

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. _____ -- CIV

U.S. District Judge _____ / U.S. Magistrate Judge _____

<p>Federal Trade Commission , Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Capital Choice Consumer Credit, Inc. , a corporation, also doing business as National Credit Shopper , also doing business as NCS,</p> <p>Millennium Communications and Fulfillment, Inc., a corporation, also doing business as National Research Group,</p> <p>E-Credit Solutions, Inc. , a corporation,</p> <p>Ricardo E. Martinez , individually and as an officer of</p> <p>Capital Choice Consumer Credit, Inc. , and Millennium Communications and Fulfillment, Inc. , and</p> <p>Scott A. Burley , individually and as an officer of E-Credit Solutions, Inc.,</p> <p>Defendants.</p>

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff Federal Trade Commission ("FTC" or "Commission") for its complaint alleges:

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

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a)(2)-5TJ 35 FTC Act, 1

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Rule"), 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing practices. The Commission may initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and the TSR to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

5. Defendant Capital Choice Consumer Credit, Inc. ("Capital Choice"), is a Florida corporation with its offices and principal place of business located at 9590 NW 25th Street, Miami, Florida. Capital Choice transacts business in the Southern District of Florida. Capital Choice also does business as National Credit Shopper and NCS.

6. Defendant Millennium Communications and Fulfillment, Inc. ("Millennium"), is a Florida corporation with its offices and principal place of business located at 9590 NW 25th Street, Miami, Florida. Millennium transacts business in the Southern District of Florida. Millennium also does business as National Research Group.

7. Defendant E-Credit Solutions, Inc. ("E-Credit"), is a Nevada corporation with its principal place of business located at 1400 Colorado Avenue, Boulder City, Nevada. E-Credit transacts business in the Southern District of Florida at 9590 NW 25th Street, Miami, Florida.

8. Defendant Ricardo E. Martinez is an owner, officer and director of defendants Capital Choice and Millennium. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this Complaint. Defendant Martinez resides and transacts business in the Southern District of Florida.

9. Defendant Scott A. Burley is an officer and director of defendant E-Credit. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this Complaint. Defendant Burley transacts business in the Southern District of Florida.

COMMERCE

10. At all times relevant to this Complaint, defendants' course of business, including the acts and

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

27. The Telemarketing Sales Rule also prohibits telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of obtaining or arranging a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit. 16 C.F.R. § 310.4(a)(4).

28. 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), violations of the Telemarketing Sales Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

29. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the FTC Telemarketing Sales Rule. 16 C.F.R. §§ 310.2(r), (t) & (u).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT TWO

30. In numerous instances, in connection with the telemarketing of advance fee credit cards, defendants or their employees or agents have misrepresented, directly or by implication, that after paying defendants a fee, consumers will, or are highly likely to, receive an unsecured major credit card, such as a VISA or MasterCard credit card.

31. Defendants have thereby violated Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT THREE

32. In numerous instances, in connection with the telemarketing of advance fee credit cards, defendants or their employees or agents have requested and received payment of a fee in advance of consumers obtaining a credit card when defendants have guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of an unsecured credit card, such as a VISA or MasterCard credit card, for such consumers.

33. Defendants have thereby violated Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4).

COMMON ENTERPRISE

34. The defendants have operated as a common enterprise while engaging in the deceptive acts and practices and Telemarketing Sales Rule violations alleged above.

CONSUMER INJURY

35. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of defendants' unlawful acts or practices. In addition, defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, the defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

36. Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), empower this Court to issue a permanent injunction against defendants' violations of the FTC Act and the Telemarketing Sales Rule, and, in the exercise of its equitable jurisdiction, to order such ancillary relief as preliminary injunction, rescission, restitution, disgorgement of profits resulting from defendants' unlawful acts or practices, and other remedial

measures.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, request that this Court:

1. award plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
2. permanently enjoin the defendants from violating the FTC Act and the Telemarketing Sales Rule;
3. award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the FTC Act and the Telemarketing Sales Rule, including but not limited to, rescission of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;
4. award plaintiff the costs of bringing this action and reasonable attorneys' fees, as well as such other and additional relief as the Court may determine to be just and proper.

DATED _____, 2002

Respectfully submitted,

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