UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
LATRESE & KEVIN ENTERPRISES INC., a Florida Corporation, also doing business as HARGRAVE & ASSOCIATES FINANCIAL SOLUTIONS,	)	**Case No. 3:08-cv-01001-MMH-JRK**
	)	
LATRESE HARGRAVE, also known as Latrese V. Williams, individually and as an officer of Latrese & Kevin Enterprises Inc., and	)	
	)	
KEVIN EDWARD WADE, also known as Kevin Hargrave, Sr., individually and as an officer of Latrese & Kevin Enterprises Inc.	)	
	)	
Defendants.	)	
	)	

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S *RENEWED* MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Pursuant to Fed. R. Civ. P. Rule 56(c), Plaintiff Federal Trade Commission ("FTC" or "Commission"), requests the Court grant its Motion for Summary Judgment against Defendants Latrese & Kevin Enterprises Inc., Latrese Hargrave and Kevin E. Wade (collectively, the "Defendants"), finding they deceptively marketed and sold credit repair services and advance fee credit cards. The FTC asks the Court to: (1) permanently enjoin Defendants from deceptively selling credit repair services, credit cards, and any other credit-related product or service; (2) find Defendants jointly and severally liable for their violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Credit Repair Organizations Act ("CROA"), 15 U.S.C. §§ 1679-1679j, and the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, as amended, 15 U.S.C. §§ 6101-6108; and (3) order $7,443,732.00 in restitution to defrauded consumers.

On October 20, 2008, the Commission initiated this action by filing a complaint seeking preliminary and permanent relief. (Dkt. No. 1). On October 23, 2008, the Court entered a TRO that among other things, enjoined the deceptive conduct, froze the Defendants' assets and appointed a temporary receiver. (Dkt. No. 18). On November 3, 2008, a Stipulated Preliminary Injunction Order was entered as to all Defendants. (Dkt. No. 26).

Plaintiff's Motion for Summary Judgment is supported by compelling evidence that

includes; the extensive record submitted to support the TRO[1] and indisputable new evidence filed with this memorandum (*e.g.*, Defendants' Admissions, deposition testimony and advertising and telemarketing scripts). At close of discovery, absolutely no evidence had emerged to exonerate Defendants' deceptive sales tactics. In fact, either one or all of the Defendants, in response to Plaintiff's Request for Admissions, admitted to the material facts needed to prove the elements of each count in the complaint.[2] The uncontroverted evidence shows that no genuine issue of material fact remains that would prevent the Court from granting Plaintiff's Motion for Summary Judgment.

II. JURISDICTION AND VENUE

The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c) and 6105(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345. This action arises under 15 U.S.C. §45(a). Venue in the United States District Court for the Middle District of Florida is proper under 15 U.S.C. §§ 53(b) and 28 U.S.C. §§ 1391(b). The Defendants maintained a substantial course of trade advertising, marketing and selling credit repair services and an advance fee credit card, in or affecting commerce, as "commerce" is

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[1] The specific evidence supporting the TRO includes: sworn declarations from 15 injured consumers who describe Defendants' wrongful acts, specialists at two major consumer credit reporting agencies, and a Better Business Bureau ("BBB") president who personally communicated with the Defendants regarding complaints consumers filed against them; more than 100 complaints and complaint summaries of consumers whose experiences with Defendants mirror those of the declarants; transcripts of Defendants' Web Site, radio and poster ads that show the Defendants' deceptive sales tactics; and transcripts of undercover conversations of Defendants' telemarketers engaging in the violative practices alleged. Dkt. No. 6, Vols. 1-III.

[2] Exhibits 68, 69, and 70 are the Admissions of the corporate defendant, Latrese Hargrave, and Kevin Wade (hereinafter, Kevin Hargrave), respectively referred to as "Ex. 68 [H&A Admissions]," "Ex. 69 [LH Admissions]"and "Ex. 70 [KH Admissions]." The FTC's Requests for Admissions asked each Defendant to admit to the genuineness of a set of documents. To decrease this submission and because the same documents were served on each Defendant, only one copy of those documents is filed herein appended to Exhibit 68.

defined in Section 4 of the FTC Act, 15 U.S.C. § 44.[3]

III. HARGRAVE & ASSOCIATES' DECEPTIVE BUSINESS PRACTICES

Latrese & Kevin Enterprises, Inc., a Florida corporation, also doing business as Hargrave & Associates Financial Solutions ("H&A") whose principal place of business was 3450 Dunn Ave., Suite 101-104, Jacksonville, FL 32218[4] and "[u]ntil sometime in 2008, H&A also had an office in Ohio at 1313 E. Broad Street, Columbus, Ohio 43205-3500."[5]

A. H&A's Deceptive Credit Repair Business

From sometime in 2003 through at least October 23, 2008, H&A marketed credit repair services and products,[6] selling to consumers throughout the United States.[7] H&A used Internet, radio, and poster advertisements to solicit customers.[8] In its credit repair ads, H&A promised consumers that, for an up-front fee of at least $250, H&A would "ERASE BAD CREDIT" from consumers' credit reports.[9] At least one of H&A's Web sites stated:

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[3] Ex. 68 [H&A Admissions] #40; Ex. 70 [KH Admissions] #41.

[4] Ex. 68[H&A Admissions] # 7; Ex. 69 [LH Admissions] #11; Ex. 70 [KH Admissions] #9.

[5] Ex. 68 [H&A Admissions] #8; Ex. 69 [LH Admissions] #12; Ex. 71, p. 51, lines 22-25 to p. 52, lines 1-9; Ex. 72, p. 46, lines 14-20.

[6] Ex. 68 [H&A Admissions] #38; Ex. 69 [LH Admissions] #34; Ex. 70 [KH Admissions] #39; Dkt. No. 6, Ex. 1, Atts. A, B.

[7] Defendants H&A and Kevin Hargrave admitted that "Hargrave & Associates sells or has sold credit repair services and products to consumers located throughout the United States of America." Ex. 68 [H&A Admissions] # 40; Ex. 70 [KH Admissions] #41.

[8] Defendants unanimously admitted that H&A used these three advertising mediums. Ex. 68 [H&A Admissions] #39; Ex. 69 [LH Admissions] #35; Ex. 70 [KH Admissions] #40. *See also*, Dkt. 6, Ex.1, Atts. M-Y, JJ; Ex. 21, Att. A.

[9] Dkt. No. 6, Ex. 1, Atts. M-X. Defendants admitted that Ex. 1, Atts. M-X are accurate and true copies of H&A's business records. Ex. 68 [H&A Admissions] #22; Ex. 69 [LH Admissions] #20; Ex. 70 [KH Admissions] #25.

> **What Hargrave & Associates Do** Our trained staff puts years of experience to work for you specializing in having credit reporting agencies ERASE BAD CREDIT.[10]
>
> ***
>
> **WHAT ARE SOME OF THE ITEMS THAT YOU CAN REMOVE?** Tax Liens Foreclosure, Collections, Repossessions, Garnishments, Bankruptcies, Judgments, Charge Offs and much more. . . . **WILL THE $250 PAY EVERYTHING FOR ALL 3 CREDIT BUREAUS?** Yes. We, at Hargrave & Associates Financial Solutions, Inc. will work to get your beacon score over 620 and 80% of the negative items removed for only $250; no other hidden charges or fees. [emphasis in original][11]

H&A also broadcast similar ads on radio stations promising to remove all negative information from consumers' credit reports, and at least one of which stated:

> Give Hargrave & Associates a call two seven nine, ninety one eighty eight. They specialize in erasing bad credit! Hargrave & Associates covers all three major credit bureaus, slow pays, charge-offs, repossessions can be erased for two-hundred, fifty dollars. . . . or online at: help my credit now dot com![12]

Likewise, H&A made similar representations in advertisement posters it placed in neighborhoods, at least one of which stated:

> Hargrave & Associates Financial Solutions ERASE BAD CREDIT $250 YOU ARE APPROVED CREDIT CARD GUARANTEED CALL 887 768-1988

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[10] *Id*. at Atts. M, N. Defendants admitted Ex. 1, Atts. M and N are accurate and true copies of H&A's business records. Ex. 68 [H&A Admissions]# 22; Ex. 69 [LH Admissions] #20; Ex. 70 [KH Admissions] #25.

[11] *Id*.

[12] Dkt No. 6, Ex.1, Att. JJ. Defendants H&A and Latrese Hargrave admitted to the genuineness and accuracy of Ex. 1, Att. JJ as transcripts of H&A's radio ads produced by radio stations to FTC pursuant to civil investigative demand. Ex. 68 [H&A Admissions] #80; Ex. 69 [LH Admissions] #76.

