

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

FEDERAL TRADE COMMISSION

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Plaintiff

\*

vs.

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CIVIL ACTION NO. MJG - 11- 1483

LOMA INTERNATIONAL  
BUSINESS GROUP INC., et al.

\*

\*

Defendants

\* \* \* \* \*

MEMORANDUM OF DECISION

The Court has conducted a bench trial against Defendants LOMA INTERNATIONAL BUSINESS GROUP INC., et al. The Court has heard the evidence presented, reviewed the exhibits, considered the materials submitted by the parties, and had the benefit of the arguments of counsel. The Court now issues this Memorandum of Decision as its findings of fact and conclusions of law in compliance with Rule 52(a) of the Federal Rules of Civil Procedure.

<sup>1</sup> Defendant Marco Alban, having filed a Motion for Summary Judgment resolved herewith, did not participate in the trial.

<sup>2</sup> <sup>3</sup>In an action tried on the facts without a jury the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58. Fed. R. Civ. P. 52(a) (1).



The FTC seeks to have the Court permanently enjoin the Defendants from violating § 5(a) of the FTC Act by engaging in unauthorized immigration services or any similar deceptive practice and seeks restitution in the amount of \$750,000. As discussed herein, the Court finds that the FTC has established the need for injunctive relief against the Albans. However, the Court finds it necessary to conduct further proceedings to resolve remaining issues relating to the equitable relief to be provided.

II. STATUTORY FRAMEWORK

Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 57(a) & 15 U.S.C. § 57(b) (FTC Act).  
15 U.S.C. § 57(a)(1) & 15 U.S.C. § 57(b)(1)

- (a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade
  - (1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.
  - (2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, [with stated exceptions] from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

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DUP RI (O + HUD OGR 3 / R P 4 Although the entity was not a corporation . The newspaper ceased operations in 2004.

Mr. Alban testified that in or about 2000, he attended a n immigration semi nar and was told that he did not need to be an attorney to assist with filling out immigration forms but that he needed to apply to the Executive Office for Immigration Review to be an accredited representative. 5

In or about 2002, Mr. Alban attended a tax preparation seminar and obtained authorization to prepare income tax returns. He provided the income tax preparation and filing [REDACTED] , QF [REDACTED] QDPH

At about the same time, Mr. Alban began to provide drug and alcohol counseling to members of the Hispanic community. This business was operated under the name Servicios LatinoAmericanos [REDACTED] , QF [REDACTED] DOWKRXJK DV ZLWK /RPD , QF [REDACTED] WKH QD not then refer to an existing corporation.

In 2005, Mr. Alban prepared and signed incorporation papers [REDACTED] IRU FRUSRUDWLRQV WR EH QDPHG [REDACTED] [REDACTED] , QWHUQDWLRQDO [REDACTED] , QF [REDACTED] DQG [REDACTED] 6HUYLFLRV /DWLQR\$PHULFDQRV 'H [REDACTED] [REDACTED] , Q 2007, the papers were filed and the corporations were formed.

Mr. Alban was identified as the sole director of both [REDACTED] FRUSRUDWLRQV 30 [REDACTED] ([REDACTED]

B. The Immigration Service's Operation

The Albans testified that when they first began offering assistance with completing immigration forms, most of their

<sup>7</sup> Regular classes were conducted by certified counselors, and a fee was charged per class. Mr. Alban took the courses for certification in drug and alcohol abuse counseling. M. Alban

Dep. 15:18 ± 30 [REDACTED] ([REDACTED]

<sup>8</sup> \$SSDUHQWO\ WKH QDPH [REDACTED] [REDACTED] , QF [REDACTED] ZID.V QRW DYDLODE

customers brought in their own forms

<sup>9</sup> and they, purportedly,

customers, deposited the funds into a Servicios checking account, and then made payment to the Government by a Servicios check. The canceled check served as proof of receipt. The Albans stopped using the Servicios bank account for this purpose in 2007.

The Albans did not operate their immigration business competently. While some customers fortunately obtained what they sought, many did not. Data from USCIS shows that of more than 600 immigration applications capable of association with Defendants, over 60 percent were denied or rejected. Strong

' H F O ^ 3 O ¶ V ([

Some customers suffered severely for their reliance upon the Albans. Several of the Alban s ¶ customers were deported. One customer who relied upon the Albans ¶ advice was arrested and jailed for almost 11 months.<sup>12</sup> In 2007 and 2008, the Albans<sup>13</sup> settled two separate lawsuits brought by customers by signing findings of fact acknowledging ineffective assistance with immigration applications.<sup>14</sup> Nevertheless, the Albans continued to operate their immigration business, as before, until June 1, 2011.

