

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THE CUBAN EXCHANGE, INC., also d/b/a
CrediSure America and also d/b/a **MyiPad.us**, a
corporation,

and

SUHAYLEE RIVERA, individually and as an
officer or director of The Cuban Exchange, Inc.,

Defendants.

CV 12

5890

Case No. _____

GARAUFIS, J.

LEVY, M.J.

**FEDERAL TRADE COMMISSION'S MEMORANDUM IN
SUPPORT OF MOTION FOR A TEMPORARY
RESTRAINING ORDER, EQUITABLE RELIEF AND AN
ORDER TO SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

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I. INTRODUCTION

The Federal Trade Commission (“FTC”) respectfully requests that the Court stop a telemarketing and internet scam that uses illegal pre-recorded robocalls designed to appear as if the calls come from the FTC. Defendants illegally spoof the FTC’s toll-free telephone number and use the website “ftcrefund.com” to solicit consumers’ bank account information. Defendants seek this information by falsely representing, explicitly and implicitly, a connection between Defendants and the FTC and by making numerous false statements about Defendants’ ability to obtain consumer redress from the FTC.

The scheme is simple. Defendants prey on the fact that the FTC provides thousands of refund checks (commonly referred to as “consumer redress”) after it successfully concludes litigation against companies accused of engaging in fraudulent and deceptive businesses practices.¹ Defendants place illegal prerecorded “robocalls” to consumers, which inform them of a supposed FTC “seizure ID number,” and tell the consumers to visit the website www.ftcrefund.com, leading consumers to believe that the FTC is calling them to inform them that they are due a refund from the FTC.

The ftcrefund.com website (like its identical twin, credisure.net) is replete with misspellings and includes numerous false and misleading statements promising that Defendants can obtain refunds allegedly due consumers from the FTC in “5 to 7 business days instead of the usual 8 to 10 weeks.” The websites require consumers to enter personal information, including bank account numbers, in order to process the fictitious refunds. Defendants claim to have assisted 13,000 clients in receiving FTC refunds.

¹ See, e.g., <http://www.ftc.gov/bcp/cases/redress.shtml>.

In truth, Defendants have no connection whatsoever with the FTC, and have no way of knowing the identity of consumers due refunds from the FTC. The FTC sends refunds directly to consumers through paper checks. Defendants have never worked with the FTC to process consumer redress payments.

In short, Defendants' claims are false. Defendants tell consumers they are due a refund from the FTC and that Defendants can expedite payment of the refund all in a ruse to obtain consumers' personal information and bank account numbers.

II. STATEMENT OF FACTS

A. **The Parties**

1. *The Federal Trade Commission*

The FTC is an independent agency of the United States government created by statute. 15 U.S.C. § 41 *et seq.* 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. § 6101 *et seq.*, and the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. The FTC is authorized to initiate United States District Court proceedings by its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such equitable relief as may be appropriate in each case, including consumer redress. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 6102(c), & 6105(b).

2. *Defendants*

The Cuban Exchange, Inc., doing business as CrediSure America and MyiPad.us ("CrediSure"), is a Colorado corporation with its principal place of business in Brooklyn, New

York.² CrediSure operates the websites ftcrefund.com, credisure.us, credisure.net and MyiPad.us, among others.³

Defendant Suhaylee Rivera is a resident of Brooklyn, New York.⁴ Rivera incorporated CrediSure and registered the websites credisure.us and credisure.net.⁵ She also filed two “Statement of Trade Name of a Reporting Entity” on behalf of The Cuban Exchange, Inc., which registered the names “CrediSure America” and “MyiPad.us” to The Cuban Exchange, Inc.⁶

B. Defendants’ Business Practices

1. Defendants use illegal robocalls to initiate contact with consumers.

Defendants are engaged in a telemarketing scheme to sell consumers bogus FTC refund services. As part of this scheme, Defendants, either directly or through their telemarketers, make illegal prerecorded “robocalls” to consumers, many of which are to phone numbers registered on the National Do Not Call Registry.⁷ When consumers answer these calls, they hear a prerecorded message that states:

² Px. 1, Tyndall Dec. ¶¶ 50-53 & Att. M. As the FTC seeks preliminary relief, it is appropriate for the Court to consider hearsay and other evidence that might not be considered in a full trial on the merits. *See Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010) (“We ... conclude that hearsay evidence may be considered by a district court in determining whether to grant a preliminary injunction. The admissibility of hearsay under the Federal Rules of Evidence goes to weight, not preclusion, at the preliminary injunction stage. To hold otherwise would be at odds with the summary nature of the remedy and would undermine the ability of courts to provide timely provisional relief.”).