HELPMYCREDITNOW.COM [emphasis in original][13]

When consumers called H&A to inquire about its credit repair service, H&A's telemarketers typically reiterated the representations from H&A's ads.[14] The excerpt below from an H&A sales script evidences that in initial sales calls its telemarketers typically reiterated the representations H&A made in its ads or some version thereof:

> Short Story: "The only item we cannot delete off your credit is child support Mr/Mrs _____. Do you have child Support? (Wait for response use it as an icebreaker) Bankruptcy, repos, medical bill, credit card, inquiries, etc. we can delete."[15]
>
> ***
>
> Hargrave & Associates Financial Solutions is a credit consulting firm, credit restoration facility. We will get the negative items removed from your credit and begin building your beacon score. . . we charge only $250 for our services not the $600 to $3000 most other companies are charging. . . . **STRESS EDUCATION STRESS $250 STRESS URGENCY (TODAY!)** [emphasis in original][16]

Moreover, Ms. Hargrave admitted that "Hargrave & Associates' representatives told consumers that Hargrave & Associates would remove derogatory information from

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[13] Dkt. No. 6, Ex. 21, Att. A. Defendants admitted that Ex. 2, Att. A is a true and correct copy of H&A's ad poster. Ex. 68 [H&A Admissions] #81; Ex. 69 [LH Admissions] #77; Ex. 70 [KH Admissions] #83.

[14] Dkt. No. 6, Ex. 5 ¶ 4; Ex. 9 ¶4; Ex. 10 ¶ 11; Ex.12 ¶ 5-6; Ex.15 ¶ 4-6; Ex.18 ¶ 5; Ex. 20 ¶ 5-7. *See also*, Dkt. No. 6, Ex. 1, Atts. PP, QQ (Undercover call transcript confirms Defendants made representations similar to those consumers declared they made.).

[15] Deposition of Kevin Hargrave taken on May 14, 2009 ("Ex. 71"), Ex. 71 at p. 111, lines 3-23. *See also*, Ex, 71 at p. 297 (DepoEx. 49). (The same exhibits were used for deposing both Kevin and Latrese Hargrave so only one set filed herewith and are referred to as "Ex. 71 at DepoEx. #"). When questioned about H&A's sales scripts, Mr. Hargrave claimed most were drafts, however, only one script was marked "draft." *Id*. at p. 111, line 1 to p. 127, line 25, discussing Ex. 71 at p. 305 (DepoEx. 53). *See also*, Ex. 75, scripts the Defendants produced during discovery.

[16] Ex. 71 at p. 316 (DepoEx. 58).

consumers' credit profiles, credit histories, including bankruptcies, tax liens, foreclosures, garnishments, collections, judgments, and charge-offs, even when that information was accurate and not obsolete, to increase consumers' credit ratings."[17]

H&A charged $250 per person or $450 per couple,[18] and required consumers to pay all or at least part of the fee before the Defendants agreed to render service.[19] Consumers' sworn declarations are uncontrovertibly confirmed by Defendants H&A and Latrese Hargrave's Admissions that "Hargrave & Associates requested or received money for its credit repair services before fully performing those services."[20]

Typically, after consumers paid H&A the required advance fee, Defendants did little, if anything, to fulfill the promises made to consumers. In the end, Defendants did not remove the negative information from consumers' credit reports as promised, nor did Defendants substantially improve consumers' credit profiles, credit histories, or credit ratings.[21] Most consumers stated no changes were made to their credit reports, and all of the

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[17] Ex. 69 [LH Admissions] #39.

[18] Ex. 68 [H&A Admissions] #41; Ex. 69 [LH Admissions] #37; Ex. 70 [KH Admissions] #42. *See also,* Dkt. No. 6, Ex.1, Atts. M, N, U, CC; Ex. 4 ¶ 9, Att. C (over 100 consumer complaints filed with the BBB); and Exs. 5, 7, 8-12, 14-16, 18-20 (consumer declarations).

[19] Dkt. No. 6, Ex.1, Atts. CC, EE; Ex. 4 ¶ 9, Att. C; and Exs. 5, 7, 8-12, 14-16, 18-20 (consumer declarations). *See also,* Dkt. No. 6, Ex.1, Atts. PP, QQ (Excerpt from an undercover call confirms Defendants required advance payment: **A:** [Y]ou make one initial payment and there are no hidden costs, no extra costs, and like I said, you never have to pay anything else. . . . **Q:** One initial payment up front? **A:** Um-hum, 250, yeah.). Further, Defendants' contract consumers had to sign also evidences Defendants required advance payment: "Client agrees to pay $250 for Products and Services. . . . WORK WILL NOT BE COMPLETED UNTIL TOTAL FEE IS PAID. . . ." Dkt. No. 6, Exs. 12, 16, 15, Att. A.

[20] Ex. 68 [H&A Admissions] #42; Ex. 69 [LH Admissions] #38.

[21] Dkt. No. 6, Ex.1, Atts. CC-FF; Ex. 4 ¶¶ 9, Att. C; Ex. 5 ¶15; Ex. 6 ¶ 6; Ex. 8 ¶ 21; Ex. 9 ¶10; Ex. 10 ¶23; Ex. 11 ¶15; Ex. 12 ¶ 17; Ex.14 ¶ 12; Ex. 14A ¶ 23; Ex.15 ¶ 21; Ex. 16 ¶ 12; Ex. 18 ¶ 16; Ex. 19 ¶¶ 17-18;

negative items they expected to be removed were still being reported.[22] Other consumers reported that items were deleted because of their own efforts, not the Defendants'.[23] A few consumers also said negative items were only temporarily removed.[24]

The Admissions of H&A's president Latrese Hargrave provides indubitable evidence that H&A did not perform as promised. She admitted "Hargrave & Associates could not remove accurate and not obsolete derogatory information from consumers' credit profiles, credit histories, such as bankruptcies, tax liens, foreclosures, garnishments, collections, judgments, and charge-offs."[25] Further, Ms. Hargrave admitted "Hargrave & Associates made untrue or misleading representations to induce consumers to purchase their credit repair services, including, but not limited to, the representation that Defendants could improve substantially consumers' credit profiles and credit scores by permanently removing negative information from consumers' credit reports, even where such information was accurate and not obsolete."[26]

B. H&A's Deceptive Advance Fee Credit Card Business

Alone and in conjunction with their credit repair scheme, beginning sometime in

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Ex. 20 ¶ 21.

[22] Dkt. No. 6, Exs. 1, 4-6, 8-12, 14-16, 18-29.

[23] Dkt. No. 6, Ex. 12 ¶ 13; Ex. 20 ¶ 20.

[24] Dkt No. 6, Ex.10 ¶ 18; Ex.19 ¶ 18.

[25] Ex. 69 [LH Admission] #41.

[26] Ex. 69 [LH Admission] #40.

2006 continuing through November 2008, H&A marketed and sold credit cards,[27] using several methods, including Web site and poster ads[28] and upselling the credit card during inbound calls from consumers and outbound calls to H&A's existing credit repair customers.[29]

As H&A and Latrese Hargrave admitted, H&A promised consumers that everyone who applied would receive a credit card with a credit limit of at least $500,[30] for an advance fee of at least $100.[31] For example, at least one of H&A's Web site states:

> **YOU ARE APPROVED** -- Credit Lines from $500 - $10,000
> *The Road To Good Credit Begins Here!*
> * ATM access and cash withdrawal
> * The Elite Hargrave & Associates Credit Card
> * Credit line up to $10,000.00
> CALL 1-877-768-9551 FOR MORE INFORMATION[32]

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[27] Ex. 68 [H&A Admissions] #52. *See also*, Dkt. No. 6, Ex. 1, Atts. Q-R, U-Y; Exs. 7, 13, 21.

[28] Ex. 68 [H&A Admissions] #39; Ex. 69 [LH Admissions] #35; Ex. 70 [KH Admissions] # 40; Dkt. No. 6, Exs. 1, Atts. HH, Q-R; Ex. 5 ¶13; Ex. 6 ¶ 4; Ex. 7 ¶ 2; Ex. 8 ¶ 20; Ex. 10 ¶ 4; Ex. 13 ¶¶ 4-5;

[29] Ex. 71, p. 111, line 24 to p. 116, line 7; Ex. 71 at pp. 300, 302 (DepoExs. 50, 51) (inbound telemarketing scripts for credit selling repair services in 2008.); p. 117, line 2 to p. 121, line 16; Ex. 71 at pp. 304, 306 (DepoExs. 52-53) (outbound scripts telemarketing scripts for selling credit repair services in 2008); p. 121, line 17 to p. 126, line 25; Ex. 71 at p. 310 (DepoEx. 54) (telemarketing script titled, "How to Sale or U-Sale the Value Package"); p. 127, line 1-25; Ex. 71 at DepoEx. 55 (advertising script for credit repair and credit card). *See also*, Dkt. No. 6, Ex. 1 ¶¶ 19, 20, 21, 26, Atts. Q-R at 1, U-Y, HH; Ex. 21, Att. A; Ex. 7 ¶ 2; Ex. 5 ¶ 13; Ex. 6 ¶ 8; Ex. 8 ¶ 20; Ex. 10 ¶ 4; Ex. 13 ¶¶ 4-5.

