

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 09-cv-61840 Seitz/O'Sullivan

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ORDER

THIS MATTER comes before the Court on the Plaintiff's Motion for Summary Judgment against Defendants, Stephen Lalonde, Amy Lalonde, and Michael Petroski (DE# 113-1, 8/26/10). On November 17, 2009, Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), commenced this action by filing a Complaint pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, Section 410(b) of the Credit Repair Organizations Act ("CROA"), 15 U.S.C. § 1679h(b), and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108. The Complaint alleges that Defendants Stephen Lalonde, Amy Lalonde, Michael Petroski, 1<sup>st</sup> Guaranty Mortgage Corp., Spectrum Title, Inc., Crossland Credit Consulting Corp., and Scoreleaper, LLC, ("Defendants") engaged in unfair or deceptive acts or practices in connection with the sale and offering for sale, of mortgages, credit repair services, and loan modification



regarding her knowledge of the deceptive acts. The Court denies the Motion for Summary Judgment against her. Because there are no genuine issues of material fact as to Stephen Lalonde and Michael Petroski, the Court hereby grants Plaintiff's Motion for Summary Judgment as to them individually (DE# 113, 8/26/10). The Court will enter separate Final Judgments and Orders of Permanent Injunction against Stephen Lalonde and Michael Petroski..

### INTRODUCTION

The FTC alleges that individual defendants Stephen Lalonde ("S. Lalonde" or "Lalonde"), Amy Lalonde ("A. Lalonde" or "Ms. Lalonde"), and Michael Petroski ("Petroski") each played an integral role in one or more of three scams that defrauded consumers seeking credit and/or mortgage assistance. The consumer injury resulting from the three scams totaled at least \$2.7 million.

Lalonde directed or co-ma



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<sup>5</sup> SOUF ¶ 5.



as the bookkeeper and paymaster of Crossland and Scoreleaper. Throug

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<sup>18</sup> SOUF, ¶¶ 20-21.

<sup>19</sup> SOUF, ¶ 18.

<sup>20</sup> SOUF, ¶¶ 26-27, 30-31, 96.

<sup>21</sup> SOUF, ¶¶ 32-33.

<sup>22</sup> SOUF, ¶ 50.

<sup>23</sup> SOUF, ¶¶ 92, 96.

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<sup>24</sup> SOUF, ¶¶ 3, 54. Spectrum replaced an earlier company owned by Stephen Lalonde – Superior Title Guaranty (“Superior”) – which had been sued in at least 15 different civil suits in Broward County Court by the time of its dissolution in 2007. PSJ Ex. 34 (Lewis SJ Decl.), ¶ 30. An instant message from Toby Shafer, an employee of Spectrum, to another employee, reflects the Lalondes’ collective involvement with both Spectrum and Superior: “...Please do not tell people that Spectrum took over Superior’s

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<sup>26</sup> SOUF, ¶ 52.

<sup>27</sup> SOUF, ¶¶ 52, 54.

<sup>28</sup> SOUF, ¶¶ 55-56.

<sup>29</sup> SOUF, ¶¶ 56, 67.

<sup>30</sup> SOUF, ¶¶ 55, 71.

<sup>31</sup> SOUF, ¶¶ 56, 59-60.

<sup>32</sup> SOUF ¶¶ 56-58, indicating that at least seven consumers spoke to S. Lalonde and four of these consumers also spoke to A. Lalon0 1.00022.4400.(d fou)Tj23.8800 0.0000 TD(r of )Tj19.0800 0.0000 TD(the)Tj14

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<sup>39</sup> SOUF, ¶ 62.

<sup>40</sup> SOUF, ¶ 62. At her deposition, Plaintiff provided Ms. Lalonde with a total of nineteen (19)

demand letter.<sup>45</sup> Confronted by the process server, Ms. Lalonde ran out the back door of Spectrum's business premises. The process server then followed Ms. Lalonde and served her at her residence.<sup>46</sup>

On July 10, 2009, S. Lalonde signed a plea agreement to plead guilty to separa

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<sup>45</sup> SOUF, ¶ 66, citing PSJ Ex. 28 (Parrish Decl.), Att. F, ¶¶ 19 (a) - (u). Notwithstanding the fact that the complaint specifically described 21 separate incidents involving Spectrum's failed payoffs, Ms. Lalonde claimed, in depositions in this case, she knew nothing about her company's transgressions until her husband's sentencing a year and a half later. PSJ Ex. 35b, A. Lalonde Dep. 67:10-68:22, May 12, 2010.

<sup>46</sup> SOUF, ¶ 66, citing the affidavit of the process server.

<sup>47</sup> SOUF, ¶ 68. Although the agreement contained a specific provision stating that no charges would be made against A. Lalonde, it also required, as a precondition, that she surrender all her licenses related to the mortgage brokering and lending businesses "by the date of Defendant STEPHEN LALONDE's guilty plea" and that, in addition, she agree to "a permanent disbarment in the State of Florida to being licensed as a mortgage broker, mortgage lender, mortgage broker business, correspondent lender, title agent, and or real estate agent." SOUF, ¶ 70.