³ Px. 1, Tyndall Dec. ¶¶ 50-53 & Att. M.

⁴ Px. 1, Tyndall Dec. ¶ 51.

⁵ Px. 1, Tyndall Dec. ¶¶ 31, 37, 50-53 & Att. H, M. As noted previously, the credisure.net website is identical to the ftcrefund.com website. *Id.*, ¶ 36.

⁶ Px. 1, Tyndall Dec. ¶¶ 50-53 & Att. M.

⁷ Px. 1, Tyndall Dec. ¶¶ 3-7; Px. 3, Lee Dec. ¶¶ 2-8; Px. 4, Galagaza Dec. ¶¶ 2-8; Px. 5, Bond Dec. ¶¶ 2-8. Defendants also have never paid the annual fee to access telephone numbers listed

Please visit www.ftcrefund.com, www.ftcrefund.com. Your seizure ID number is 123223, again your seizure ID number is 123223. Visit right now www.ftcrefund.com. Your seizure ID number is 123223. Thank you and have a nice day.⁸

The messages provide the same “seizure ID number” to all consumers.⁹

2. *Defendants suggest they are part of, or connected with, the FTC.*

The website Defendants use – ftcrefund.com – states, explicitly and implicitly, that the FTC is participating in the supposed “refund” process. Defendants compound the deception by using the FTC’s toll-free consumer response phone number – 877-382-4357 (often published to the public as 877-FTC-HELP) – as the Caller ID number transmitted with the robocalls.¹⁰ A reasonable consumer could conclude that the FTC, or someone on its behalf, is calling to alert them to refunds or redress due the consumer.¹¹

3. *Defendants direct consumers to a deceptive website.*

When consumers visit the website ftcrefund.com (or its identical twin, credisure.net), they are told that:¹²

on the National Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8. Px. 1, Tyndall Dec. ¶¶ 54-57.

⁸ Px. 1, Tyndall Dec. ¶¶ 12-15; Px. 3, Lee Dec. ¶ 6; Px. 4, Galagaza Dec. ¶ 6; Px. 5, Bond Dec. ¶ 6.

⁹ Px. 1, Tyndall Dec. ¶¶ 12-15; Px. 3, Lee Dec. ¶ 6; Px. 4, Galagaza Dec. ¶ 6; Px. 5, Bond Dec. ¶ 6.

¹⁰ Px. 1, Tyndall Dec. ¶¶ 7-8.

¹¹ Defendants’ websites also link to numerous FTC press releases concerning FTC consumer protection enforcement actions and consumer redress. Px. 1, Tyndall Dec., Att. B at 1-6, G at 1, 3-7.

¹² After the FTC discovered the deceptive ftcrefund.com website on November 16, 2012, the FTC issued a press release warning of the deceptive website (ftc.gov/opa/2012/11/robocalls2.shtm) and issued a bulletin at the top of the Commission’s official consumer redress page (ftc.gov/bcp/cases/redress.shtml). Sometime on the weekend of

CrediSure America is a firm specialized [sic] in corporate FTC seizures collections. But don't worry, we work for you. Yes we work for you! CrediSure America specializes in private financial forensic and investigation. Our main targets are large telemarketing and infomercial firms who get shutdown by the FTC for misrepresenting or simply defrauding customers like your self [sic]. CrediSure has the proper knowledge and open doors [sic] to expedite refunds you may not even know were owed to you. CrediSure works as a tireless collector and fiercely fights for its clients [sic] refunds to be paid first.¹³

Defendants inform consumers they will receive a refund from the FTC in five to seven days, instructing consumers: "To get your refund: 1. Enter your Seizure [sic] ID (top left). 2. Enter your depository information. 3. Wait 5 to 7 busienss [sic] days."¹⁴ The website promises that "Your refund will be processed within 5 to 7 business days instead of the usual 8 to 10 weeks."¹⁵ Defendants claim they charge a 5.55% fee for this service, stating: "For only 5.55% we take care of your refund and process it in less then [sic] 7 business days as opposed to the standard 8 to 10 weeks."¹⁶ Defendants claim that "Over 13000 clients have received refunds through CrediSure America."¹⁷

When consumers enter the 123223 "seizure ID number" into the seizure ID box on the website, they are directed to a page on the website that states:

SEIZURE ID: 123223
REFUND CASE: American Consumer Group, Inc.
NATURE OF REFUND: FTC Seizure - Expedited (5 to 7 business days)

November 17-18, 2012, the website was taken off-line. The website credisure.net – a mirror image of ftcrefund.com – remains active and online. See Px. 1, Tyndall Dec. ¶¶ 35-37.