[30] Ex. 68 [H&A Admissions]# 55; Ex. 69[LH Admissions] #51. The type of card Defendants promised consumers varied from advertisement to advertisement – "Elite Hargrave & Associates Credit Card," "secured MasterCard," a regular "MasterCard," and generic "credit card." Dkt. No. 6, Ex. 1, Atts. Q, U, W.

[31] Dkt. No. 6, Exs. 1 ¶ 26, Att. HH; Ex. 7 ¶ 3; Ex. 13 ¶¶ 4-5; Ex. 69 [LH Admissions] #52. *See also*, Ex. 68 [H&A Admissions] #92(d), Ex. 69 [LH Admissions] #92(d) and Ex. 60 [KH Admissions] #96 (d), admitting that complaints regarding Defendants' credit card are genuine business records.

[32] Dkt. No. 6, Ex.1, Atts. W-X. Defendants admitted that Atts. W-X, copies of H&A's website are accurate and true copies of its H&A's business records. Ex. 68 [H&A Admissions] #22; Ex. 69 [LH Admissions] #20; Ex. 70 [KH Admissions] #25.

Additionally, the following telemarketing script excerpt that Kevin Hargrave, during deposition, admitted H&A used when consumers called in to apply for the credit card evidences H&A guaranteed approval to everyone, but still required payment before agreeing to issue the card:

> Customer Service Inbound Credit Card Script 2008
> Greetings: "Thank you for calling Hargrave and Associates, are you calling in regards to your Guaranteed Approved MasterCard? Customer: "Yes." Customer Service Associate: Hargrave and Associates . . . we are now able to offer you a Guaranteed Approved MasterCard with NO Credit Check. . . . There is a one-time $100 processing fee . . . Your MasterCard will have a line of credit for $500 billed at the time you receive it. . . . Let's get your application completed and processed. . . . The process should take between 10-14 business days for you to receive your MasterCard. . . . Will you be using a Debit Card or Credit card for your processing fee? May I have that number please.[33]

Moreover, the Admission of Latrese Hargrave that "[a]fter telling consumers that they had been approved for a credit card, Hargrave & Associates required consumers to pay a fee before Hargrave & Associates would issue the credit card," substantiates consumers' claims that H&A charged an advance fee for its guaranteed approved credit card.[34]

Instead of actually receiving the promised credit card, consumers received a letter inviting them to apply for a secured credit card, for an additional $59 fee.[35] A few

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[33] Ex. 71 at p. 300 (DepoEx. 50).

[34] Ex. 69 [LH Admissions] #52.

[35] Ms. Hargrave admitted she was aware that instead of a credit card, consumers would receive a letter inviting them to apply for a credit. Ex. 69 [LH Admissions] # 61. *See* Ex. 71 at p. 369 (DepoEx. 65) (The letters consumers received states: "We are pleased to offer you the New Horizons MasterCard to finance your account with the creditor named in the box to the right. New Horizons has acquired your debt, and upon you agreement, we will: Transfer your balance to your New Horizons MasterCard; Add a low $59 first-year annual

consumers received nothing at all for the money they paid the Defendants.[36]

IV. FTC IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW

Fed. R. Civ. P. Rule 56(c) provides that summary judgment shall be granted if "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law."[37]

In moving for a summary judgment, Plaintiff bears the burden of establishing the absence of a genuine issue of material fact.[38] "Once a moving party has sufficiently supported its motion, the non-moving party must provide significant, probative evidence demonstrating the existence of a triable issue of fact."[39] The non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts."[40]

This case is especially suited for summary judgment. The overwhelming,

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fee. **Call 800-927-1503 today to accept this limited-time offer**."). [emphasis in original]. *See also*, Ex. 68 [H&A Admissions] #65.

[36] Dkt. No. 6, Ex.1 Att. HH; Ex 7 ¶ 8; Ex. 13 ¶¶ 4-6. Consumers' experiences were further corroborated in a taped conversation between an FTC investigator and an H&A telemarketer. Dkt. No. 6, Ex.1, Atts. PP.

[37] *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 884 (1990); *FTC v. Transnet Wireless Corp.*, 2007 U.S. Dist. LEXIS 19685, at *42 (S.D. Fla. March 20, 2007). Summary judgment is not a disfavored procedural shortcut, but rather "an integral part" of the judicial system. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

[38] *Id.* at 325; *FTC v. Holiday Enters., Inc.*, 208 U.S. Dist. LEXIS 35858, at *14-15 (quoting *Celotex Corp.,* 477 U.S. at 325); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970).

[39] *Chanel, Inc. v. Italian Activeware, Inc.*, 931 F.2d 1472, 1477 (11th Cir. 1991); *Irby v. Bittick*, 44 F.3d 949, 953 (11th Cir. 1995).

[40] *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Irby*, 44 F.3d at 953.

unassailable evidence submitted, including Defendants' Admissions, establishes conclusively: 1) Defendants violated Section 5 of the FTC Act, CROA, and the TSR; 2) Defendants caused substantial injury to the public and 3) Latrese and Kevin Hargrave are individually liable for the violations because they had the authority to control H&A's business practices and had knowledge of and participated in the violations. The record is undisputed. No genuine issue of material fact remains. Therefore, the Court should grant the Plaintiff's Motion for Summary Judgment.

V. IT IS UNDISPUTED THAT H&A VIOLATED SECTION 5 OF THE FTC ACT

A. Legal Standard under Section 5

Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful."[41] For liability under Section 5, the Court must find Defendants made material misrepresentations that injured consumers.[42]

A representation or omission is material if it is the kind usually relied upon by a reasonably prudent person.[43] Courts consider the overall net impression created by the acts

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[41] *See*, Dkt. No. 6, Volume IV, Tab A, FTC Act.

[42] *FTC v. Peoples Credit First, LLC*, 244 F. App'x. 942, 944 (11th Cir. 2007); *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *FTC v. Home Assure, LLC*, 2009 U.S. Dist. LEXIS 32053, at *13 (M.D. Fla. Tampa Div. Apr. 8, 2009); *FTC v. Jordan Ashley, Inc*., 1994-1 Trade Cas. (CCH) ¶ 70, 570 at 72,096 (S.D. Fla. 1994)(citing *FTC v. Amy Travel Serv., Inc*., 875 F.2d 564, 573 (7th Cir.1989)); *FTC v. Atlantex Assocs*., 1987 U.S. Dist. LEXIS 10911 * 25.

[43] *FTC v. Home Assure, LLC*, 2009 U.S. Dist. LEXIS 32053, at *13 (M.D. Fla. Tampa Div. Apr. 8, 2009); *FTC v. Jordan Ashley, Inc*., 1994-1 Trade Cas. (CCH) ¶ 70, 570 at 72,096 (S.D. Fla. 1994)(citing *FTC v. Amy Travel Serv., Inc*., 875 F.2d 564, 573 (7th Cir.1989)). *See also*, *FTC v. Atlantex Assocs*., 1987 U.S. Dist. LEXIS 10911 * 29.

or practices when evaluating their deceptiveness;[44] it is not necessary to show any particular consumer actually relied on or was injured by the unlawful conduct:

> In an FTC Act Section 13(b) enforcement action in which the government seeks restitution to compensate thousands of individual victims of unlawful practices, in contrast to a private action for fraud, such representative proof of injury suffered is sufficient to justify the requested relief . . . Requiring proof of subjective reliance by each individual consumer would thwart effective prosecution of large consumer redress actions and frustrate the statutory goals of the section.[45]

"A presumption of actual reliance arises once the Commission has proved that the defendant made material misrepresentations, that they were widely disseminated, and that consumers purchased the defendant's product."[46] Express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service are presumed to be material.[47] Finally, Section 5 does not require proof that Defendants possessed an

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[44] *FTC v. Nat'l Urological Group, Inc.*, 2008 U.S. Dist LEXIS 44145, at *40 (N.D. Ga. Atlanta Div. June 4, 2008); *FTC v. Stefanchik,* 2009 U.S. App. LEXIS 5216, at *7 (9th Cir. Mar. 13, 2009); *Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992); *Removatron Int'l Corp., v. FTC*, 884 F.2d 1489, 1496 (1st Cir. 1989)(quoting *Am. Home Prods. Corp. v. FTC*, 695 F.2d 681, 687 (3d Cir. 1982)). *See e.g., Peoples Credit First*, 244 F. App'x. at 944.

[45] *Holiday Enters.Inc.,* 2008 U.S. Dist. LEXIS 35858, at *16-17(quoting *FTC v. Windward Mktg.,* 1997 U.S. Dist. LEXIS 17114, at *27 (N.D. Ga. Sept. 30, 1997)). *See also McGregor v. Chierico*, 206 F.3d 1378, 1388 (11th Cir. 2000); *FTC v. Freecom Commc'ns., Inc.,* 401 F.3d 1192, 1203 (10th Cir. 2005); *FTC v. U.S. Oil & Gas Corp*., 1987 U.S. Dist. LEXIS 16137, at *68 (S.D. Fla. July 10, 1987).