<sup>48</sup> SOUF, ¶ 71. Lalonde's plea also involved a third corporation, Delta Financial, which is not named as a Defendant in this matter.

offs.<sup>49</sup> On December 18, the Court sentenced Lalonde to a 60-month prison term.<sup>50</sup>

## 2. Defendants' Deceptive Practices Involving Credit Repair Services

Lacking an underwriter for Spectrum's mortgage cash diversion scam, Lalonde moved on to a new fraud – misrepresenting credit repair assistance to credit-impaired consumers who were seeking mortgages. By at least June 2008, using a new company, Crossland, in tandem with 1<sup>st</sup> Guaranty, his sales representatives began offering to assist credit impaired consumers in quickly obtaining mortgages.<sup>51</sup> In May 2009, Lalonde began transitioning the 1<sup>st</sup> Guaranty-Crossland credit repair operation to a new company, Scoreleaper.<sup>52</sup> Petroski served as manager of Crossland and Scoreleaper from June 2008 to June 2009.

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<sup>49</sup> *Id.*

<sup>50</sup> SOUF, ¶ 73.

<sup>51</sup> SOUF, ¶ 74. In fact, Lalonde may have been operating his credit repair operation through 1<sup>st</sup> Guaranty long before June 2008. In September 2007 – nine months before he incorporated Crossland – he told a 1<sup>st</sup> Guaranty manager that he was establishing a new operation that would provide credit repair assistance to consumers who could not otherwise obtain a mortgage. DE 8-1, pp. 42-43 (TRO Exhibits, Vol. I, Ex. 13 (Declaration of Manny Silva (“Silva Decl.”)), ¶ 7).

<sup>52</sup> SOUF, ¶¶ 5, 74.

<sup>53</sup> SOUF, ¶¶ 75-76.

<sup>54</sup> SOUF, ¶ 78.

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<sup>55</sup> SOUF, ¶ 81. 1<sup>st</sup> Guaranty and Crossland salesmen portrayed a 620 standard as the “gold standard” for mortgages. In fact, according to Commission expert, Marietta Rodriguez, it is a bare minimum. According to Ms. Rodriguez, financial institutions will frequently require a consumer with significant credit issues to have a higher score. PSJ Ex. 29 (Expert Report of Marietta Rodriguez (“hffhu oeqtenttaez

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Petroski said, “Good luck buying a house with your credit score. You won’t be able to buy s--t in this country because you are so irresponsible with paying your bills.”<sup>67</sup>

The defendants based their representations solely on consumers’ oral representations about their credit histories during sales calls. They typically did not obtain consumers’ credit reports, and, even where they did, they did not obtain the underlying documentation involving negative items in the report.<sup>68</sup>

Numerous consumers confirm the defendants’ deceptive marketing representations, in particular the claim that they could remove all negative items, including bankruptcies in short periods of time.<sup>69</sup> For instance, representatives told one consumer with a credit score in the 400s that their company would remove her recent bankruptcies and raise her score to 700-800 within 30 days;<sup>70</sup> they told another consumer their company would delete all negative items from his credit history, including a recent bankruptcy, and raise his score 145 points within 2-3 months.<sup>71</sup>

As described in the expert declaration of Marietta Rodriguez, the defendants’ representations were utterly implausible. Ms. Rodriguez states that negative information can be removed from a consumers’ credit history only if there is documentation that it is incorerr(a)Tj5.2800 0.000 0.00

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<sup>67</sup> *Id.*

<sup>68</sup> SOUF, ¶ 86.

<sup>69</sup> SOUF, ¶¶ 30, 83-84.

<sup>70</sup> SOUF, ¶ 83, citing PSJ Ex. 5 (Declaration of Yolanda Ford (“Ford Decl.”)), ¶¶ 2-3.

<sup>71</sup> *Id.*, citing PSJ Ex. 6 (Declaration of Stephen Francis (“Francis Decl.”)), ¶¶ 2-3.

<sup>72</sup> PSJ Ex. 29 (Rodriguez Expert Report), pp. 9-10.



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<sup>73</sup> PSJ Ex. 29 (Rodriguez Expert Report), pp. 10-11.

<sup>74</sup> PSJ Ex. 29 (Rodriguez Expert Report), p. 12.

<sup>75</sup> *Id.*

<sup>76</sup> SOUF, ¶ 94.

<sup>77</sup> SOUF, ¶¶ 91-92.

<sup>78</sup> ~~SOUF~~ PSJ Ex. 24 (Declaration of Maria Ramirez (“Ramirez Decl.”)), ¶ 10.

