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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AMERICAN FINANCIAL BENEFITS
CENTER, a corporation, also d/b/a AFB and
AF STUDENT SERVICES, et al.,

Defendants.

Case No: C 18-00806 SBA

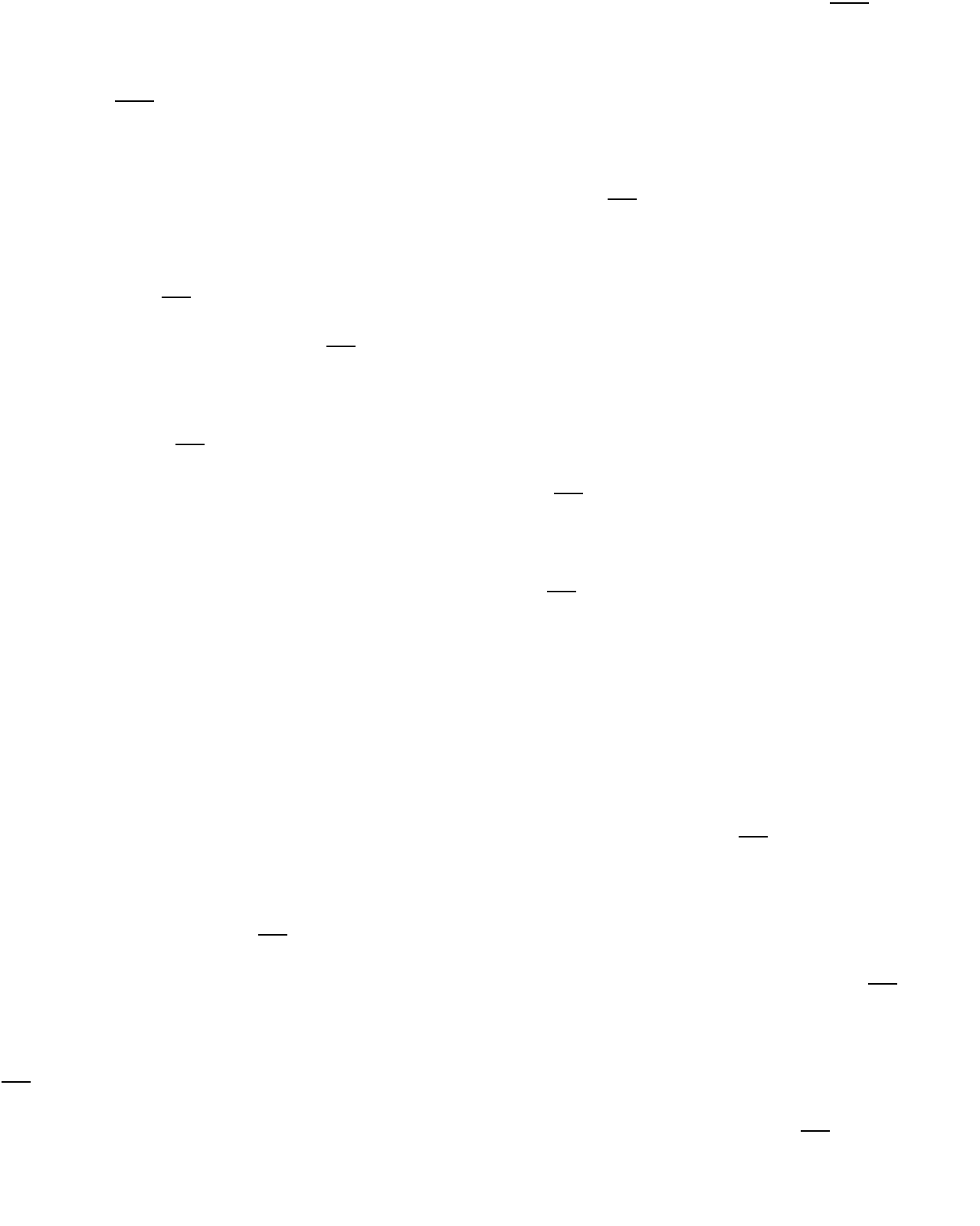
Related to Case No: C 17-04817 SBA

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS**

Dkt. 117

The Federal Trade Commission (“FTC”) brings the instant consumer fraud action against Defendants American Financial Benefits Center (“AFBC”), Ameritech Financial (“Ameritech”), Financial Education Benefits Center (“FEBC”), and Brandon Frere (“Frere”) (collectively, “Defendants”). ThSpnteTrade Co822 StyleSpnteTrade Co922 205.0(7)TP

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1 qualified” to reduce their payments through the “Student Loan Document Preparation and
2 Processing Services Program.” Id. Mailers also include specific dollar amounts for the
3 reduced payments, payoff amount, and total loan savings. Id. Mailers do not advertise or
4 describe a monthly membership to any service. Id. ¶ 23.

