

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

v.

Case No: 6:16cv-2123-Orl-31DCI

J. WILLIAM ENTERPRISES, LLC, JESS  
KINMONT, JOHN P. WENZ, JR. and  
PRO TIMESHARE RESALES OF  
FLAGLER BEACH LLC,

Defendants

vs.  
WORLDWIDE TRAVEL SERVICES, LLC

Reply (Doc. 168).

I. Background

Plaintiff, the FTC alleged violations of Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 6(b) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 16 C.F.R. § 312.6(b) and sought equitable relief, including disgorgement of the proceeds and restitution of the proceeds.

Plaintiff filed a Complaint on August 2, 2017, and sought equitable relief, including disgorgement of the proceeds and restitution of the proceeds. On August 2, 2017, the Defendants filed a Joint Motion for Partial Summary Judgment. Doc. 146. The Defendants argue that the equitable relief sought by the FTC is unavailable under the statutes pled in the Complaint, and that some of the damages sought by the FTC fall outside the appropriate statute of limitations. Mot. at 1.

II. Legal Standards

& R X U W V P D \ J U D Q W V X P P D U \ M X G J P H Q W s t b e z d e i s h Q W K  
question of law' *Saregama India Ltd. v. Mosley*, 635 F.3d 1284, 1290 (11th Cir. 2011). The parties agree that there are no issues of fact that would preclude the Court entering partial summary judgment here. Accordingly, the sole questions before the Court on this Motion are (1) whether the equitable relief requested is available under the statutes pled in the Complaint, and (2) whether the three-year statute of limitations found in section 19(b) of the FTC Act applies to the claims brought by the FTC.

III. Analysis

The Defendants argue that the remedies sought by the FTC—disgorgement, restitution, refunds, and rescission or reformation of contracts—are unavailable for violations of Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b). As the Defendants point out, Section 13(b), which provides for injunctive relief, does not mention restitution, rescission, refunds, or disgorgement. However, the Court needs no express grant of authority to grant equitable relief under section 13(b). District courts possess inherent power to grant equitable relief. *De O'H U H O L H I ³ X Q O H V V R W K F U Z G e m M e r c h C o r p . v . W a r n e r H o l d i n g C o .*, 87 F.3d 466, 469 (11th Cir. 1996) (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)) (internal quotation marks omitted). Accordingly, section 13(b) which contains no O D Q J X D J H U H V W U L F W L Q J W K H & R X U S U R Y D X W K R U D L O W X O V T R X D R I V W D W X W R U \ D X W K R U L W \ ¶ W R L V V X H T . q u W K H i n X O O D a U D Q J H *Res., Inc.*, 704 F.3d 1323, 1326 (11th Cir. 2013) (quoting *Gem Merch. Corp.*, 87 F.3d at 469); see also *F.T.C. v. Lalonde*, 545 F. App'x 825, 841 (11th Cir. 2013); *ed. Trade Comm'n v. Lanier Law, LLC*, 194 F. Supp. 3d 1238, 1287 (M.D. Fla. 2016); *C. v. Worldwide Info Servs., Inc.*,

No. 6:14cv8, 2015 WL 10

DERXW FRXUWV ¶ DX We're in Agency We're Redundant. Where disgorgement is not a statutorily- F R Q I H U U H C O U A t P H E S. Essentially, the Defendants ask the Court to deviate from 12792 Term 120 Cite precedent and extend the logics and comments made during oral argument in *Kokesh* to the facts at hand. As a threshold matter, *Kokesh* did not involve section 13(b); it dealt with federal securities law. Even assuming *ingo* that a finding as to the unavailability of equitable remedies for violations of federal securities law would apply to section 13(b) violations, there was no such finding *Kokesh*: the Supreme Court's 13(b), t2

*Security Rare Coin & Bullion Corp.*). Additionally, there is nothing in *Kokesh*