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<sup>80</sup> SOUF ¶ 92, citing PSJ Ex. 20 (Declaration of Rosemary Coker (“Coker Decl.”)), ¶ 7 and Att. B.

<sup>81</sup> SOUF, ¶ 91.

<sup>82</sup> *Id.*

<sup>83</sup> SOUF, ¶ 91. Since 1<sup>st</sup> Guaranty purportedly had non-credit impaired consumers in addition to those it referred to Crossland, it is unclear whether the four customers had credit repair issues. Plaintiff was unable to locate any of the four consumers.

*Id.*

consumers that would make the consumers' mortgage payments substantially more affordable by lowering their interest rates and monthly payments.<sup>86</sup> They represented additionally that consumers were highly likely to get such loan modifications.<sup>87</sup> They charged consumers one-month's mortgage payment in advance for these loan modification services.<sup>88</sup>

The defendants' computer files do not show a single instance in which a consumer received a loan modification.<sup>89</sup> Numerous consumers complained.<sup>90</sup> Consumers repeatedly informed sales personnel and

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<sup>86</sup> SOUF, ¶ 99.

<sup>87</sup> SOUF, ¶ 100.

<sup>88</sup> SOUF, ¶ 101.

<sup>89</sup> SOUF, ¶ 103.

<sup>90</sup> SOUF, ¶ 102.

<sup>91</sup> *Id.*

<sup>92</sup> SOUF, ¶ 96.

<sup>93</sup> DE 9, p. 33 (TRO Exhibits, Vol. I, Ex. 15 (Lewis TRO Decl.), Att. K, p. 11). To burnish his credibility, Petroski/Marshall asserted that he was an attorney, that his children went to Harvard, and

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<sup>101</sup> SOUF, ¶¶ 110-113. Crossland's total revenue was \$518,903 (SOUF, ¶ 110); Scoreleaper's total revenue was \$116,010 (SOUF, ¶ 111); and 1 Guaranty's total revenue was \$279,



B. The FTC Is Entitled to Summary Judgment against S. Lalonde and Petroski.

In the six counts of its complaint, the FTC alleged that the defendants' three scams violated the CROA, the TSR, and the FTC Act. The uncontroverted evidence, described in Section II above, establishes that the FTC is entitled to judgment as a matter of law on each count against S. Lalonde and Petroski only. Questions of fact preclude judgment as a matter of law against A. Lalonde individually.

1. Violations of the Credit Repair Organizations Act ("CROA") (Counts 1 and 2)

The CROA protects the public from unfair or deceptive advertising and business practices by credit repair organizations. 15 U.S.C. § 1679(b). Violations of CROA constitute violations of Section 5 of the FTC Act. 15 U.S.C. § 1679h(b)(1).

The defendants Lalonde and Petroski meet the CROA's definition of "credit repair organization":

[A]ny 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)(A). Defendants Lalonde and Petroski are subject to the CROA because they used the Internet and telephones to sell, provide, or perform credit repair services for the purpose of improving consumers' credit records, credit history, or credit rating. SOUF, ¶ 79; *see Rannis v. Recchia*, 2010 U.S. App. LEXIS 10858, \*4-7 (9th Cir., May 27, 2010) (court affirmed summary judgment finding that an individual defendant, an a

record, credit history, or credit rating); *Polacsek v. Debticated Consumer Counseling*, 413 F. Supp. 2d 539, 545-54 (D. Md. 2005) (finding a defendant is subject to CROA if it meets the statutory definition even it offers other services, such as credit counseling, and is not wholly a credit repair organization).

The evidence shows that the defendants, Stephen Lalonde and Michael Petroski, violated the CROA, by misrepresenting credit repair services (Count 1 of the Complaint), and by charging for them before they were fully performed (Count 2 of the Complaint).

- a. Count 1: Defendants Stephen Lalonde and Michael Petroski Violated the CROA by Misrepresenting That They Could Remove Truthful, Negative Items from Consumers' Credit Reports, Substantially Improve the Consumers' Credit Scores and Use the Improved Scores to Obtain Home Mortgages for the Consumers.

The CROA prohibits credit repair organizations from making or using any untrue or misleading representation of their services. 15 U.S.C. § 1679b(a)(3). To establish violations of the CROA, the FTC must show that Defendants S. Lalonde and Petroski made an untrue or misleading statement regarding their credit repair services. *FTC v. Gill*, 265 F.3d 944, 955-56 (9th Cir. 2001) (court affirmed order granting summary judgment finding that Defendant made false representations in violation of the CROA, 15 U.S.C. § 1679b(a)(3)).