[46] *Chierico*, 206 F.3d at 1388 (quoting *FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 605-06 (9th Cir. 1993)); *Holiday Enters.,* 2008 U.S. Dist. LEXIS 35858, at *17; *FTC v. Peoples Credit First*, 2005 U.S. Dist. LEXIS 38545, at *28-29 (M.D. Fla. Dec. 18, 2005), *aff'd,* 244 F. App'x. 942 (11th Cir. 2007).

[47] *In Re Thompson Med. Co*., 104 F.T.C. 648, 816 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986); *Jordan Ashley*, 1994-1 Trade Cas. at 72,096.

intent to deceive or acted in bad faith.[48]

1. Defendants misrepresented that they could improve substantially consumers' credit profiles and credit scores by permanently removing negative information from consumers' credit reports, even where such information was accurate and not obsolete. (Count IV)

It is undisputed that H&A violated Section 5 of the FTC Act in marketing and selling their credit repair services. Both orally and in writing, Defendants made deceptive express and deliberately implied claims to convince consumers H&A could improve substantially consumers' credit profiles and credit scores by permanently removing negative information from consumers' credit reports, even where such information is accurate and not obsolete.[49] Latrese Hargrave's Admission undeniably confirms H&A committed this violation. Specifically, she admitted "Hargrave & Associates made untrue or misleading representations to induce consumers to purchase their credit repair services, including, but not limited to the representation that Defendants could improve substantially consumers' credit profiles and credit scores by permanently removing negative information from consumer' credit reports, even where such information was accurate and not obsolete."[50] Defendants admitted copies of H&A's Internet, radio, and poster ads containing the misrepresentations that H&A could "ERASE BAD CREDIT" from consumers' credit reports

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[48] *FTC v. Bay Area Bus. Council, Inc.,* 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. World Travel Vacation Brokers*, 861 F.2d 1020, 1029 (7th Cir. 1988); *Holiday Enters.*, 2008 U.S. Dist. LEXIS 35858, at *17; *Windward Mktg.,* 1997 U.S. Dist. LEXIS 17114, at *39.

[49] *See supra*, Section IV.A. at pp. 3-7, the excerpts from Defendants' Web sites, ads, telemarketing scripts, and the discussion of representations Defendants made during conversations with consumers.

[50] Ex. 69 [LH Admissions] #40.

that Plaintiff filed to support entry of the TRO are genuine.[51]

H&A's misrepresentations systematically led consumers to believe it could remove all negative information from credit reports, even when that negative information was accurate and not obsolete, and consumers purchased H&A's bogus credit repair service.[52] Contrary to H&A's deceptive ads, the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq., provides that accurate adverse information be reported on credit reports for up to ten years.[53] Consequently, many consumers reported there were no changes in their credit reports and, after purchasing Defendants' credit repair service, the negative information they expected to be removed was still reported.[54] Some consumers stated that even when negative information was removed, it later reappeared on their credit reports.[55] Moreover, Latrese Hargrave admitted that "Hargrave & Associates could not remove accurate and not obsolete

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[51] Defendants H&A and Latrese Hargrave admitted to genuineness of the copies of H&A's Internet, radio and poster ads. Ex. 68 [H&A Admissions] # 22, 80-81; Ex. 69 [LH Admissions] #20, 76-77. Defendant Kevin Hargrave admitted to the Internet and poster ads. Ex. 70 [KH Admissions] #25, 83. *See* Dkt. No. 6, Ex. 1 Atts. M-Y (Internet ads), JJ (radio ads); Ex. 21, Att. A (poster ad).

[52] Dkt. No. 6, Ex. 1 ¶ 21, 25 Atts. CC-GG; Ex. 4 ¶ 16, Atts. C, E; Ex. 5 ¶15; Ex. 6 ¶ 9; Ex. 8 ¶¶ 16, 21; Ex. 9 ¶10; Ex. 10 ¶23; Ex. 11 ¶¶ 14-15; Ex. 12 ¶17; Ex. 14 ¶ 7; Ex. 14A ¶7; Ex. 15 ¶ 22; Ex. 16 ¶ 10; Ex. 17 ¶ 16; Ex. 18 ¶ 16; Ex. 19 ¶ 19; Ex. 20 ¶18.

[53] 15 U.S.C. § 1681c. The FCRA requires that consumer reporting agencies ensure the accuracy and fairness of credit reporting with regard to the confidentiality, accuracy, relevancy, and proper utilization of consumer credit information. Dkt. No. 6, Vol. IV, Tab E; Ex. 3 [TransUnion] ¶¶ 4,8. In so doing, the FCRA specifies the reporting time frame of such information, and in the event of reporting errors, provides a mechanism for disputes. *See* 15 U.S.C. §§ 1681c, 1681i; Dkt. No. 6, Ex. 2 [Experian] ¶¶ 4-6.

[54] Dkt. No. 6, Exs. 1, Atts. CC-GG; Exs. 4-5, 8-12, 14-16, 18-20. *See also,* In their Admissions, Defendants admitted that they received and responded to consumers' complaints (Ex. 68 [H&A Admissions] #91-95; Ex. 69 [LH Admissions] # 81, 83, 89, 91-93; Ex. 70 [KH Admissions] # 91-96). However, the Defendants continued to misrepresent their credit repair services. Attached as Ex. 73 are copies of consumer complaints, with sensitive information redacted, that the Defendants produced in discovery.

[55] Dkt. No. 6, Ex. 10 ¶ 18; Ex. 19 ¶ 18.

derogatory information from consumers' credit profiles, credit histories, such as bankruptcies, tax liens, foreclosures, garnishments, collections, judgments, and charge-offs; and her awareness of this fact."[56] There is no question that H&A's misrepresentations violated Section 5.

2. H&A Misrepresented That after Paying a Fee, Consumers Are Guaranteed to Receive a Major Credit Card (Count V)

H&A also violated Section 5 of the FTC Act by misrepresenting that after paying an advance fee, consumers were guaranteed to receive a credit card.[57] As admitted by H&A and Latrese Hargrave, "Hargrave & Associates's promised that everyone who applied for a credit card would be approved for a credit card with a credit limit of at least $500."[58] Although Defendants' ads guaranteed that everyone who called would receive a credit card, H&A required consumers to pay an advance fee of at least $100 before Defendants would agree to issue the card.[59] Consumers relied on H&A's representation that they would receive a credit card and paid the requested up-front cost.[60] Instead of receiving the promised credit card, however, many consumers received letters inviting them to apply for a secured credit card,

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[56] Ex. 69 [LH Admissions] #41-42.

[57] Ex. 68 [H&A Admissions] #22, 55, 62, 95(d); Ex. 69 [LH Admissions] #51-52, 61, 93(d); Ex. 70 [KH Admissions] #96(d). *See also*, Dkt. No. 6, Ex.1 Atts. O-R, U-Y, HH; Ex. 5 ¶ 13; Ex. 6 ¶ 8; Ex. 7 ¶¶ 2-3; Ex. 8 ¶ 20; Ex. 10 ¶ 4; Ex. 13 ¶¶ 4-5; Ex. 21 ¶ 5, Att. A.

[58] Ex. 68 [H&A Admissions] # 55; Ex. 69 [LH Admissions] #51; *See* Dkt. No. 6, Ex. 1, Atts. W-Y, HH; Ex. 7 ¶ 3; Ex. 13 ¶¶ 4-5.

[59] Dkt. No. 6, Ex.1, Att. HH; Ex. 7 ¶ 3; Ex. 13 ¶¶ 4-5. *See also,* Ex. 69 [LH Admission] #52.

[60] Dkt. No. 6, Ex. 1, Att. HH; Ex. 7 ¶ 3; Ex. 13 ¶¶ 4-6.

for which they would have to pay an additional $59.[61] Even more troubling is that some consumers reported that they did not receive anything at all for their money.[62]

The Defendants' Admissions substantiate that H&A's sales tactics were deceptive. For example, H&A essentially admitted the deception by its Admission that "Hargrave & Associates did not disclose to consumers that they would not receive a credit card after paying Hargrave & Associates the required fee, but instead would receive a letter from New Horizons Bank offering to transfer the balance of their old $500 debt owed to Hargrave & Associates onto a New Horizon's MasterCard."[63] In addition, Defendant Latrese Hargrave admitted that she "was aware that instead of a credit card consumers would receive a letter from New Horizons inviting them to accept New Horizon's offer to transfer the balance of their old $500 debt owed to Hargrave & Associates onto a New Horizon's MasterCard."[64]

The record conclusively shows H&A's express and deliberately implied representations were material and central to the decision of each consumer who paid the Defendants for the credit card. H&A's misrepresentations were likely to, and in fact did, mislead consumers.[65] As a result, cumulatively, consumers who relied on H&A's

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[61] Ex. 68 [H&A Admissions] #62, 65, 70 (H&A admitted Mr. and Mrs. Hargrave were "aware that instead of a credit card consumers would receive a letter from New Horizons inviting them to accept New Horizon's offer to transfer the balance of their old $500 debt owed to Hargrave & Associates onto a New Horizon's MasterCard."). *See* Ex. 71 at DepoEx. 65 (letter consumers received instead of the credit card).