¹³ Px. 1, Tyndall Dec., Att. B at 1, G at 3.

¹⁴ Px. 1, Tyndall Dec., Att. B at 1, G at 3.

¹⁵ Px. 1, Tyndall Dec., Att. B at 4, G at 5.

¹⁶ Px. 1, Tyndall Dec., Att. B at 1, G at 3.

¹⁷ Px. 1, Tyndall Dec., Att. B at 3, G at 4.

AMOUNT TO BE REFUNDED: \$399.99
FEE FOR REFUND: \$22.19
TOTAL REFUND AMOUNT: \$377.80¹⁸

All consumer victims of the scheme receive the same “seizure ID number.”¹⁹ Regardless of what “seizure ID number” consumers enter on the website, they are shown the same refund information, including the same supposed refund amount – \$399.99 – and the same supposed refund case – American Consumer Group, Inc.²⁰

After entering any number in the “seizure ID” box, the website informs consumers that, to process the supposed refund, consumers must provide their address, phone number, bank name (including the name listed on the account), account number, ABA/Routing number, and a check number.²¹

4. *Defendants’ cannot provide the services promised.*

Defendants’ claims are patently false:

- The FTC does not work or contract with Defendants.²²
- All refunds from the FTC are provided directly to consumers through one of four different “prime vendors.” Those vendors never charge consumers for their services; they are paid directly by the FTC.²³
- The Defendants are not one of those vendors.²⁴

¹⁸ Px. 1, Tyndall Dec. ¶¶ 7-14, 16-22.

¹⁹ Px. 1, Tyndall Dec. ¶¶ 12-15; Px. 3, Lee Dec. ¶ 6; Px. 4, Galagaza Dec. ¶ 6; Px. 5, Bond Dec. ¶ 6.

²⁰ Px. 1, Tyndall Dec. ¶¶ 17-18, 21-22.

²¹ Px. 1, Tyndall Dec. ¶ 18, Att. C.

²² Px. 2, Lawson Dec. ¶¶ 5-8, 15.

²³ Px. 2, Lawson Dec. ¶ 5.

- Neither the FTC nor any of its contracted redress vendors ask consumers to provide their bank account information.²⁵
- The FTC does not direct deposit refunds; the FTC mails paper checks directly to refund recipients.²⁶
- The FTC does not publish the names of consumers due to receive refunds from its consumer protection litigation.²⁷ Thus, Defendants could not know the names of consumers due refunds or redress from FTC litigation.
- The FTC has never administered a redress program for a case involving “American Consumer Group, Inc.”²⁸

In short, Defendants’ claims are false and deceptive. Defendants cannot expedite consumer redress, nor can they receive or process refunds on behalf of consumers. Defendants simply place illegal robocalls and then attempt to dupe consumers into providing sensitive personal information and bank account numbers.²⁹

²⁴ Px. 2, Lawson Dec. ¶ 5.

²⁵ Px. 2, Lawson Dec. ¶¶ 11-12.

²⁶ Px. 2, Lawson Dec. ¶ 13.

²⁷ Px. 2, Lawson Dec. ¶ 14.

²⁸ Px. 1, Tyndall Dec. ¶ 20; *see also* Px. 2, Lawson Dec. ¶ 10.

²⁹ The Defendants provide consumers with a web form for contacting the company; no phone number, email address or physical address is provided. The website states: “We apologies [sic], due to high levels of contact requests, we only allow email contact. Please do not write to ask if you are elijible [sic] for a refund, only those who are contacted are elijible [sic]. Should we need more information from you, one of our experts will enter in (sic) contact with you. Thank you and we appologies [sic] for any invonvenience [sic].” Px. 1, Tyndall Dec. ¶ 16, Att. B at 6. The FTC’s experience with fraudulent and deceptive websites indicates that a significant number of spelling errors is an indicia of fraud. Px. 1, Tyndall Dec. ¶ 58.