As discussed in Section II.B.2, above, the defendants, S. Lalonde and Petroski, acting through 1 Guaranty, Crossland, and Scoreleaper, made statements to consumers to



recent bankruptcies.<sup>103</sup> In numerous instances, they either guaranteed or stated there was a very high likelihood that consumers would get loans after the credit repair process.<sup>104</sup> However, the defendants did not remove truthful, negative information, including bankruptcies, from consumers's credit reports to improve their credit scores and get them mortgage loans.<sup>105</sup>

Accurate information which is not obsolete cannot be deleted from a credit report. The FTC presented uncontroverted evidence that no credit repair company can legitimately remove or enable consumers to remove all negative entries from a consumer's credit report. The FTC's expert opines that "no one can legally remove timely and accurate information from a credit report." *See* Expert Report of Marietta E. Rodriguez on Behalf of Plaintiff Federal Trade Commission.<sup>106</sup> Accurate credit information can be reported for 7 years, and bankruptcies can be reported for 10 years. Although consumers can

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<sup>103</sup> SOUF, ¶ 83-84.

<sup>104</sup> SOUF, ¶ 87.

<sup>105</sup> SOUF, ¶¶ 93-94.

<sup>106</sup> PSJ Ex. 29 (Rodriguez Expert Report), pp. 9 -11.

<sup>107</sup> PSJ Ex. 29 (Rodriguez Expert Report.), pp. 7-8.

<sup>108</sup> PSJ Ex. 29 (Rodriguez Expert Report), p. 11.

consumers over the phone, they lacked the documentation about negative items on consumers' credit reports on which to base their representations.<sup>109</sup> Without such documentation from consumers, the defendants could not make accurate predictions about removing negative items.<sup>110</sup> Even if the defendants had such documentation from consumers, they still could not predict how their credit repair efforts would impact consumers' credit scores because the analytics for deriving credit scores are proprietary to credit reporting agencies and were not transparent to the defendants.<sup>111</sup> Thus, they could not have predicted that their credit repair efforts would improve credit scores, at all, let alone improve them sufficiently to qualify consumers for loans.<sup>112</sup> This inability to predict the results of the credit repair process renders entirely misleading claims that consumers were guaranteed to get loans or that there was a high likelihood that consumers would get loans.<sup>113</sup>

The defendants' own tactics made it less likely they would obtain the results they promised consumers. The defendants' practice of challenging all negative items, whether accurate or not, would lead lenders to suspect the prospective borrowers' credit status.<sup>114</sup> This was particularly true during the time the defendants made their representations, because by 2007 financial institutions were tightening their credit practices to reflect a downturn in the mortgage

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<sup>109</sup> PSJ Ex. 29 (Rodriguez Expert Report), p. 10; SOUF, ¶ 86.

<sup>110</sup> PSJ Ex. 29 (Rodriguez Expert Report), p. 10.

<sup>111</sup> PSJ Ex. 29 (Rodriguez Expert Report), p. 12.

<sup>112</sup> *Id.*

<sup>113</sup> PSJ Ex. 29 (Rodriguez Expert Report), p. 10.

<sup>114</sup> PSJ Ex. 29 (Rodriguez Expert Report), p. 11.

market.<sup>115</sup>

By the end of 2007, 1<sup>st</sup> Guaranty was not obtaining mortgage loans for consumers. The manager of 1<sup>st</sup> Guaranty's loan processing department, Maria Ramirez, expressed her concern to Lalonde that 1<sup>st</sup> Guaranty did not have lenders for its credit repair customers.<sup>116</sup> Managers and employees were becoming increasingly frustrated about describing a supposed end result (obtaining mortgages for credit-impaired consumers) which was unobtainable.<sup>117</sup> Rosemary Coker, a 1<sup>st</sup> Guaranty employee who worked under Maria Ramirez processing loans, gave as a reason for her resignation that she did not want to "keep misleading borrowers thinking; they are closing. When in reality there is no lender." The defendants' own record keeping system,

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<sup>115</sup> *Id.*

<sup>116</sup> SOUF, ¶ 92, citing PSJ Ex.24 (Ramirez Decl.), ¶ 10.

<sup>117</sup> SOUF, ¶ 92.

<sup>118</sup> *Id.*

<sup>119</sup> SOUF, ¶¶ 49, 91.

- b. Count 2: Defendants Stephen Lalonde and Michael Petroski Violated the CROA by Charging or Receiving Money for Credit Repair Services Before Such Services Were Fully Performed.

The CROA also prohibits charging or receiving any money or other valuable consideration for the performance of credit repair services before they are fully performed. *See* 15 U.S.C. § 1679b(b). The defendants, S. Lalonde and Petroski, acting through 1<sup>st</sup> Guaranty, Crossland, and Scoreleaper, violated this provision of the CROA by charging and receiving payment for credit repair services before they were fully performed.

The defendants did not start their credit repair services until consumers paid in full.<sup>120</sup> Even after the defendant Petroski left Scoreleaper in September 2009<sup>121</sup>, he continued to charge consumers in advance for credit repair services. In charging and receiving these advance

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<sup>120</sup> SOUF, ¶ 89.

<sup>121</sup> SOUF, ¶ 76.

abusive and deceptive telemarketing acts or practices. 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).