[62] Dkt. No. 6, Ex.1 , Atts. HH; Ex.13 ¶¶ 4-5; Ex. 6 ¶ 2, 4-5.

[63] Ex. 68 [H&A Admissions]# 62; *see also*, Ex. 68 [H&A Admissions] #65, 70 (both Kevin and Latrese Hargrave knew).

[64] Ex. 69 [LH Admissions] #61; *see also*, Ex. 68 [H&A Admissions] #65, 70.

[65] Dkt. No. 6, Ex. 1, Att. HH; Ex. 7 ¶ 3; Ex. 13 ¶¶ 4-5.

misrepresentations lost more than $7.4 million.[66] Reasonable consumers have no obligation to doubt the veracity of express claims, and false claims are "inherently likely to mislead."[67] Accordingly, it is incontestible that H&A's misrepresentations violated Section 5(a) of the FTC Act.

VI. IT IS UNDISPUTED THAT H&A VIOLATED THE CROA

The corporate Defendant is a "credit repair organization," as defined in CROA.[68] Based on the evidence, including Defendants' Admissions, it is undisputed that H&A has violated two provisions of CROA by (1) misrepresenting its credit repair services and (2) charging and receiving payment before completing the promised credit repair services.[69]

A. H&A Violated Section 404(a)(3) of CROA (Count I)

Section 404(a)(3) of CROA, 15 U.S.C. § 1679b(a)(3), prohibits credit repair organizations from "mak[ing] or us[ing] any untrue or misleading representation of the services of the credit repair organization." As discussed in detail, *supra* at pages 3-7 and 13-15, H&A repeatedly misrepresented its credit repair service and led consumers to believe H&A could improve substantially consumers' credit profiles and credit scores by

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[66] As explained *infra* at p. 29-31, Defendants' records indicate total injury to consumers is $7,443,732.

[67] *FTC v. Direct Mktg. Concepts, Inc.,* 2004 U.S. Dist. LEXIS 11628, at *13 (D. Mass. June 23, 2004) (citing *Thompson Med. Co.*, 104 F.T.C. at 788).

[68] *See* Dkt. No. 6, Vol. IV, Tab D, CROA. Section 403(3) of CROA, 15 U.S.C. § 1679a(3); *See also*, Ex. 68 [H&A Admissions] # 6, 20-27, 38-42; Ex. 69 [LH Admissions] #2, 20, 34-35, 37-40, 42; Ex. 70 [KH Admissions] #1, 21-27, 38-42.

[69] It is clear Defendants knew or should have known their business practices violated CROA. Ex. 74, excerpts from CROA and state credit repair laws Defendants produced provide proof of their knowledge.

permanently removing negative information from consumers' credit reports, even when such information was accurate and not obsolete.[70] However, H&A did not, and in fact could not, perform as promised.[71] Accurate negative information can legally be and is reported on credit reports for up to 10 years.[72] Indeed, Latrese Hargrave admitted that H&A misrepresented its credit repair service to induce consumers to purchase the service.[73] Thus, H&A's misrepresentations violated Section 404(a)(3) of CROA.

B. H&A Violated Section 404(b) of CROA (Count II)

Section 404(b) of CROA, 15 U.S.C. § 1679b(b), states that "no credit repair organization may charge or receive any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed."

In violation of Section 404(b), H&A's routinely charged and received money for the performance of credit repair services before fully performing those services. Consumers consistently reported that H&A required all or part of the credit repair fee to be paid up-front.[74] Consumers' claims are fully substantiated by the Defendants' own Admissions that

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[70] Ex. 68 [H&A Admissions] # 22, 80-81; Ex. 69 [LH Admissions] #20, 39-42, 76-77; Ex. 70 [KH Admissions] #25, 83. *See also*, Dkt. No. 6, Ex. 1, Atts. M-Y, JJ at 5; Exs. 4-6, 8-12, 14-16, 18-21.

[71] Ex. 69 [LH Admissions] #40-42; Dkt. No. 6, Exs. 1, Atts. CC-GG; Exs. 4-5, 8-12, 14-16, 18-20.

[72] 15 U.S.C. § 1681c. *See also*, Dkt. No. 6, Ex 2 [Experian] ¶¶ 3; Ex. 3 [TransUnion] ¶¶ 4.

[73] Ex. 69 [LH Admissions] #40.

[74] Dkt. No. 6, Ex. 1, Atts. CC-GG; Exs. 2-6, 8-12, 14-16, 18-20.

they charged between $250 and $450[75] and "requested or received money for its credit repair services before fully performing those services."[76] Thus, there is no question that H&A required up front payment for their credit repair services. Consequently, H&A's practice of charging an advance fee for its credit repair service was a blatant violation of this provision.

VII. IT IS UNDISPUTED THAT DEFENDANTS VIOLATED THE TSR

It is undisputed Defendants are "sellers" or "telemarketers," engaged in "telemarketing," as these terms are defined in the TSR,[77] and they violated the TSR in selling advance fee credit cards.

A. Defendants Violated Section 310.4(a)(4) of the TSR (Count III)

Section 310.4(a)(4) of the TSR prohibits telemarketers and sellers from "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."

As described in detail *supra* in Section III.B. at pages 7-10, H&A, in telemarketing an advance fee credit card, routinely requested and received payment of a fee in advance of consumers obtaining a credit card when H&A had guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of a credit card, such as a

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[75] Ex. 68 [H&A Admissions] #41; Ex. 69 [LH Admissions] #37; Ex. 70 [KH Admission] #42.

[76] Ex. 68 [H&A Admissions] #42; Ex. 69 [LH Admissions] #38; *see also* Dkt. No. 6, Exs. 12, 15-16.

[77] 16 C.F.R. §§ 310.2(z), (bb) and (cc); Ex. 68 [H&A Admissions] #13. Section 310.6(b)(5) of the TSR that exempts telephone calls initiated by a customer or donor in response to an ad through any medium other than direct mail solicitation. However, excluded are calls initiated by consumers in response to ads for, among other things, credit repair as described in § 310.4(a)(2) and advance fee loans or § 310.4(a)(4) for advance fee loans or extensions of credit. 16 C.F.R. § 310.6(b)(5). *See*, Dkt. No. 6, Vol. IV, Tab F, TSR.

MasterCard credit card, for such consumers.[78] The Admissions of H&A and Latrese Hargrave provide unquestionable substantiation that H&A guaranteed approval to everyone who applied for a credit card.[79] Moreover, Ms. Hargrave also admitted that "[a]fter telling consumers that they had been approved for a credit card, H&A required consumers to pay a fee before H&A would agree to issue the credit card."[80] Thus, it is undisputed that H&A violated Section 310.4(a)(4) of the TSR by requesting and receiving advance payment after guaranteeing everyone who responded to H&A's ads would receive a credit card.

VIII. LATRESE AND KEVIN HARGRAVE ARE EACH INDIVIDUALLY LIABLE FOR THE VIOLATIONS OF THE CORPORATE DEFENDANT

To find individuals liable for violations of the FTC Act and, thereby, CROA and the TSR, Plaintiff must first demonstrate corporate liability. Once corporate liability has been established, "the FTC must show that the individual defendants participated directly in the practices or acts or had authority to control them . . . the FTC must then demonstrate the individual had some knowledge of the practices."[81]

The FTC may establish knowledge by showing "actual knowledge of material

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[78] Dkt. No. 6, Ex. 1 ¶ 26, Att. HH; Ex. 7 ¶ 8; Ex. 13 ¶¶ 4-5.

[79] "Hargrave & Associates promised that everyone who applied for a credit card would be approved for a credit card with a credit limit of at least $500." Ex. 68 [H&A Admissions] #55; Ex. 69 [LH Admissions] # 51.

[80] Ex. 69 [LH Admissions] #52. Additionally, the corporate Defendant admitted it "did not disclose to consumers that they would not receive a credit card after paying H&A the required fee, but instead would receive a letter from New Horizon offering to transfer the balance of their old $500 debt owed to H&A onto a New Horizon's MasterCard." Ex. 68 [H&A Admissions] #62.