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<sup>12</sup> See \* X H Y H U D 5 L Y H U D ' H F O ^ 3 O ¶ V ([

<sup>13</sup> And Loma.

<sup>14</sup> See 3 O ¶ V ([ - Miguel Zelaya, et.al. v. Manuel Alban, et. al., Civil Case No. 0101 - 0012695 - 2007; 3 O ¶ V ([ - Santos Bacilia Guevara Rivers v. Manuel Alban, etc. al., Civil Case No. 0101 - 0004723 - 2008.



On June 1, 2011, the FTC filed the instant lawsuit, obtained an ex parte Temporary Restraining Order, appointment of a monitor, and permission to enter the Albanian banks and seize records. The Albanian banks were poorly organized. Nevertheless, the monitor was able to identify and contact some of the estimated 1,000 immigration customers<sup>15</sup> to provide assistance with any outstanding immigration requirements. By virtue of the lack of reliable and adequate financial records, the monitor retained a forensic

- (2) that was likely to mislead customers acting reasonably under the circumstances; and
- (3) the representation, omission, or practice was material.

FTC v. Tashman, 318 F.3d 1273, 1277 (11th Cir. 2003); FTC v. Gill, 265 F.3d 944, 950 (9th Cir. 2001).

If the se three elements are proven, the FTC need not prove any intent to deceive, and were the Defendants able to prove good faith, <sup>18</sup> it would not provide a defense. FTC v. Patriot Alcohol Testers, Inc., 798 F. Supp. 851, 855 (D. Mass. 1992); Y & Y 9 H U L W \ , Q W ¶ 0443 / ¶ 36 48, 63 (2d Cir. 2006); FTC v. Wor ld Travel Vacation Brokers, Inc., 861 F.2 d 1020, 1029 (7th Cir. 1988).

To hold an individual liable for the deceptive acts or practices of a corporate entity, the FTC must establish that the individual had some knowledge of the unlawful conduct, and the individual participated in the acts or had a uthority to control the conduct. FTC v. Ross, 897 F. Supp. 2d 369, 384 (D. Md. 2012) (citing FTC v. Amy Travel Serv., Inc., 875 F.2d 564, 57 3-74 (7th Cir. 1989)). The knowledge requirement may be fulfilled by showing actual knowledge of material misrepresentations or reckless indifference to the truth or falsity of such

<sup>18</sup> The Albans have not, however, proven good faith. Indeed the Court finds that Mr. Alban intentionally sought to mislead his customers as to his competence and authority and Mrs. Alban was,

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misrepresentations . Id.

authorization to provide such a service, hence is sufficient to support the finding that there was a representation, omission, or practice.

The evidence includes many

5 L Y H U D ' H F O ^ 3 O ¶ V (3[My sister] told me about an attorney named Manuel Alban who had prepared her immigration

G R F X P H Q W V ' 9 D V T X H ] 0 R Q W R \ D ' H F O ^ 3 O ¶ V ([ 3 , R I 0 U \$ O E D Q W K U R X J K P \ E U R W K H U ' ^

Although the finding is not necessary to establish liability in the instant case, the Court finds that the Albans by implication (and sometimes expressly) at times <sup>20</sup> falsely represented Mr. Alban to be a n attorney. See, e.g., Lovo Decl.

^ 3 O ¶ V ([ 3 , E H O L H Y H G 0 U \$ O E D Q Z D V D Q D W W R U Q H ' G u e v e r a R i v e r a D e c l . 8 ^ 3 O ¶ V ([ 3 , Z R X O G Q H Y H U K D Y H X V H G 0 U \$ O E D Q ¶ V V H U Y L F H V L I , K D G N Q R Z Q K H Z D V D W W R U Q . H \ O n e c u s t o m e r t e s t i f i e d

responding, 3 + R Z F D Q , K H O S \ R X " ' W R W K H T X H V W L R Q 3 , V W K  
D W W R U Q H \ 0 D Q X H O \$ O E D Q ¶ 3 O R ¶ V L F [ H Nor did Mr.  
Alban choose to inform a telephone caller stating, 3 , D P  
interested in getting att R U Q H \ 0 D Q X H O \$ O E D Q ¶ V t h a t H u n e L F H V '   
was not an attorney. 3 O ¶ V ( [ 6.4.