The defendants, S. Lalonde and Petroski, acting through the defendants, 1<sup>st</sup> Guaranty, Crossland, and Scoreleaper, were “seller[s]” or “telemarketer[s]” engaged in “telemarketing,” as those terms are defined respectively in the TSR, 16 C.F.R. §§ 310.2(z)<sup>122</sup>, (bb)<sup>123</sup>, and (cc)<sup>124</sup>, because they received telephone calls from customers as part of a program of telemarketin00 0.0000 TD(t)Tj3.36

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<sup>122</sup> The TSR defines a “seller” as “any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.”

<sup>123</sup> The TSR defines “telemarketer” as “any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.”

<sup>124</sup> The TSR defines “telemarketing” as “a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.”

<sup>125</sup> SOUF, ¶ 79.

or represented they can obtain with a high likelihood of success. 16 C.F.R. § 310.4(a)(4).<sup>126</sup> As discussed above in connection with their CROA violations (Section III.B.1.b, above), the defendants, S. Lalonde and Petroski, acting through 1<sup>st</sup> Guaranty, Crossland, and Scoreleaper, demanded advance payment over the phone for the credit repair services that they represented would result in consumers receiving mortgage loans.<sup>127</sup> In addition, they demanded advance payment over the phone for the loan modification services that they represented would result in consumers receiving modified loans.<sup>128</sup>

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<sup>126</sup> Under the TSR, inbound telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, are ordinarily exempt from the TSR. *See* 16 C.F.R. § 310.6(b)(5). The TSR, however, covers inbound telemarketing in various instances, including when the calls are made, as here, in connection with requesting advance payment for a loan or other extension of credit.

<sup>127</sup> SOUF, ¶¶ 87,89.

<sup>128</sup> SOUF, ¶¶ 99-101.

<sup>129</sup> SOUF, ¶ 87.

<sup>130</sup> SOUF, ¶ 100.



material to consumers as a matter of law. The defendants, Lalonde and Petroski, violated Section 5(a) of the FTC Act and the FTC is entitled to summary judgment on Count 4.

- b. Count 5: Defendant, Stephen Lalonde, Violated the FTC Act by Misrepresenting That He Would Obtain Refinanced Home Mortgage Loans for Consumers and Use the Proceeds of Those Loans to Payoff Consumers' Existing Mortgage Loans Fully and Promptly.

In Count 5, the FTC seeks summary judgment against Stephen Lalonde and Amy Lalonde for violations of the FTC Act. The FTC asserts that the defendants, S. Lalonde and A. Lalonde, acting through the corporate defendants, 1<sup>st</sup> Guaranty and Spectrum, represented to consumers, orally as well as in loan closing documents such as HUD-1 forms, that disbursements from their new loans would be made fully and promptly to specifically named parties, such as former lenders.<sup>131</sup> The record evidence of employee and consumer declarations in this action as well as the prior criminal action against S. Lalonde shows that in numerous instances, borrowers' loan proceeds were not disbursed as represented.<sup>132</sup>

The evidence submitted by the FTC does not show A. Lalonde's direct participation in the misrepresentations. In her depositions, A. Lalonde testified that she did not know the

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<sup>131</sup> SOUF ¶ 52.

<sup>132</sup> SOUF ¶ 56, 71, 92.



various e-mails from Mr. Carretta. See A. Lalonde Depo. (5/12/10) , Ex. 35b pp. 49, 53-54, 56-58, 62-63, 66-67, 69, 74-75, 77-78 (DE# 113-2, 8/26/10). Thus, fact issues exist that preclude summary judgment in the FTC's favor as to A. Lalonde's individual liability for alleged violations of the FTC Act.

The representations misled consumers, who stopped paying their old mortgages and subsequently found themselves threatened with foreclosure or even undergoing foreclosure of their homes. Th

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<sup>133</sup> SOUF ¶¶ 56.

<sup>134</sup> PSJ Ex. 29 (Rodriguez Expert Report), p. 13.

and Scoreleaper, falsely represented that they would obtain modifications of consumers' existing mortgages to make them more affordable.<sup>135</sup> The defendants claimed that they could reduce consumers' interest rates and lower their monthly payments on existing mortgage loans, and that consumers could get these loan modifications quickly.<sup>136</sup> Like all of their other claims described herein, the defendants' loan modification claims were false. The defendants' own records establish that they failed to modify a single mortgage as evidenced by consumer and employee declarations.<sup>137</sup> Likewise, the FTC's expert opined that the representations were baseless. At the time they made their sales pitch, the defendants lacked the requisite documentation from borrowers relating to their income, employment, debt and the delinquent status and payment history of the loan.<sup>138</sup> The defendants also lacked the necessary information from the mortgage servicers and investors on which to base their specific promises of reduced interest rates, reduced monthly payments, and quick turn around times.<sup>139</sup> The FTC's expert explained that approving loan modifications is at the discretion of the mortgage servicers and investors, who consider several factors in determining whether a loan should be modified or foreclosed.<sup>140</sup> The expert also averred that it would not have been possible for the defendants to make predictions about

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<sup>135</sup> SOUF ¶¶ 99.