[81] *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 470 (11th Cir. 1996)(quoting *Amy Travel*, 875 F.2d at 573).

misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth."[82] "An individual's status as a corporate officer gives rise to a presumption of ability to control a small, closely-held corporation."[83] "A heavy burden of exculpation rests on the chief executive and primary shareholder of a closely held corporation whose stock-in-trade is overreaching and deception."[84]

As demonstrated above, the Commission has presented volumes of compelling and undisputed evidence, including the Defendants' own Admissions, that establish corporate liability. This evidence clearly demonstrates that the corporate Defendant, by and through its owners and officers Latrese and Kevin Hargrave and employees, violated Section 5 of the FTC Act, CROA, and the TSR. Once the FTC has established corporate liability, the analysis then focuses upon showing (1) the individual defendant has authority to control the corporate defendant or participates directly in the wrongful acts or practices and (2) the individual defendant has some knowledge of the wrongful acts or practices.[85] As discussed

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[82] The FTC "need not demonstrate . . . that the individual defendant possessed the intent to defraud." *Jordan Ashley, Inc.*, 1994-1 Trade Case. (CCH) at 72,096 (citing *Amy Travel Serv.*, 875 F.2d at 573-4). In addition, "direct participation in the fraudulent practices is not a requirement for liability. Awareness of fraudulent practices and failure to act within one's authority to control such practices is sufficient to establish liability." *Atlantex Assocs*., 987 U.S. Dist. LEXIS 10911 * 34.

[83] *FTC v. Windward Mktg.,*1997 U.S. Dist. Lexis 17114, at *27 (quoting *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973)).

[84] *Id*.

[85] *FTC v. Gem Merch. Corp.*, 87 F.3d at 470; *Home Assure, LLC*, 2009 U.S. Dist. LEXIS 32053, at *17; *FTC v. Holiday Enters., Inc.*, 2008 U.S. Dist. LEXIS 35858, at *25; *Windward Mktg.,* 1997 U.S. Dist. LEXIS 17114, at *38; *Peoples Credit First,* 2005 U.S. Dist. LEXIS 38545, at *26-27. To satisfy the knowledge requirement, the FTC need not demonstrate that defendants possessed the intent to deceive or defraud. *See e.g.,*

below, the evidence clearly demonstrates Latrese and Kevin Hargrave, acting alone or in concert with others, formulated, directed, controlled, or participated in and had knowledge of the unlawful acts and practices alleged in the complaint, and are individually liable for the violations of the FTC ACT, CROA, and the TSR.

A. Latrese Hargrave Is Individually Liable

Latrese Hargrave had authority to control the corporate Defendant and participated in and had knowledge of its deceptive acts and practices. During her deposition, Ms. Hargrave testified that she was the president, and she and her husband Kevin Hargrave owned the company.[86] Ms. Hargrave is also listed as the treasurer and registered agent of the corporate Defendant.[87] Ms. Hargrave admitted she registered the corporate Defendant's fictitious names, one of which was "Hargrave & Associates Financial Solutions."[88] During her deposition, Ms. Hargrave also admitted opening bank accounts and lines of credit for the corporation.[89] Ms. Hargrave also admitted she had authority to use corporate bank and credit

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Id; Atlantex Assoc., 1987 U.S. Dist. LEXIS 10911, at *25-26; *Bay Area Bus. Council, Inc.,* 423 F.3d at 636; *Freecom Commc'ns., Inc.,* 401 F.3d at 1207. A showing of actual knowledge of the misrepresentations, reckless indifference to the truth or falsity of the representations, or an awareness of a high probability of fraud coupled with an intentional avoidance of the truth will suffice. *Global Mktg., Group, Inc*., 2008 U.S. Dist. LEXIS 106775, at *16-17 (citations omitted).

[86] Deposition of Latrese Hargrave taken on May 13, 2009 (hereafter referred to as "Ex. 72"). Ex. 72 at p. 35, lines 13-14, p. 48, lines 11-20, p. 49, lines 10-12. *See also*, Ex. 71 at p. 246 (DepoEx. 36) (H&A organization chart showing both Kevin and Latrese Hargrave as "president and CEO.").

[87] In her Admissions, Ms. Hargrave admitted that she was the "incorporator, registered agent, owner and president of Latrese & Kevin Enterprises, Inc." Ex. 69 [LH Admissions] #1. *See also*, Ex. 68 [H&A Admissions] #2; Dkt. No. 6, Ex. 1, Atts. A, G.

[88] Ex. 69 [LH Admissions] #2. *See also*, Ex. 68 [H&A Admissions] #6; Dkt. No. 6, Ex.1, Att. B.

[89] Ex. 72 at p. 33 lines 5-21. *See also*, Ex. 69 [LH Admissions] #94, Ms. Hargrave admitted to the genuineness of the bank records contained in Dkt. No. 6, Ex.1, Atts. KK, LL, MM.

card accounts and that she used them to pay business and personal expenses.[90]

Ms. Hargrave also testified under oath that she had an office at H&A's business premises.[91] She admitted that she participated in the management and business operation of H&A with her husband Kevin Hargrave.[92] She also admitted she helped train H&A's employees and telemarketers.[93] Ms. Hargrave attended staff meetings and was responsible for H&A's payroll.[94] According to H&A's Admissions made by and through Ms. Hargrave, "Defendant Latrese Hargrave had authority to control the content of the scripts used by Hargrave & Associates' telemarketers."[95] Additionally, Ms. Hargrave admitted that she "participated in drafting the telephone scripts used by Hargrave & Associates to offer credit repair services ad credit cards to consumers."[96] Further, Ms. Hargrave placed H&A's

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[90] Ex. 69 [LH Admissions] #95-96. *See also*, Ex. 68 [H&A Admissions] #97; Ex. 70 [KH Admissions] #100-101; Dkt. No. 6, Ex.1, Atts. KK, LL, MM.

[91] Ex. 72 at p. 71, lines 13-14. However, in her Admissions that were served on Plaintiff after Ms. Hargrave was deposed, she denied that she had an office at the company. Ex. 69[LH Admissions] #5. Interestingly, Mr. Hargrave in his Admissions, stated that Defendant Latrese Hargrave **did** maintain an office at H&A. Ex. 70 [KH Admissions] #15.

[92] Ex. 69 [LH Admissions] #6, 13-14. Kevin Hargrave admitted that Latrese Hargrave had authority to hire and/or fire H&A's employees. Ex. 70[KH Admissions] #20. Additionally, Latrese Hargrave in her capacity as president of H&A was sued and a judgment was entered for failure to perform credit repair services. Dkt. No. 6, Ex. 20 ¶¶ 25-26.

[93] Ex. 69 [LH Admissions] #8. Latrese Hargrave, on behalf of H&A, also admitted to participating management and operation of H&A and in training its telemarketers. Ex. 68 [H&A Admissions] #11, 15.

[94] Ex. 72 at p. 11, lines 19-24, p. 32 lines 11-25.

[95] Ex. 68 [H&A Admissions] #14. Curiously, Ms. Hargrave, in her Admissions, denied she had authority to control the content of H&A's telemarketing scripts. Ex. 69 [LH Admissions] #7.

[96] Ex. 69 [LH Admissions] #107. Ms. Hargrave, on behalf of H&A, also admitted to control over the content of scripts used by H&A's telemarketers. Ex. 68 [H&A Admissions] #14.

deceptive ads,[97] received and responded to consumers' complaints,[98] and admitted she made decisions regarding issuing refunds.[99]

Unquestionably, Ms. Hargrave had knowledge of H&A's deceptive acts and practices. Ms. Hargrave admitted: a) "Hargrave & Associates made untrue or misleading representations to induce consumers to purchase their credit repair services, including, but not limited to, the representation that Defendants could improve substantially consumers' credit profiles and credit scores by permanently removing negative information from consumers' credit reports, even where such information was accurate and not obsolete;"[100] b) "Hargrave & Associates could not remove accurate and not obsolete derogatory information from consumers' credit profiles, credit histories, such as bankruptcies, tax liens, foreclosures, garnishments, collections, judgments, and charge-offs;"[101] c) she was "aware that Hargrave & Associates could not remove accurate and not obsolete derogatory information from consumers' credit profiles, credit histories, such as bankruptcies, tax liens, foreclosures,

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[97] Dkt. No. 6, Ex.1, Atts. JJ; *see also* Ex. 68 [H&A Admissions] #80; Ex. 69 {LH Admissions] #76 (JJ is accurate and genuine.

[98] Ex. 72 at p. 31, line 14 to p. 32, line 7. *See* Ex. 68 [H&A Admissions] #91 (The corporate Defendant admitted that "Defendant Latrese Hargrave responds or has responded to complaints from consumers regarding Hargrave &Associates' business practices."). *See also*, Ex. 69 [LH Admissions] #83 (Ms. Hargrave admitted that prior to the FTC filing this case, she "received notice of consumers' complaints that they were misled by Hargrave & Associates's misrepresentations that it could remove accurate and not obsolete negative information such as bankruptcies, foreclosures, judgments, and liens from consumers' credit reports, and increase consumers' credit scores."). *Accord*, Dkt. No. 6, Ex. 1, Atts. EE, HH.

[99] Ex. 69 [LH Admissions] #105. *See also*, Ex. 68 [H&A Admissions] #91, 95, 107; Ex. 70 [KH Admissions] #111; Ex. 72 at p. 57, line 14 to page 58 line 20. *See also*, Dkt. No. 6, Ex. 1, Atts. JJ; Ex. 6 ¶ 7; Ex. 13 ¶11; Ex. 20 ¶24.