5 As alleged by the FTC, the mailers “create a sense of urgency” by indicating that the
6 offers are available for a limited time. Id. ¶ 24, e.g., Ex. C (“**Failure to respond to this**
7 **letter may cancel the offer for services.**”). Mailers often do not include the Companies’
8 names. Id. ¶ 25. Instead, they purport to be from the “Student Loan Department” or the
9 “Student Loan Payment Reduction Dept.” Id. Mailers include a toll-free phone number
10 where consumers can reach Defendants. Id. ¶ 26. The recorded message that consumers
11 hear while waiting to be connected to a sales agent has stated: “You have reached the
12 program enrollment department,” and “[T]o speak with an account specialist regarding an
13 important notice you’ve received, please stay on the line.” Id.

14 Defendants advise consumers that their new monthly payment amount will apply for
15 10 or 20 years, after which time their remaining loan balances will be forgiven. Id. ¶ 27.
16 Defendants also advise consumers that they will save a specific amount of money, usually
17 in the thousands of dollars. Id. According to the FTC, any representation that Defendants
18 are able to procure a permanent reduction in monthly payments is false or unsubstantiated
19 because IDR programs do not guarhnr20 thousands of c -pa0 Td[(9 BDC a/St 6 2Td[(Defenda)5.7

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1 And we just had Christmas. You know, if you bought presents, clothes, watch,
2 earrings, toilet paper, they're a part of your family.

3 Id. In reality, however, "family size" is determined "by counting the borrower, the
4 borrower's spouse, and the borrower's children . . . if the children receive more than half
5 their support from the borrower." Id. ¶ 29 (quoting 34 C.F.R. § 682.215(a)(3)). It may also
6 include "other individuals if, at the time the borrower certifies family size, the other
7 individuals - (i) Live with the borrower; and (ii) Receive more than half their support from
8 the borrower and will continue to receive this support from the borrower for the year the
9 borrower certifies family size." Id. (quoting 34 C.F.R. § 682.215(a)(3)). As a result,
10 consumers may be enrolled in programs for which they do not qualify. Id. ¶ 30.

11 After consumers agree to enroll in a program and turn over their payment
12 information, Defendants email a link to a lengthy contract that consumers are required to
13 sign electronically. Id. ¶ 32. As consumers remain on the phone, Defendants pressure
14 them to quickly click through the documents and electronically sign multiple pages. Id. In
15 some instances, Defendants represent that the consumer not need read the agreement
16 carefully because the information contained in the contract was already discussed in the
17 call. Id. At the end of the call, consumers are transferred to the Verification Department
18 and are quickly read lengthy disclosures. Id.

19 As stated above, Defendants charge consumers an advance fee for "document
20 preparation" ranging from \$600 to \$800, which they generally collect over one to six
21 installments before attempting to enroll consumers in any federal program. Id. ¶ 33.

22 **2. Marketing of "Financial Education" Memberships**

23 In addition to charging advance fees, Defendants also charge consumers a monthly
24 fee for the life of their loan. Compl. ¶ 34. The monthly fee ranges from \$49 to \$99. Id.

25 Defendants represent that the monthly fee will be used to pay down consumers'
26 loans. Id. For example, after reciting a consumer's loan balance, pay off amount, and
27 estimated savings in the program, Defendants told a consumer, "Your quote based on your
28 current situation is \$255 for 1 month then it would drop down to \$235 for an additional 6

1 savings are false or unsubstantiated because monthly payment amounts fluctuate from year
2 to year based on the borrower's income and family size, and thus, whether any portion of a
3 borrower's loan will be forgiven, and if so, how much, cannot be determined. The
4 allegations of the Complaint thus show that "the FTC's claims have a factual basis and
5 provide Defendants with adequate notice as to the FTC's reasons for believing that [the
6 representations] [are] unsubstantiated and materially false." Id., at *6. "Put another way,
7 the FTC has identified the 'who' [the Companies, acting in a common enterprise, and
8 Frere]; the 'what' [misrepresentations regarding loan savings and program fees]; the 'when'
9 [2014 and onward]; the 'where' [throughout United States]; and the 'how' [by stating that
10 monthly payments will remain fixed and certain sums be forgiven and that fees associated
11 with the programs go toward loan balances]." Id. "Rule 9(b) requires no more." Id.