<sup>136</sup> *Id.*

<sup>137</sup> SOUF ¶¶ 102-103.

<sup>138</sup> PSJ Ex. 29 (Rodriguez Expert Report), p. 16; SOUF ¶¶ 99.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

specific turn around times given the complexity of the loan modification process.<sup>141</sup>

The defendants' false loan modification representations misled consumers who reasonably believed that they would receive more affordable, modified loans. The representations were express claims that were material to consumers. Thus, the uncontroverted facts show that no genuine issue of material fact exists that the defendants violated Section 5(a) of the FTC Act in connection with Count 6. *See FTC v. Dinamica Financiera*, Civil No. 209-cv-03554-MMM-PJW, 17-21 (C.D. Cal. Aug. 19, 2010) (court granted summary judgment finding that defendants misrepresented loan modification services).

C. The Individual Defendants, S. Lalorde and Petoski, Are Subject to Injunctive Relief and Monetary Relief.

1. Legal Standard

The Clerk's Default (DE# 56, 2/4/10) entered against the corporate defendants, 1<sup>st</sup> Guaranty, Spectrum, Crossland, and Scoreleaper establishes corporate liability in this action. *Buchanon v. Bowman*, 820 F.2d 359, 361 (11<sup>th</sup> Cir. 1987). "Once the FTC has established corporate liability, 'the FTC must show that the individual defendants participated directly in the practices or acts or had authority to control them ... The FTC must then demonstrate that the individual had some knowledge of the practices.'" *FTC v. Gem Merchandising Corp.*, 87 F.3d 466, 470 (11<sup>th</sup> Cir. 1996) (quoting *FTC v. Amy Travel Serv., Inc.*

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<sup>141</sup> *Id.*

*Amy Travel Service*, 875 F.2d at 574 (quoting *FTC v. Kitco*, 612 F. Supp. 1292, 1292 (D. Minn. 1985)). Additionally, “[a]n individual’s status as a corporate officer gives rise to a presumption of ability to control a small, closely-held corporation.” *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1270 (S.D. Fla. 2007) (quoting *FTC v. Windward Mktg.*, 1997 WL 33642380, \*25 (N.D. Ga. Sept. 30, 1997) (quoting *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973)). “The degree of participation in business is probative of knowledge.” *Amy Travel Service*, 875 F.2d at 574 (citation omitted). Proof of intent to defraud is not required to satisfy the knowledge requirement. *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1270 (citation omitted). In *Amy Travel Service*, the Seventh Circuit acknowledged that “the knowledge requirement is the key issue in this case.” *Amy Travel Service*, 875 F.2d at 573.

The Court can order injunctive relief against individual defendants for violations of Section 5(a) of the FTC Act if the individuals participated directly in the deceptive acts or practices or had the authority to control them. *Gem Merchandising Corp.*, 87 F.3d at 470 (quoting *FTC v. Amy Travel Serv., Inc.*, 875 F.2d at 573); *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1270. Additionally, the Court may order monetary relief against the individual defendants if they had or should have had knowledge or awareness of the misrepresentations.

The FTC’s uncontroverted evidence shows that S. Lalonde and Petroski are individually liable for their violations and are subject to both injunctive and monetary relief.

## 2. Individual Liability of Stephen Lalonde

In S. Lalonde’s Plea Agreement and subsequent Stipulated Factual Proffer at the time he entered his guilty plea, he stated that he falsely represented on the HUD-1 forms of six consumers that their prior mortgages would be paid off, thereby causing more than a million

dollars in damage claims.<sup>142</sup> Pursuant to the doctrine of collateral estoppel, Lalonde cannot now relitigate these critical elements in the context of the FTC's civil complaint involving Spectrum's failure to honor promises to disburse mortgages. See *Emich Motors Corp. v. General Motors Corp.*, 340 U.S. 558, 568 (1951) ("It is well established that a prior criminal conviction may work an estoppel in favor of the Government in a subsequent civil proceeding."); *Blohm v. Commissioner of Internal Revenue*, 944 F.2d 1542r of Internal Reve

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<sup>142</sup> SOUF ¶¶ 70-71, citing DE 23 (Plea Agreement) and DE 24 (Stipulated Factual Proffer).

<sup>143</sup> Collateral estoppel applies to issues in a prior criminal conviction whether the conviction is pursuant to a jury verdict or a guilty plea. *United States v. Killough*, 848 F.2d 1523, 1528 (11<sup>th</sup> Cir. 1988).