[100] Ex. 69 [LH Admissions] #40.

[101] Ex. 69 [LH Admissions] #41.

garnishments, collections, judgments, and charge-offs;[102] d) "Hargrave & Associates requested or received money for its credit repair services before fully performing those services,"[103] and prior to the FTC filing its Complaint, "consumers complained to Hargrave & Associates that it was misrepresenting its credit repair services and requested refunds;"[104] e) "Hargrave & Associates promised that everyone who applied for a credit card would be approved for a credit card with a credit limit of at least $500;"[105] f) "[a]fter telling consumers that they had been approved for a credit card, Hargrave & Associates required consumers to pay a fee before Hargrave & Associates would issue the credit card;"[106] and g) she was "aware that instead of a credit card consumers would receive a letter from New Horizons inviting them to accept New Horizon's offer to transfer the balance of their old $500 debt owed to Hargrave & Associates onto a New Horizon's MasterCard."[107] Moreover, in June 2006, the president of the BBB of Northeast Florida notified H&A that representations on its Web site were problematic and suggested modifications, however, H&A did not make the

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[102] Ex. 69 [LH Admissions] #42.

[103] Ex. 69 [LH Admissions] #37-38. *See also*, Ex. 68 [H&A Admissions] #41-42.

[104] Ex. 69 [LH Admissions] #80. *See also,* Dkt. No. 6, Ex. 1, Att. EE (copies of complaints consumers filed with the Ohio Office of Attorney General and Latrese Hargrave's responses to those complaints) and Attachment HH (copies of complaints consumers filed with the BBB regarding the H&A's credit card that the BBB forwarded to Defendants and Latrese Hargrave and Kevin Hargrave's responses to those complaints.).

[105] Ex. 69 [LH Admissions] #51.

[106] Ex. 69 [LH Admissions] #52.

[107] Ex. 69 [LH Admissions] #61.

suggested changes and continued to mislead consumers.[108] That Latrese Hargrave had the ability to control the corporate Defendant and participated in and had knowledge of its deception is incontrovertible, thus she should be found individually liable.[109]

B. Kevin Hargrave Is Individually Liable

Defendant Kevin Hargrave had the ability to control the corporate Defendant, participated in and had knowledge of its deceptive acts and practices. Kevin Hargrave admitted "he and Defendant Latrese Hargrave were the only officers and owners of the corporate Defendant."[110] He also admitted that he "was the treasurer of Hargrave & Associates until April 30, 2007, and continued to participate in the business as an owner and manager."[111] Mr. Hargrave admitted he had the authority to control the "content of H&A's Web sites,"[112] "the content of scripts used by H&A's telemarketers,"[113] and "the content and placement of Hargrave & Associates's marketing and advertising materials."[114] Further, he jointly controlled the finances of the corporate Defendant. He signed opening documents for

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[108] Ex. 3 ¶ 16. To warn potential new customers, the BBB gave H&A an "unsatisfactory" rating. *Id*. at ¶ 7, Att. A.¶ 15.

[109] Additionally, Ms. Hargrave personally benefitted from the fraudulent business. She received more than $1.46 million as salary and shareholder distributions. Ex. 69 [LH Admissions] #97. *See also*, Ex. 68 [H&A Admissions] #103.

[110] Ex. 70 [KH Admissions] #6. *See also*, Dkt. No. 6, Ex. 1, Att. A.

[111] Ex. 70 [KH Admissions] #2.

[112] Ex. 70 [KH Admissions] #24. *See also*, Ex. 68 [H&A Admissions] #26; Ex. 69 [LH Admissions] # 24.

[113] Ex. 70 [KH Admissions] #12. *See also,* Ex. 69[LH Admissions] #15.

[114] Ex. 70 [KH Admissions] #76. *See also*, *Id*. at 81 (Kevin Hargrave admitted signing advertising agreement for broadcasting H&A's ads).

corporate bank and credit card accounts and admitted he used those accounts to pay personal and business expenses.[115]

Additionally, Mr. Hargrave admitted he maintained an office at H&A's business,[116] controlled and participated in its management and operation,[117] had authority to control the content and the placement of H&A's marketing and advertising materials,[118] and registered at least one of its Web sites.[119] He also admitted he participated in training H&A's employees and telemarketers and had authority to hire and fire them.[120]

It is undebatable that Kevin Hargrave had knowledge of H&A's deceptive business practices. He admitted he had knowledge of consumer complaints the BBB forwarded to H&A and complaints consumers filed directly with H&A regarding its business practices.[121]

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[115] Ex. 70 [KH Admissions] #99. *See also*, Ex. 68 [H&A Admissions]# 99; Ex. 69 [LH Admissions] #99; Ex. 72 at 81, lines 4-11. *See also*, Ex. 70 [KH Admissions] #97 (admitted to the accuracy and genuineness of bank records in Dkt. No. 6, Ex.1, Atts. LL, MM).

[116] Ex. 70 [KH Admissions] #10. *See also*, Ex. 68 [H&A Admissions] #10; Ex. 69 [LH Admissions] #13.

[117] Ex. 70 [KH Admissions] #2, 11. *See also*, Ex. 68 [H&A Admissions] #12; Ex. 69 [LH Admissions] #10, 14. During his deposition, when questioned about his responsibilities, Mr. Hargrave testified he performed sales management. Ex. 71 at p. 13, line 25 to p. 14, lines 1-6. Consumers provided sworn declarations to which they appended copies of the welcome letter H&A sent to new credit customers, a letter authored by Kevin Hargrave. Dkt. No. 6, Ex. 6 ¶ 11; Ex. 12, Att. A; Ex. 15, Att. A; Ex.16, Att. A.

[118] Ex. 70 [KH Admissions] #76, 78, 108; Ex. 68 [H&A Admissions] #83, 26, 76-77; Ex. 69 [LH Admissions] #14, 15, 75.

[119] Ex. 70 [KH Admissions] #23 (admitted he registered H&A's www.helpmycreditnow.com Web site). *See also,* Ex. 69 [LH Admissions] #22(b).

[120] Ex. 70 [KH Admissions] #13, 14.

[121] Ex. 70 [KH Admissions] #91-92.

Mr. Hargrave also admitted he reviewed and responded to consumers' complaints[122] and made decisions regarding refunds.[123] Additionally, during deposition Latrese Hargrave corroborated that Mr. Hargrave exercised control over H&A and had knowledge of all aspects of its operations.[124] According to Ms. Hargrave, Kevin Hargrave was responsible for the day-to-day business operations of H&A,[125] and he decided which products H&A would sell, where H&A would sell them, and exercised full control over H&A's finances.[126] Irrefutably, Defendant Kevin Hargrave had authority to and did control the corporate Defendant and participated in and had knowledge of its deceptive acts and practices.[127] Consequently Kevin Hargrave should be found individually liable for the violations of H&A.

IX. THE REQUESTED RELIEF

A. Broad Injunctive Provisions are Appropriate in Order to Prohibit Future Violations by the Defendants

Broad injunctive provisions are necessary to prevent Defendants from violating the law in a new guise. "Congress envisioned, it cannot be required to confine its road block to

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[122] Ex. 70 [KH Admissions] #93. Mr. Hargrave also admitted to the accuracy and genuineness of the complaints contained in Dkt. No. 6, Ex. 1, Atts. DD-FF, HH. *Id*. at #96. *See also*, Ex. 68 [H&A Admissions] #92-93; Ex. 69 [LH Admissions] #91.

[123] Ex. 70 [KH Admissions] #106. *See* also, Ex. 68 [H&A Admissions] # 108; Ex. 69 [LH Admissions] # 108.

[124] Ex. 72 at p. 12, lines 6-10; p. 13, lines 1-4; p. 16, lines 8-14, 22-25.

[125] Ex. 72 at p. 16, lines 22-25; p. 70 lines 15-19.

[126] Ex. 72 at p. 81, lines 4-11.

[127] Kevin Hargrave personally benefitted from H&A's deceptive business, and from October 2003 until October 23, 2008, and he admitted that he had no other source of income during this period. Ex. 70 [KH Admissions] #104. *See also*, Ex. 68 [H&A Admissions] #105; Ex. 69 [LH Admissions] #103.

the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity."[128] As a result, Defendants may be restrained from making misrepresentations and some fencing in provisions to prevent future violations are also reasonable.[129] The FTC requests that the corporate Defendant, its successor Kevetrese Enterprises, Inc. ("Kevetrese")[130] and Latrese and Kevin Hargrave be prohibited from, among other things, engaging in certain business activities and distributing or selling customer information. Defendants should also be required to adhere to provisions that will prevent future violations, including record keeping and compliance monitoring provisions, as provided in the attached proposed order.[131]

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[128] *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952). "[I]t is entirely reasonable for the Commission to frame its order broadly enough to prohibit petitioner's use of identical illegal practices for any purpose, or in conjunction with the sale of any and all products." *Carter Prods. v. FTC*, 323 F.2d 523, 533 (5th Cir. 1963)(quoting *Niresk Indust. Inc. v. FTC*, 278 F.2d 337, 343 (7th Cir. 1960), *cert. denied*, 364 U.S. 883 (1960)).