12 In arguing to the contrary, Defendants contend that the allegations of the Complaint
13 are insufficient because the FTC "misrepresents the content of the attached mailers." Mot.
14 at 9. Specifically, the FTC alleges that "Defendants distribute mailers to consumers
15 claiming that consumers are eligible for federal programs that would permanently reduce
16 their monthly loan payments to a fixed amount or result in total loan forgiveness." Compl.
17 ¶ 12. Defendants assert that, contrary to the FTC's allegations, the mailers "make a number
18 of disclosures," including that: (1) the Companies provide "document preparation and
19 processing services for a fee"; (2) the Companies "cannot guarantee warranty or predict the
20 outcome in any particular situation"; and (3) a consumer "may apply on [his/her] own
21 directly with the DOE for its services without fee." Mot. at 9 (quoting Compl., Ex. D-1).
22 Quoting language such as, "this program can

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1 solicitation also contains truthful disclosures.” Cyberspace.Com, 453 F.3d at 1200. “[A]
2 disclaimer does not automatically exonerate deceptive activities.” FTC v. Gill, 74 F. Supp.
3 2d 1030, 1044 (C.D. Cal. 1999), aff’d, 265 F.3d 944 (9th Cir. 2001); see also FTC v.
4 Medlab, Inc., 615 F. Supp. 2d 1068, 1077 (N.D. Cal. 2009) (“Defendants cannot inoculate
5 themselves from the representations that appear in the body of the text by including these
6 cautionary statements at the foot of the advertisement.”). Nor does the lack of an
7 *unequivocal* promise preclude deception. See Gill, 74 F. Supp. 2d at 1044 (“the lack of
8 guarantee does not negate the misrepresentations” when a guarantee was “implied in the
9 text”). Here, given the overall content of the mailers, the FTC adequately alleges one or
10 more misrepresentations. See DeVry, 2016 WL 6821112, at *5 (denying motion to dismiss
11 where defendants’ advertisements “at least plausibly create[d]” a misleading impression).

12 Defendants further argue that “[o]ther generalized allegations also do not satisfy
13 Rule 9(b).” Mot. at 9. For example, with regard to the alleged representation that
14 consumers’ monthly payments will be fixed for a certain period and, thereafter, the
15 remaining balances forgiven, Defendants argue that the FTC “does not supply any details of
16 specific representations to individual consumers.” Mot. at 9-10. “Given that Defendants
17 purportedly have engaged in their allegedly deceon to d/T.8 hey (pmusat60005 Tw 16.723 24also

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1 **C. APPLICABILITY OF THE TSR**

2 The TSR prohibits deceptive or abusive telemarketing acts or practices, including
3 certain acts or practices by sellers or telemarketers of any “debt relief service.” 16 C.F.R.
4 §§ 310.3(a)(2)(x) & 310.4(a)(5)(i). Counts Two and Three of the Complaint allege that
5 Defendants engage in such abusive or deceptive acts or practices by, respectively,
6 (a) requesting or receiving advance fees for any debt relief service, and (b) misrepresenting
7 material aspects of any debt relief service.

8 Defendants move to dismiss Counts Two and Three on the ground that the FTC has
9 not adequately alleged that the Companies provide a “debt relief service.” Defendants
10 argue that, although the Complaint “summarily contends” that the Companies provide debt
11 relief services, the mailers attached thereto demonstrate that they merely provide document
12 preparation and processing services for a fee. Mot. at 12; *id.* at 13 (citing Compl. Ex A-1
13 (“AF Student Services provides document preparation and processing services for a fee.”),
14 Exs. C & D-1 (“Company provides document preparation and processing services for a
15 fee.”)). Relying on FTC v. PSC Administrative, LLC, No. CV 15-0084-WS-B, 2016 WL
16 3406113, at *10 (S.D. Ala. June 17, 2016), Defendants assert that the FTC’s “failure to
17 address these disclaimers and adequately describe the Companies’ businesses requires
18 dismissal of the TSR claims.” Mot. at 13. Defendants’ argument is without merit.

19 The TSR defines a debt relief service in “broad terms.” CFPB v. IrvineWebWorks,
20 Inc., NO. SACV 14-1967 JVS (ANx), 2016 WL 1056662, at *6 (C.D. Cal. Feb. 5, 2016).
21 Specifically, a “debt relief service” encompasses “any program or service represented,
22 directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or
23 other terms of the debt between a person and one or more unsecured creditors or debt
24 collectors, including, but not limited to, a reduction in the balance, interest rate, or fees
25 owed by a person to an unsecured creditor or debt collector.” 16 C.F.R. § 310.2(o).
26 Defendants’ services fall within this definition, as they purport to alter the terms of
27 payment or other terms of consumers’ debt. Indeed, as alleged by the FTC, Defendants
28 represent their services as “Student Loan Payment Reduction & Forgiveness.” Compl.