<sup>144</sup> Additionally, the factual statements in Lalonde's Plea Agreement and Stipulated Factual Proffer, cited above constitute an admission for the purposes of this civil action. *Killough*, 848 F.2d at 1528.

his companies had promised to consumers on HUD-1 forms and in prior sales representations.<sup>145</sup> Instead, after reiterating the promises in numerous one-on-one conversations with consumers, he repeatedly failed to honor them.<sup>146</sup> Lalonde knowingly participated in his companies' mortgage fraud. *See Transnet Wireless Corp.*, 506 F. Supp. 2d at 1270.

With respect to the credit repair and loan modification frauds, Lalonde had the authority to control as he was the hands-on sole owner of each of the corporations that perpetrated the fraud.<sup>147</sup> He was present at all times on the business premises of his companies and monitored the activities of his salesmen and managers, using a video and audio system, as well as company-wide instant message and e-mail systems.<sup>148</sup> Additionally, Lalonde was the sole or joint signatory on all bank accounts of the defendant corporations.<sup>149</sup>

The FTC has met the knowledge requirement with testimony of Lalonde's managers and his own records that indicate that he was fully apprised of customer complaints concerning his companies. Lalonde's audio system provided him with records of the sales calls of his employees – calls which, as the plaintiff's transcripts demonstrate, revealed all of the fraudulent practices engaged in by his credit repair and loan modifications businesses.<sup>150</sup> Finally, through an office-wide computer network, he had day-to-day access to performance records of his

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<sup>145</sup> SOUF ¶¶ 6-7, 54.

<sup>146</sup> SOUF ¶¶ 56, 65, 92.

<sup>147</sup> SOUF ¶¶ 6-7.

<sup>148</sup> SOUF ¶¶ 8, 42, 46.

<sup>149</sup> SOUF ¶ 6.

<sup>150</sup> SOUF ¶ 42.

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<sup>151</sup> SOUF ¶¶ 43, 46.

<sup>152</sup> SOUF ¶¶ 7, 10-12, 15, 20, 61.

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<sup>153</sup> The Court finds that the fact questions regarding knowledge raised by A. Lalonde's deposition that was filed by the FTC are adequate to defeat the FTC's motion for summary judgment. The Court notes that Ms. Lalonde submitted declarations of herself and various employees that essentially state that she never participated in closings and that any problems involving Spectrum's failure to make promised disbursements were entirely S. Lalonde's fault. *See* Defendant, Amy Lalonde's, Statement to Controverted Material Facts and exhibi 0.0000 TD(c)Tj0950.0000



case).

4. Individual Liability of Michael Petroski

The defendant, Petroski, had the authority to control the deceptive practices of Crossland

them to ge

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<sup>154</sup> SOUF, ¶ 26.

<sup>155</sup> SOUF, ¶ 28.



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<sup>156</sup> SOUF, ¶¶ 30-31, 96.

<sup>157</sup> SOUF, ¶ 32.

The phrase “proper caseas

to order a monetary judgment for restitution, as well as disgorgement of the defendants' ill-gotten gains. *Gem Merchandising*, 87 F.3d at 469-70.

Injunctive relief is warranted. Lalonde and Petroski should be enjoined from the practices alleged in the Complaint, including fencing-in relief to deter them from violating the law in the future. Because of the repetitive, long standing nature of their fraudulent conduct, notwithstanding their awareness of judicial proceedings stemming from such misconduct, the fencing-in provisions include bans from engaging in the sale of mortgages and credit repair and loan modification services, and from all telemarketing. Lalonde and Petroski are liable for equitable monetary relief to redress consumers and to disgorge their ill-gotten gains. Reporting and monitoring provisions are also appropriate under the circumstances. *See FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1276 (S.D. Fla. 1999).

1. **Bans Against Defendants Stephen Lalonde and Michael Petroski Engaging in Mortgage-Related Activities, Credit Repair, and Telemarketing**

District courts have banned defendants in FTC cases from engaging in certain activities to ensure the effectiveness of injunctive relief where the defendants demonstrate blatant disregard of the law. *See FTC v. Five Star Auto Club, Inc.*, 2000 U.S. Dist. LEXIS 10548 (S.D.N.Y. June 9, 2000) (permanent injunction banned defendants from engaging in multi-level marketing); *FTC v. Micom Corp.*, 1997 U.S. Dist. LEXIS 3404 (S.D.N.Y. Mar. 12, 1997) (on summary judgment, court banned defendants from the promotion, advertising, marketing, sale, or offering for sale of any U.S. government licenses or permits and certain investment offerings). The Court agrees that the defendants, S. Lalonde and Petroski, should be enjoined from engaging in the sale and provision of mortgage, credit repair, and loan modification services, and from engaging in

telemarketing.

a. Stephen Lalonde

Beginning in at least February 2007 with his fraud involving undisbursed mortgage monies, S. Lalonde engaged in three separate scams involving the mortgage loan industry and credit repair. When his fraud involving Spectrum's theft of mortgage monies collapsed because the underwriter for the company terminated its contract, Lalonde switched to his credit repair and loan modification scams. Even after agreeing to surrender all Florida licenses involving his mortgage and lending businesses as part of a guilty plea in a criminal case arising from his first scam, Lalonde continued his credit repair and loan modification fraud for another four months, switching his operation to a new location in Ft. Lauderdale. In effectuating his scams, Lalonde used a wide array of interrelated companies, including the four corporate defendants.

