1000 to $4000.

22. Defendants also charge a monthly maintenance fee of $29.95 or $39.95 for each month consumers are enrolled in Defendants' debt relief service.

23. Defendants also charge a negotiation fee for each account settled. The negotiation fee is calculated as 10 percent of the purported savings the company obtains in a settlement. Many consumers never pay a negotiation fee because Defendants do not settle their debts. Other consumers are surprised to discover that Defendants collect the negotiation fee even when consumers settle their own debts.

Defendants' Welcome Kit

24. After consumers enroll in Defendants' debt relief service, they receive a packet of documents from Defendants, which Defendants call a "Welcome Kit." The Welcome Kit provides additional information about how Defendants' debt relief service works and is typically delivered to consumers after the Right of Refusal period has ended. In numerous instances, consumers receive their Welcome Kit after their first month's payment.

25. The Welcome Kit explains that Defendants, on average, do not negotiate with a consumer's creditors until after six months and only once the consumer has accumulated sufficient funds to make a reasonable offer. The Welcome Kit also explains that creditors will write off a delinquent debt after six months and will notify the credit bureaus that the debt has been written off as bad debt. In addition, the Welcome Kit states that if consumers accept a settlement offer from their creditors while enrolled in the service, Defendants are entitled to collect the negotiation fee, even if the consumers conducted all of the negotiations with the creditor. In numerous instances, Defendants do not disclose this information to consumers prior to their enrollment.

Failure to Deliver Promised Results

26. In numerous instances, Defendants do not contact or commence settlement negotiations with their consumers' creditors immediately upon the consumers' enrollment in

their debt relief service. Defendants typically do not contact or initiate negotiations with any creditor until after: (a) consumers have paid the administrative fee in full, and (b) consumers have accumulated enough funds in their special purpose account to settle the debt with that creditor. Often, the first time Defendants mention this fact to consumers is in the Welcome Kit.

27. For numerous consumers, it takes a minimum of four to six months after enrollment in Defendants' debt relief service for consumers to pay Defendants' administrative fee in full and begin accumulating funds in their special purpose account for the first settlement offer. Throughout this time, Defendants typically do not contact the consumers' creditors and continue to advise consumers to cease making payments to and communicating with their creditors.

28. Contrary to Defendants' representations that consumers will pay off their debt in 18 to 36 months at 30 to 60 percent savings, Defendants rarely negotiate settlements for all accounts entered into the debt relief service by consumers. Moreover, even when Defendants succeed in negotiating a settlement on one or more of the consumers' several accounts, in numerous instances, consumers' account balances increase from the time of enrollment to the time of settlement due to creditors' additional late fees, finance charges, and other charges. Therefore, the total aggregate amount consumers are required to pay is, in numerous instances, higher than 70 percent of the total amount the consumers owed to their creditors at the time of enrollment. In numerous instances, consumers have not obtained the 30 to 60 percent savings on their debt as promised by Defendants and do not have their debts paid off in 18 to 36 months.

29. Few consumers who enroll in Defendants' debt relief service ever complete the service and receive the promised results. In numerous instances, consumers cancel or drop out of Defendants' debt relief service before any debt is negotiated because they cannot afford to pay

Defendants' substantial fees and also accumulate money to pay off their debts. Other consumers cancel or drop out because of harassment and escalating collection attempts by their creditors. Consumers who cancel or drop out before any debts are settled forfeit most or all fees paid to Defendants.

30. Consumers who purchase Defendants' debt relief services frequently seek a refund from Defendants. Defendants routinely deny consumers' refund requests.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

32. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

33. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of their debt relief services, Defendants have represented, directly or indirectly, expressly or by implication, that by participating in Defendants' debt relief services, consumers will eliminate their unsecured debt by paying a substantially reduced amount, realizing savings of 30 to 60 percent of the total debt initially enrolled in the program.

34. The representation set forth in Paragraph 33 is false or was not substantiated at the time the representation was made. Among other reasons, in making this representation, Defendants relied on calculations of past consumers' results that (a) included only consumer debts that Defendants actually settled, omitting those debts that Defendants were unable to or did not settle; (b) were based on the amounts consumers owed at the time of settlement, rather than at the time they initially enrolled; (c) excluded fees paid by consumers to Defendants; and (d)

excluded consumers who dropped out of Defendants' services before achieving any results. All of these factors tended to inflate the percentage saved by consumers enrolled in Defendants' services. Therefore, the making of the representation as set forth in Paragraph 33 of this Complaint constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

35. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of their debt relief services, Defendants have represented, directly or indirectly, expressly or by implication, that consumers who enroll in Defendants' debt relief services will be out of debt in 18 to 36 months.

36. The representation set forth in Paragraph 35 is false or was not substantiated at the time the representation was made. Therefore, the making of the representation as set forth in Paragraph 35 of this Complaint constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

36. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. 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

37. 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

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

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

C. 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.

Dated: December 2, 2010

Dallas, Texas

Respectfully submitted,

WILLARD K. TOM
General Counsel

DEANYA T. KUECKELHAN
Regional Director

/s/ Ann D. LeJeune
ANN D. LEJEUNE
Texas Bar No. 24054286
JAMES E. HUNNICUTT

Texas Bar No. 24054252

FEDERAL TRADE COMMISSION
Southwest Region
1999 Bryan Street, Suite 2150
Dallas, Texas 75201
Tel: 214-979-9371 (LeJeune)
Tel: 214-979-9381 (Hunnicutt)
Fax: 214-953-3079

Email: alejeune@ftc.gov
Email: jhunnicutt@ftc.gov

ATTORNEYS FOR PLAINTIFF