1 Ex. C; id. Exs. D-1 & E-1; see also id. Ex. B-1 (“Due to the current status of your student
2 loans, your pre-qualification may allow you to reduce your current monthly payments of
3 approximately \$480 down to as low as \$60, and you may also qualify for complete 100%
4 total loan forgiveness with other available programs.”).

5 Defendants’ characterization of their services as mere document preparation and
6 processing, to the exclusion of any service defined as debt relief under the TSR, is
7 unavailing. Although Defendants’ mailers label their services as “document preparation
8 and processing services for a fee,” the FTC rightly notes that the fine-print disclaimers cited
9 by Defendants only appear after the mailers have advertised the aforementioned loan
10 forgiveness and payment reduction services. Moreover, the language of the disclosures
11 does not contradict the mailers’ broader representations regarding the services offered.
12 While Defendants now imply that document preparation and processing services are
13 necessarily discrete from any debt relief service, that assertion is unsupported and, in fact,
14 belied by the Companies’ own representations. See Compl., Ex. A-1 (“You have been Pre -
15 Qualified to reduce your student loan payments *through* the Student Loan Document
16 Preparation and Processing Services Program.”) (emphasis added).

17 In view of the forgoing, Defendants’ reliance on PSC Administrative is likewise
18 unavailing. Defendants rely on that case in support of the proposition that the FTC
19 inadequately addresses the “threshold, ‘debt relief service’ issue.” Reply at 8-9 (quoting
20 PSC Administrative, 2016 WL 3406113, at *10). But for purposes of the pleading stage,
21 the FTC adequately alleges facts showing that Defendants are sellers or telemarketers of
22 debt relief services. Cf. PSC Administrative, 2016 WL 3406112, at *10 (denying the
23 FTC’s motion for summary judgment on the ground that it had not adequately shown that
24 the defendants represented their payday loan validation services—which did not actually
25 renegotiate, settle, or otherwise alter the terms of the loans—as a debt relief service). The
26 Complaint and the exhibits attached thereto allege facts that, on their face, fall within the
27 debt relief provisions of the TSR. The FTC need not allege anything further.

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Finally, other courts have found that similar “student loan debt relief” operations fall under the purview of the debt relief provisions of the TSR. See, e.g., IrvineWebWorks, 2016 WL 1056662, at *2, 6-7 (finding that the defendant provided debt relief services subject to the TSR where it purported “to assist consumers identify and apply for various Department of Education repayment plans, ensure proper assignment in federal programs, and help consumers meet recertification requirements”). In so finding, the court noted that the TSR’s debt relief service provisions were designed to combat the very harms that the defendant’s practices were likely to inflict, and that the policies behind the debt relief provisions thus applied to cover the defendant’s services. Id., at *6-7 & n.3 (quoting 75 Fed. Reg. 48458 at 48484-5 (“In many cases, providers misrepresent or fail to disclose material aspects of their programs, causing consumers to make payments to the providers for several months, not realizing that most of the payments go toward fees, rather than settlement offers.”)). The same is true here, where it is alleged that Defendants misrepresented or failed to disclose material aspects of their programs, causing consumers to believe that payments to the Companies were being applied toward their loan balances.

Accordingly, the Complaint adequately alleges that the Companies provide “debt relief services.”

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1 Exhibit G falls short of establishing that the Companies satisfy all of the requirements of
2 the TSR.⁸ Of particular note is the allegation that Defendants often do not provide refunds
3 to consumers upon demand. Exhibit G therefore does not contradict the Complaint's
4 allegation of advance fee violations.

5 Accordingly, Defendants have not shown that Count Two is subject to dismissal.

6 **IV. CONCLUSION**

7 For the reasons stated above, IT IS HEREBY ORDERED THAT:

- 8 1. Defendants' motion to dismiss is DENIED.
9 2. This Order terminates Docket 117.

10 IT IS SO ORDERED.

11 Dated: 08/08/2018


12 SAUNDRA BROWN ARMSTRONG
13 Senior United States District Judge

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⁸ In their reply, Defendants add that they “clearly disclosed the consumer’s ownership of the funds in the dedicated account.” Reply at 10. Setting aside the questions of whether Exhibit G’s language is clear and conspicuous and included in all consumer contracts, however, the Court notes that the language fails to fully satisfy the TSR’s disclosure requirements. As set forth above, the seller or telemarketer must not only advise consumers of their ownership of the funds, but must also advise them of their right to withdraw from the debt relief service at any time without penalty and to be returned the funds. 16 C.F.R. § 310.3(a)(1)(viii)(D). The cited contractual language does not include all of the requisite disclosures. se 0003 T:Td(T0 Tw 9t to)Tj-