Lalonde's repetitive fraudulent conduct, even in the face of ongoing legal proceedings, demonstrates that he cannot be trusted to engage lawfully in the mortgage, credit repair, or loan modification businesses. Moreover, Lalonde's past behavior shows that he presents too great a risk of serious economic injury to vulnerable consumers seeking credit and mortgage assistance in this venue. Numerous courts have ordered similar bans at summary judgment to protect consumers. *See FTC v. Dinamica Financiera*, Civil No. 2:09-cv-03554-MMM-PJW, 17-21 (C.D. Cal

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<sup>159</sup> The telemarketing definition proposed herein has been used in recent FTC final orders. *See, e.g., FTC v. Voc. Guides, Inc.*, 2009 U.S.

engaged in the business of telemarketing and the business of marketing career advisory goods or services); *Voc. Guides, Inc.*, 2009 U.S. Dist. LEXIS 29522, \*52-53 (court modified order to enjoin defendant from telemarketing).

b. Michael Petroski

Like S. Lalonde, individual defendant, Michael Petroski, has engaged in repetitive, widespread fraud involving mortgage, credit repair, and loan modification activities. Serving as the manager of corporate defendants, Crossland and Scoreleaper, Petroski telemarketed bogus credit repair and mortgage products to credit-impaired customers. Without any basis, he promised consumers that Lalonde's companies could repair their damaged credit histories, irrespective of how low their scores were, and then obtain mortgages for them. He also promised consumers, without substantiation, that he could obtain modifications of their mortgages with huge reductions in interest rates and monthly payments.

After he stopped working for Lalonde in September 2009, Petroski began working on his own, still posing as a representative of Crossland and Scoreleaper, and cheating consumers over the phone. He evaded service in this case and continued his deceptive practices until at least April 2010, notwithstanding the fact he was aware of this proceeding by the first week of December 2009. This habitual misconduct shows that he will engage in similar misconduct in the future unless the Court prohibits him from providing mortgage, credit repair, and loan modification services, and from engaging in telemarketing.

2. Other Injunctive Provisions

The FTC is entitled to a permanent injunction that enjoins defendants, Lalonde and Petroski, from making any false or misleading statements in connection with the sale of any



goods or service

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<sup>160</sup> As noted in Section III.B.1. and III.B.2., violations of the CROA and the TSR are violations of Section 5 of the FTC Act. *See* 15 U.S.C. § 1679h(b)(1); 15 U.S.C. § 6102(c); and 15 U.S.C. § 57a(d)(3).

1387-89; *Freecom Communs., Inc.*, 401 F.3d at 1206; *Security Rare Coin & Bullion Corp.*, 931 F.2d at 1315-16.

The Court finds the defendants, S. Lalonde and Petroski, jointly and severally liable for restitution in connection with Counts 1-4, and 6, and defendant, S. Lalonde, individually liable for disgorgement in connection with Count 5. In connection with Counts 1-4, and 6, restitution would compensate consumers for the money they paid for credit repair and loan modification services they did not receive. In connection with Count 5, disgorgement is the more appropriate remedy. Stewart Title, Spectrum's title insurance company, stepped in to pay title claims to avoid injury to borrowers and lenders resulting from Lalonde's failure to make the disbursements. Disgorgement would deprive Lalonde of his unjust enrichment. *See Gem Merchandising Corp.*, 87 F.3d at 470.

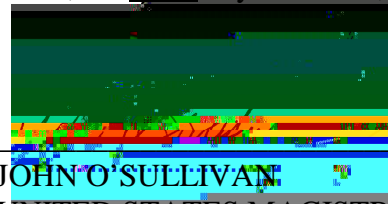
Damages for consumer injury are calculated by determining the gross sales. *See Chierico*, 206 F.3d at 1386-87 (11 Cir. 2000) (affirming the district court's a

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<sup>161</sup> As discussed in Sections II.B and C, the damage figures are conservative. The figure for Spectrum (\$1,773,721) represents undistributed monies from consumers' refinancing agreements; total undistributed monies, including monies from *any* mortgage agreement, were \$2,181,486. The figures for the loan modification

Amy Lalonde and thus, the motion for summary judgment is denied as to her.

DONE AND ORDERED in Miami, Florida, this 30th day of March, 2011.



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JOHN O' SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

Copies provided to:  
All Counsel of Record

Copies provided by Chambers to:

Amy Lalonde