

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FIRST CHOICE HORIZON LLC, a Florida
limited liability company,

FIRST SOUTHERN TRUST LLC, a Florida
limited liability company

FIRST UNITED MUTUAL LLC, a Florida
limited liability company

PREMIER UNION TRUST LLC, also dba
SECOND CHOICE HORIZON, a Florida limited
liability company,

SOUTH PREMIER TRUST LLC, a Florida
limited liability company,

SUNCOAST MUTUAL LLC, a Florida limited
liability company,

UNITED CHOICE PLUS LLC, a Florida limited
liability company,

SOUTHERN CHOICE LLC, a Florida limited
liability company,

SOUTHERN PRIDE LLC, a Florida limited
liability company,

SUN PREMIER LLC, a Florida limited liability
company,

FINANCIAL SERVICE TRUST LLC, a Florida
limited liability company,

RAYMOND GONZALEZ, individually and as a member, manager, or owner of FIRST CHOICE HORIZON LLC,

CARLOS S GUERRERO, a/k/a Carlos Sinencio Guerrero, also dba CSSOLUTIONS, individually, and as an officer, member, manager, or owner of FIRST CHOICE HORIZON LLC and FIRST UNITED MUTUAL LLC, and

JOSHUA HERNANDEZ, individually and as a member, manager or owner of SOUTH PREMIER TRUST LLC,

Defendants

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges

1. The FTC brings this action under Sections 18(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. §§ 6106-108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

SUMMARY OF THE CASE

2. Since at least May 2016, the Individual Defendants, Raymond Gonzalez, Carlos S Guerrero, and Joshua Hernandez, through a maze of interrelated companies called First Choice Horizon LLC, First Southern Trust LLC, First United Mutual LLC,

paying additional bank or transaction fees, such as balance transfer fees can typically total three to five percent of the amount of a consumer's credit card debt

6. Consumers who agree to use Defendants' services do not receive what they are promised. While, in some instances, Defendants are able to secure new credit cards for consumers at a zero percent interest rate, this rate is not for the life of the consumer's debt, but rather only a promotional "ease" interest rate that only lasts for a limited time

consumer protection

1337(a), and 1345.

10. Venue is proper in this district under 28 U.S.C. § 1391(b) (2) and 15 U.S.C. § 53(b).

PLAINTIFF

11. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 45. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices affecting commerce

12. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR and to secure such relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, the disgorgement of ill-gotten monies, and other relief 15 U.S.C. §§ 53(b), 56(a)(2)(A)(B), 57b, 6102(c), and 6105(b).

DEFENDANTS

13. Defendant First Choice Horizon LLCs a Florida limited liability company with its principal place of business at 3929 Pemberly Pines Circle, Saint Cloud, Florida 34769. First Choice Horizon transacts or has transacted business in this district and throughout the United States.

14. Defendant First Southern Trust LLC is a Florida limited liability company with its principal place of business at 8529 South Park Circle, Orlando, Florida 32819. First

Southern Trust transacts or has transacted business in this district and throughout the United States.

15. Defendant First United Mutual LLC is a Florida limited liability company with its principal place of business at 6900 South Orange Blossom Trail, Orlando, Florida 32809. First United Mutual transacts or has transacted business in this district and throughout the United States.

16. Defendant Premier Union Trust LLC, also dba Second Choice Horizon, is a Florida limited liability company with its principal place of business at 1341 Raintree Bend, Clermont, Florida 34714. Premier Union Trust transacts or has transacted business in this district and throughout the United States.

He also holds the registration for the Florida fictitious name "CCG Solutions." At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Guerrero resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

26. Defendant Joshua Hernandez is a member, manager, or owner of South
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34. In numerous instances consumers who refuse the offer of Defendant's service during their telemarketing call nonetheless receive unordered and unwanted (a) credit cards and credit card applications, and (b) ~~invited~~ or calls for payment of the fee for Defendant's service.

Defendant's Telemarketing Campaign

35. In numerous instances, Defendants have initiated, or directed others to initiate, telemarketing calls to consumers that deliver a prerecorded message offering consumers the opportunity to lower their credit card interest rates if they press a number on their telephone keypad. When consumers press the number on their telephone keypad, they are connected to a live representative.

36. In other instances, Defendants have initiated, or directed others to initiate, telemarketing calls to consumers in which a live representative offers consumers the opportunity to lower their credit card interest rates ~~to zero~~.

37. Once a consumer is connected with a live telemarketer, Defendants do not initially disclose their company name, but rather often use a name like "card member services" and frequently deceive consumers into thinking that Defendants have a relationship or affiliation with the consumer's bank or credit card issuer.

38. Defendants also deceive consumers into disclosing their personal financial information, such as their social security number and their credit card numbers and security codes to Defendants under the guise that Defendants must confirm the consumer's identity.

39. During telemarketing calls, Defendants represent that they offer a service that

will permanently reduce consumers' credit card interest rates to zero percent.

40. During telemarketing calls, Defendants often claim that their service will allow consumers to save thousands of dollars on their credit card debt.

41. During telemarketing calls, Defendants often tell consumers that they will be charged a fee for Defendants' service typically ranging from \$200 to \$8,000.

42. Defendants fail to inform consumers that consumers will likely have to pay additional fees to obtain the zero percent interest rates.

Defendants' Deceptive Telemarketing Sales Pitch

43. Later in the telephone call, Defendants inform consumers that they do not contact consumers' current credit card companies to obtain a zero percent credit card interest rate, but

and transfer their credit card balances to the promotional cards obtained for consumers by Defendants, rarely, if ever, save thousands of dollars on their credit card debt.

48. Defendant's claim that they will obtain permanent zero percent credit card interest rates for consumers is false and deceptive.