[129] *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 395 (1965)(finding that, once caught violating the FTC Act, defendants must expect some reasonable fencing in).

[130] Under Florida case law, a company is liable as a successor when it is "merely a continuation or reincarnation of the predecessor under a different name." *Chicago Title Ins. Co. v. Alday-Donalson Title Co. of Fla.*, 832 So.2d 810, 815 (Fla. Dist. Ct. App. 2002) (quoting *Munim v. Azar*, 648 So.2d 145, 153-54 (Fla. 4th D.C.A. 1994)). The court also concluded "a change in form, but not a change in substance" is key determining liability of a successor corporation. *Id*. Between October 20, 2008 and November 3, 2009, Defendants disabled the H&A Web sites (Ex. 71 at 83, ln. 23-23; 33, ln. 23-25), and began selling credit repair services and credit cards through Kevetrese, incorporated November 3, 2008. Ex. 68 [H&A Admissions] #114, 118; Ex. 70 [KH Admissions] #115, 119. Defendants admit that Kevtrese is the successor corporation and was operating from H&A's office at 3450 Dunn Avenue, Jacksonville, FL 32218. Ex. 68 [H&A Admissions] #117, 129; Ex. 69 [LH Admission] #117, 132 (#132 default admission); Ex. 70 [KH Admissions] # 118, 130. Like H&A, Kevtrese, d/b/a "BFS Credit Services, using three Web sites: www.bfscredit.com, makelifebetternow.net, and www.bfscard.com to sell its products. Ex. 68 [H&A Admissions] #118, 122, 130; Ex. 69 [LH Admissions] #118, 126a-b, 133 (#133 default admission); Ex. 70 [KH Admissions] #126-127.

[131] *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1018 (finding that courts may order record keeping and monitoring to ensure compliance)(citing *FTC v. SlimAmerica*, 77 F. Supp. 2d 1263, 1276 (S.D. Fla. 1999)(finding that record keeping and monitoring provisions are appropriate to allow the Commission to police future conduct); *FTC v. US Sales*, 785 F. Supp. 737, 753-754 (N.D. Ill. 1992); *FTC v. Sharp*, 782 F. Supp. 1445, 1456-57 (D. Nev.1991)).

B. Defendants Should Be Held Jointly and Severally Liable to the Commission for a $7,443,732.00 Monetary Judgment

The Court has the authority to exercise its full equitable powers under Section 13(b) of the FTC Act to remedy violations of Section 5 of the FTC Act.[132] The full range of equitable remedies includes the power to order equitable monetary relief in the form of repayment of money, restitution, disgorgement, and rescission.[133] The Defendants are jointly and severally liable for the total amount of consumer injury.[134]

The primary purpose of restitution in the context of a deceptive sales scheme is to restore victims to their position prior to the deceptive sale.[135] The amount of restitution to be awarded usually equals the amount paid by the victims of an illegal scheme less any amounts previously returned to the victims by the Defendants.[136] No credit is given for goods or services that may have been purchased by injured consumers or for a defendant's

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[132] *Gem Merch. Corp.*, 87 F.3d at 469; *U.S. Oil & Gas*, 748 F.2d at 1432-1434; *Global Mktg. Group,* 2008 U.S. Dist. LEXIS 106775, at *20; *Windward Mktg.*, 1997 U.S. Dist. LEXIS 17114, at *42-46; *Peoples Credit First*, 2005 U.S. Dist. LEXIS 38545, at *28; *Think Achievement Corp.*, 144 F. Supp. 2d at 1019; *Amy Travel Servs.,* 875 F.2d at 570; *FTC v. Silueta Distrib. Inc.*, 1995-1 Trade Cas. (CCH) ¶ 70,918 at 74,100 (N.D. Cal. 1995); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102-03 & n. 34 (9th Cir. 1994), *cert denied*, 514 U.S. 1083 (1995).

[133] In a suit under section 13(b), a court may also order disgorgement of a defendant's "unjust enrichment" when it is not possible to reimburse all of the consumers who have been injured by the defendant's misrepresentations. Further, because it is not always possible to distribute the money to the victims of the defendants wrongdoing, a court may order any remaining funds to be paid to the United States Treasury. *Gem Merch. Corp.*, 87 F.3d 466 at 470.

[134] *See, e.g.*, *Atlantex Assocs.*, 987 U.S. Dist. LEXIS 10911 * 35; *Silueta Distrib.*, 1995-1 Trade Cas. at 74, 100; *Sharp*, 782 F. Supp. at 1452-54; *Magui Publishers, Inc.*, 1991-1 Trade Cas. (CCH) at 65,729.

[135] *See Atlantex Assocs.*, 987 U.S. Dist. LEXIS 10911 * 36-37.

[136] *See Id.*; *FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 606-7 (9th Cir. 1993).

cost of doing business.[137] In calculating a refund, the Court looks to the price paid by the consumer and does not deduct any value received.[138]

The total injury to consumers from Defendants' credit repair and credit card scheme is $7,443,732, derived from the gross total revenue declared in Defendants' corporate tax returns for 2004 through 2007 ($4,853,940) plus the total gross revenue stated in their monthly financial statements for January through October 2008 ($2,589,792).[139] Kevin Hargrave admitted they did not keep comprehensive financial records, but relied on bank statements and their accountants' records.[140] No evidence of any other stream of income was found during discovery.

Under Section 5, the FTC need only demonstrate that the best evidence available was used to substantiated injury.[141] This is exactly what Plaintiff has done, thus the burden shifts

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[137] *See e.g., Chierico,* 206 F.3d at 1388-89 ("the fraud in the selling, not the value of the thing sold, is what entitles consumers in this case to full refunds") (citation omitted); *Figgie Int'l, Inc.*, 994 F.2d at 606-07 (noting that "[c]ourts have previously rejected the contention'that restitution is available only when goods purchased are essentially worthless.'") (citation omitted); *Think Achievement Corp.*, 144 F. Supp. 2d at 1019 (finding that defendants entitled to zero reduction in the redress amount based on their costs to do business); *US Sales*, 785 F. Supp. 752-53 (rejecting argument that restitution is not appropriate when the defendants provided some value in exchange for the money paid); *SlimAmerica, Inc.*, 77 F. Supp. 2d at 1276 ("costs incurred by the defendants in the creation and perpetration of the fraudulent scheme will not be passed on to the victims.").

[138] *Id.* at 607; *see Silueta,* 1995-1 Trade Cas. at 74,099 (finding that restitution should equal the full amount consumers paid).

[139] Dkt. No. 79, Ex. 68[H&A Admissions] #101, 102; Ex. 69 [LH Admissions] #101, 102; Ex. 70[KH Admissions] #102, 103. Federal tax returns, provided pursuant to the TRO and Stipulated PI (Dkt. Nos. 6, 18), carry an indicia of accuracy since falsifying them is a federal offense. Also, Defendants admitted to the accuracy and genuineness of these records.

[140] Ex. 71, p. 56, lines 1-8.

[141] *Global Mktg. Group.*, 594 F. Supp. 2d 1281, 1290 (11th Cir. 2008, M.D. Fla.) (The Commission must show that its calculations reasonably approximate the amount of customers' net losses, and then the burden shifts to the defendant to show that those figures were inaccurate.).

to the Defendants to rebut the judgment Plaintiff seeks. Fraudsters generally do not keep accurate records of the proceeds of their illegal activity, and any risk of uncertainty should be born by the wrongdoer who created the uncertainty.[142] The burden now rests with Defendants to prove they are not jointly and severally liable for the $7,443,732.00 judgment needed to redress consumers.[143]

X. CONCLUSION

No genuine issue of material fact remains in dispute. The Court should enter summary judgment, and the Commission respectfully requests entry of the [*Proposed*] Final Judgment and Order for Permanent Injunction and Other Equitable Relief, filed herewith.

Dated: October 22, 2009

Respectfully submitted,

s/Jessica D. Gray
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[142] *SEC v. K W. Brown and Co.,* 555 F. Supp. 2d 1275, 1312 (llth Cir. 2007, S.D. Fla.); *see also Gem Merch. Co.,* 87 F. 3d 466, 470 (11th Cir. 1996).

[143] Under Florida's Revised Uniform Partnership Act, "all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by a claimant or provided by law." Fla. Stat. Ann. § 620.6306 (West 2009). A partnership is formed if there is an "association of two or more persona to carry on as a co-owners [sic] a business for profit … whether or not the persons intends to form a partnership." Fla. Stat. Ann. § 620.8202 (West 2009). The statute's criteria for determining whether a partnership is formed presumes "a person who receives a share of the profits of a business is presumed to be a partner in the business." Consequently, Defendants are jointly and severally liable for an equitable judgment of $7,443,732.