2. Mislead ing

The Court must consider whether a representation is likely  
to mislead a reasonable consumer by viewing the representation  
as a whole and focusing on the impression created, not its  
literal truth or falsity. Patriot , 798 F. Supp. at 855. 3In  
evaluating a t endency or capacity to deceive, it is appropriate  
to look not at the most sophisticated, but the least  
sophisticated consumer. ' FTC v. Five - Star Auto Club, Inc. , 97  
F. Supp. 2d 502, 532 (S.D.N.Y. 2000).

The FTC did not have to prove that each individual customer  
U H O L H G R Q W K H ' H I H Q G D Q W V ¶ P L V U H S U H V H Q W D W L R Q V R U  
representative sample of in jured consumers is sufficient.  
Figgie , 994 F.2d at 605. The FTC has provided adequate sampling  
evidence. For example, Ms. Guevara Rivera, Ms. Lovo, Mr.  
Maddox, and Mr. Vasquez Montoya testified that they hired and  
paid Defendant Manuel Alban to help them with their immigration  
needs because Defendants represented that Mr. Alban was

qualified to provide immigration services. See, e.g. 30 ¶ V ([ V  
1, 3, 4, 50.

Even without this sampling testimony, the Court finds that  
the Alban ¶ D Q G / R P D ¶ V U H S U H V H Q W D W L R Q V Z H U H O L N H O \ W R  
reasonable consumer of the services provided to believe that the  
Alban and Loma were competent, qualified, and legal ly  
authorized t o provide such services.

The fact that some of the Alban s ¶ D Q G / R P D ¶ V F X V W R P H U V  
satisfied with the services they received does not provide a  
defense. Amy, 875 F.2d at 572. Indeed, there is no reason to  
doubt that these customers relied upon the Al ban s ¶  
representations of competence, qualification and legal  
authority. Fortunately, they were not among the customers who  
suffer ed for their reliance.

3. Material ity

A material representation is one that involves information  
that is important to consumers such that it is likely to affect  
their decisions or actions. Patriot, 798 F. Supp. at 855; FTC v.  
Cyberspace.Com LLC, 453 F.3d 1196, 1201 (9th Cir. 2006). Express  
representations that are shown to be false are presumptively  
material. Patriot, 798 F. Supp. at 855.

The FTC has proven that the representations that the Albans and Loma were competent, qualified and legally authorized to provide the services at issue involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding [the services]. Kraft, Inc. v. FTC, 970 F.2d 311, 322 (7th Cir. 1992).

Although such evidence is not necessary, the FTC provided testimony of some customers that the representations were material to their decision to use the services. Mr. Maddox, Ms. Guevara Rivera, Mr. Vasquez Montoya, and Ms. Lovo each testified that had they known that Manuel Alban was not authorized to provide immigration services, they would neither have sought nor paid for the services.

The Court finds that the FTC has proven the materiality element of the FTC Act § 5 violation.

4. Liability Conclusion

The Court finds that the FTC has proven each of the elements necessary to hold the Albans and Loma liable under § 5 of the FTC Act.

The Albans personally violated the statute by their own individual actions. Loma, Inc., acting through the Albans, also





1. Permanent Injunction

Permanent injunctive relief is appropriate when there is

some cognizable danger of recurring violation. Ross, 897 F.

Supp. 2d at 387 (citing FTC v. Med. Billers Network, Inc., 543

F. Supp. 2d 283, 323 (S.D.N.Y. 2008)(internal quotations

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scienter; (2) whether the conduct was isolated or recurrent; (3)

whether defendants are positioned to commit future violations;

(4) GHJUHH RI FRQVXPHU KDUP GHIHQGDQWV¶ UHFRJQLV

FXOSDELOLW\ DQG VLQFHULW\ RI GHIHQGDQWV¶ DVVXUD

future violations. Id. The injunction must not unduly harm the

The Court finds that absent an injunction, the re is a realistic danger that the Albans will find and take a nother opportunity to mislead consumers , particularly those who speak Spanish and not English , in violation of § 5 of the FTC Act.

The FT C seeks, and may well be entitled to obtain, broad injunctive relief. However, the Court finds a need to hear further evidence and argument regarding the terms of the injunction to be issu ed. In particular, the Court wishes to consider providing injunctive relief regarding violations of § 5 of the FTC Act in addition to those only relat ed to immigration services .<sup>21</sup>

2. Restitution

Since the Court holds that a pe rmanent injunction is warranted, restitution may be pr ovided . To obtain restitution under Section 13(b) of the FTC Act, the FTC must prove consumer reliance.