49. Defendant's claim that by using their service, consumers will save thousands of dollars on their credit card debt is false and deceptive.

Post Solicitation Deceptive and Unfair Practices

50. After hearing Defendant's telemarketing sales pitch, many consumers refuse Defendant's offer for their service. Despite their refusal, Defendants use the consumer's personal financial information obtained during the sales call, and apply for more credit cards on behalf of these consumers without the consumer's knowledge, authorization, or express informed consent.

51. Thereafter, Defendants frequently send these consumers an invoice and/or call consumers demanding payment of the fee for their service.

52. In many instances, consumers dispute that they ordered Defendants' service. Defendants, nonetheless, claim that these consumers verbally ordered Defendants' service, that Defendants already obtained new credit cards for these consumers, and that the consumers owe money to Defendants for their service.

53. While, in some instances, Defendants claim to have an audio recording of the sales call in which the order was purportedly placed, Defendants ignore any consumer requests to hear the recording.

54. In numerous instances, consumers refuse to pay Defendants' fee for a service

they did not order and did not want. When consumers refuse to pay, Defendants often attempt to coerce them by making repeated calls to these consumers demanding payment.

55. In numerous instances, Defendants' claim that consumers have ordered Defendants' service and that consumers owe money to Defendants for the service is false and deceptive.

56. Defendant's practice of applying for one or more credit cards for consumers without the consumers' knowledge, authorization, or express informed consent is an unfair act or practice.

Defendants' Illegal Telemarketing Practices

57. Defendants, acting directly or through one or more intermediaries, have made numerous outbound calls to telephone numbers on the National Do Not Call

VIOLATIONS OF THE FEDERAL TRADE COMMISSION ACT

61. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.

62. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 15 U.S.C. § 45(a).

63. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT ONE

Misrepresentations Regarding Defendants' Service in Violation of Section 5(a)

64. In numerous instances, since at least May 2016, in connection with the marketing, promotion, offering for sale, or sale of Defendants' (s)-15.36 (ce)TJ 0 Tc 0 Tw (,)Tj -

of dollars on their credit card debt.

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marketing, promotion, offering for sale, or sale of Defendants' service, Defendants have represented, directly or indirectly, expressly or by implication; that

- A. Consumers have ordered Defendants' service; and
- B. Consumers owe money to Defendants for Defendants' service.

71. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 70 of this Complaint:

- A. Consumers have not ordered Defendants' service
- B. Consumers do not owe money to Defendants for Defendants' service.

72. Therefore, Defendants' representations set forth in Paragraph 70 of this Complaint are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FOUR

Unauthorized Consumer Credit Card Applications in Violation of Sections 5(a) and (n)

73. In numerous instances, since at least May 2016, Defendants have applied for one or more credit cards for consumers without the consumers' knowledge, authorization, or express informed consent

74. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

75. Defendants' practices as set forth in Paragraph 73 of this Complaint constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a) and (n).

THE TELEMARKETING SALES RULE

76.

deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The FTC adopted the original TSR in 1995, and extensively amended it in 2003 and 2010. The 2010 amendments to the TSR address the telemarketing of debt relief services. 16 C.F.R. Part 310.

77. Defendants are “seller[s]” or “telemarketer[s]” engaged in telemarketing as defined by the TSR, 16 C.F.R. § 310.2(dd), (ff), and (gg). For purposes of the TSR, a “seller” is any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to a customer in exchange for consideration. 16 C.F.R. § 310.2(dd). A telemarketer is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(ff). And “telemarketing” is 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. 16 C.F.R. § 310.2(gg).

78. Defendants are sellers or telemarketers of debt relief services as defined by the TSR, 16 C.F.R. § 310.2(o). Under the TSR, debt relief service is any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors, including, but not limited to, a reduction in the balance, interest rate, or fees owed

(B)

services offered or sold through telemarketing. 16 C.F.R. § 310.4(a)(9). A remotely created payment order includes a remotely created check. 16 C.F.R. § 310.2(cc).

83. The 2003 amendments to the TSR established the National Do Not Call Registry maintained by the FTC, which is a registry of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a free telephone call or over the Internet at www.donotcall.gov.

84. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at www.telemarketing.donotcall.gov, to pay any required fee(s), and to download the numbers not to call.

85. The TSR prohibits sellers and telemarketers from calling any telephone number within a given area code unless the seller on whose behalf the call is made has paid the annual fee for access to the telephone numbers within that area code included in the Registry. 16 C.F.R. § 310.8.

86. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to telephone numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

87. The TSR prohibits initiating a telephone call that delivers a prerecorded message to induce the purchase of any good or service unless the seller has obtained from the recipient of the call an express agreement, in writing, that evidences the willingness of the

92. Defendant's acts or practices as set forth in Paragraph 91 of this Complaint are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(1)(i)

COUNT SEVEN

Failure to Obtain Express Verifiable Authorization - 16 C.F.R. § 310.3(a)(3)

93. In numerous instances, since at least May 2016, in connection with the telemarketing of a debt relief service, Defendants have

101. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

102. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, 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, requests that the Court

- A. 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, including but not limited to, temporary and preliminary injunctions, an order freezing assets and the appointment of a receiver;
- B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants
- C. Award such relief as the Court finds necessary to redress injury to consumers

resulting from Defendants' violations of the FTC Act ~~and~~ TSR including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ~~gotten monies~~ and

- D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: July 16, 2019

Respectfully submitted,

ALDEN F. ABBOTT
General Counsel

/s/ Michael A. Boutros
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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I electronically filed the foregoing with the Clerk of the Middle District of Florida, Orlando Division, using the CM/ECF system, which will send notice of electronic filing to the service list below.

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Dated: July 16, 2019

/s/ Michael A. Boutros
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