III. A TEMPORARY RESTRAINING ORDER SHOULD ISSUE AGAINST THE DEFENDANTS.

The FTC seeks a Temporary Restraining Order (“TRO”) to halt Defendants’ ongoing violations of the FTC Act and the TSR. The FTC requests that the Court enjoin Defendants from their ongoing violations of the law, shut down the offending websites and allow expedited discovery. As set forth herein, the evidence overwhelmingly supports entry of the proposed TRO.

A. This Court has the authority to grant the requested relief.

Where, as here, the Defendants have violated the FTC Act by engaging in deceptive practices, Section 13(b) of the FTC Act authorizes district courts to grant permanent injunctive relief. *See* 15 U.S.C. §53(b). The authority to grant permanent injunctive relief necessarily “carries with it the full range of equitable remedies,” including the authority “to grant ancillary equitable relief.” *FTC v. Bronson Partners, LLC*, 654 F. 3d 359, 365 (2d. Cir. 2011). Ancillary equitable relief includes the authority to enter a temporary restraining order and other preliminary relief designed to preserve the possibility of effective final relief. *See FTC v. U.S. Oil and Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984). District courts in the Second Circuit have routinely granted the sort of equitable relief the FTC requests here. *See, e.g., FTC v. Edge Solution, Inc.* No. 07-4087 (E.D.N.Y. Oct. 12, 2007) (granting TRO prohibiting misrepresentations, suspending websites, freezing assets, prohibiting dissemination of customer lists, repatriating foreign assets, granting immediate access, authorizing expedited discovery, requiring financial reports, preserving records, and appointing temporary receiver); *FTC v. Guzetta.*, No. 01-2335 (E.D.N.Y. April 17, 2001) (granting *ex parte* TRO prohibiting violations of the FTC Act, freezing assets, requiring financial reporting, preserving financial records, granting immediate access, and authorizing expedited discovery); *accord FTC v. Medical Billers*

Network, Inc., No. 05-2014 (S.D.N.Y. Feb. 18, 2005); *FTC v. Navestad*, No. 09-6329 (W.D.N.Y. June 25, 2009).

B. The evidence justifies entry of a Temporary Restraining Order and a Preliminary Injunction.

In the Second Circuit, in order to grant preliminary injunctive relief under the FTC Act, the district court must: (1) determine that the FTC has a “fair and tenable chance of ultimate success on the merits” and (2) balance the equities. *FTC v. Verity Int’l*, 124 F. Supp. 2d 193, 199 (S.D.N.Y. 2000) (citing *United States v. Sun & Sand Imps., Ltd.*, 725 F.2d 184, 188 (2d Cir. 1984)). When the FTC acts to prevent violations of federal law, it proceeds “not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest.” *See SEC v. Management Dynamics, Inc.*, 515 F. 2d 801, 808-809 (2d Cir. 1975). For this reason, irreparable harm is presumed in FTC consumer protection cases like this one. *Verity Int’l*, 124 F. Supp.2d at 199.

1. *The FTC has demonstrated a likelihood of success on the merits.*

a. The FTC has Demonstrated a Likelihood of Success on the Merits that Defendants Violated Section 5(a) of the FTC Act.

Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a). In order to show that Defendants violated Section 5(a) of the FTC Act, the FTC must establish: (1) a representation, omission, or practice, (2) that is likely to mislead consumers acting reasonably under the circumstances, and (3) that the representation is material. *FTC v. Verity Int’l*, 443 F.3d 48, 63 (2d Cir. 2006). The FTC is not required to show that the Defendants acted “with the intent to deceive; it is enough that the representation or practices were likely to mislead consumers acting reasonably.” *Id.* A misrepresentation is material if it “involves information that is important to ...consumer’s choice of or conduct regarding a product.” *FTC v. Bronson Partners, LLC*, 564 F. Supp. 2d 119, 135 (D. Conn.

2008). Express claims are presumed to be material. *Id.* The FTC is also not required to prove reliance by each consumer misled by the Defendants. *FTC v. Figgie Int'l*, 994 F.2d 906, 906 (9th Cir. 1993). Rather, a “presumption of actual reliance arises once the Commission has proved that the defendants made material misrepresentations that were widely disseminated.” *Id.*

As explained above, the Defendants make five principal misrepresentations. First, Defendants claim they are affiliated with or endorsed by the FTC.³⁰ Second, Defendants claim they can obtain refunds/redress from the FTC on behalf of consumers.³¹ Third, Defendants claim they can reduce FTC refund/redress wait times to 5 to 7 business days from 8 to 10 weeks.³² Fourth, Defendants claim to know that the consumer is entitled to a refund or redress from the FTC.³³ And fifth, Defendants claim to have assisted more than 13,000 clients in receiving refunds from the FTC.³⁴ As set forth above and in the attached evidence, these representations are false. Moreover, these representations are likely to mislead consumers acting reasonably under the circumstances.