Consumer reliance can be established by a representative sample of injured consumers or by a V K R Z L Q J W K D W <sup>3</sup> W K H bus iness entity made material misrepresentations likely to

<sup>21</sup> For example, income tax preparation services. Indeed, the evidence at trial indicates that, while providing income tax return preparing services to the public, Mr. Alba n prepared and filed unreliable ± if not outright fraudulent ± income tax returns on behalf of himself and his corporations.



The FTC has the initial burden to show the amount of assets subject to disgorgement. FTC v. Washington Data Res., 856 F. Supp. 2d 1247, 1279 (M.D. Fla. 2012) DII G VXE QRE v. Washington Data Res., Inc., 704 F.3d 1323 (11th Cir. 2013). All WKDW LV UHTXLUHG LV 3D UHDVQRDEOH DSSUR[LPDWLRQ RI ill - JRWWHQ JDLQ.V The burden then shifts to the defendants to show WKDW WKH )7&¶V ILJXUHV DUH llQ DFFXUDWH at 1281.

TKH 'HIHQGDQWV have and poorly organized files and lack of adequate and reliable financial records <sup>22</sup> made it impossible for the FTC to present definitive evidence establishing precisely the revenue derived from the services at issue. The FTC presented the testimony of Mr. Joseph Dengler, a former Internal Revenue Service Agent experienced in the reconstruction of income from incomplete records. Mr. Dengler used alternative methods <sup>23</sup> WR HVWLPDWH WKH 'HIHQGDQWV revenue received from the services at issue. He testified that

<sup>22</sup> The Defendants had no internal accounting program or method for recording the amount of money received from individual customers. Further, it appears that a substantial amount of the money received was in cash. Although the Albans report that Loma had its own bank account that should have been used to analyze bank deposits made during the period, there were no records available for that bank account prior to 2008.

<sup>23</sup> See 3 O¶V ([ 7ZR GLIIHUHQW PHWKRGORJRJLHV ZHUH estimate net revenues, each with two variables based on the bank account records found, the receipts that were found, a subset of 110 customer files from 2010, and information regarding fees charged as supplied by the Albans.



around 200 7.<sup>27</sup> Additional fees were also charged, but they were for other services such as translation or photographs and not for filling out the immigration forms. The Defendants estimate ± without support from any reliable documentation - that they received from the services at issue only about \$200,000 in total.

The reasonableness of an approximation varies depending on

WKH LQIRUPDWLRQ DYDLODEOH EXW <sup>3</sup>WKH ULVN RI XQFHUW  
IDOO RQ WKH ZURQJGRHU Med. Bille's Network, 543 F.

Supp. 2d at 324. As stated by other courts:

> : @ KHUH GHIHQGDQWV¶ UHFRUG NHHSLQJ KDV <sup>3</sup>VR  
obscured matters that lawful gains cannot be  
distinguished from the unlawful without  
incurring inordinate expense, it is well  
within the distric W FRXUW¶V SRZHU WR UXOH

'HIHQGDQWV¶ UHFHLSWV IURP WKH VHUYLFHV DW LVVXH DU

range of \$479,000 to \$75 3,406 . However, the amount of disgorgement to be ordered does not necessarily equate to the revenue derived from the services.

The Court, considering an equitable remedy, finds it

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financial circumstance s because disgorgement is designed to be remedial and not punitive. See Febre , 128 F.3d at 537.

Moreover, it may be appropriate to consider the ultimate disposition <sup>29</sup> of any amount of disgorgement paid.

Therefore, the

Court finds a need to he ar further evidence and argument regarding the amount of disgorgement to be required.

IV. CONCLUSION

For the foregoing reasons , as stated more fully herein:

- 1. The Court finds Defendant Manuel E. Alban, Lola



2. The Court finds that a permanent injunction pursuant to § 13(b) of the FTC Act, 15 U.S.C. § 53(b), is appropriate.
3. The Court finds that the injunctive relief should include a restitution requirement.
4. The Court finds it necessary to conduct further proceedings related to the terms of the aforesaid permanent injunction and the amount of the aforesaid restitution requirement.

SO DECIDED on Wednesday, June 5, 2013.

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/s/ \_\_\_\_\_  
Marvin J. Garbis  
United States District Judge