Finally, the Defendants’ representations are material. The Defendants’ false representations are presumed to be material because they are express claims. *Bronson Partners, LLC*, 564 F. Supp. 2d at 135; *see also In re Thompson Medical Co.*, 104 F.T.C. 648, 818-19 (1984) *aff’d* 791 F.2d 189 (D.C. Cir. 1986). No consumer would purchase Defendants’ refund services had the Defendants been candid about the fact that they were not affiliated with the

³⁰ Px. 1, Tyndall Dec. ¶¶ 3-8.

³¹ Px. 1, Tyndall Dec., Att. B at 1, G at 3.

³² Px. 1, Tyndall Dec., Att. B at 4, G at 5.

³³ Px. 1, Tyndall Dec. ¶¶ 12-15, Att. B at 1, G at 3; Px. 3, Lee Dec. ¶ 6; Px. 4, Galagaza Dec. ¶ 6; Px. 5, Bond Dec. ¶ 6.

³⁴ Px. 1, Tyndall Dec., Att. B at 3, G at 4.

FTC, could not reduce FTC redress processing time, have no ability to know the identity of consumers entitled to redress, and had never had any prior substantive interaction with the FTC's Redress Administration Office.

b. The FTC has demonstrated a likelihood of success on the merits that Defendants violated the Telemarketing Sales Rule.

In 1994, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act. 15 U.S.C. §§ 6101-6108. The FTC then adopted the TSR. 16 C.F.R. § 310. Defendants have violated the TSR by: (1) misrepresenting their affiliation with a government entity; (2) making false or misleading statements to induce consumers to purchase their FTC refund services; (3) calling consumers on the National Do Not Call Registry; (4) failing to transmit accurate Caller ID information; (5) making calls that played a prerecorded message; (6) failing to make required oral disclosures during the call; and (7) failing to pay the required fee to access the National Do Not Call Registry. Each violation is discussed in turn.

i. Defendants misrepresented their affiliation with the FTC.

The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, a "seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity." 16 C.F.R. § 310.3(a)(2)(vii). The Defendants "spoofed" the Caller ID number on their outbound robocalls to match the FTC's toll-free consumer response phone number – 877-382-4357, frequently published to the public as 877-FTC-HELP.³⁵ The Defendants also used the website name "ftcrefund.com" in order to sell their bogus FTC refund

³⁵ Px. 1, Tyndall Dec. ¶¶ 7-8.

service.³⁶ Accordingly, Defendants have violated the TSR by misrepresenting, directly or by implication, their affiliation with the FTC.

- ii. Defendants made false or misleading statements to induce persons to pay for goods and services.

The TSR prohibits any seller or telemarketer from making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution. 16 C.F.R. § 310.3(a)(4). The Defendants are sellers or telemarketers engaged in telemarketing as defined by the TSR since they arrange for the sale of goods or services, or initiate or cause telemarketers to initiate outbound telephone calls. 16 C.F.R. § 310.2 (aa), (cc), and (dd). As explained above, Defendants claim they can reduce FTC refund wait times to 5 to 7 business days from 8 to 10 weeks. Defendants also claim to know which consumers are entitled to refund or redress from the FTC. Defendants further claim to have assisted more than 13,000 clients in receiving refunds from the FTC. And Defendants claim they can obtain refunds/redress from the FTC on behalf of consumers. Defendants made these false claims to induce consumers to purchase FTC refund services. Therefore, Defendants violated the TSR by making false claims to induce the purchase of goods or services.

- iii. Defendants called numbers listed on the National Do Not Call Registry.

The TSR prohibits sellers and telemarketers from initiating outbound telephone calls to numbers on the National Do Not Call Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B). The Defendants placed outbound telemarketing calls to numbers listed on the National Do Not Call Registry.³⁷

³⁶ Px. 1, Tyndall Dec. ¶¶ 16, 27-37.

³⁷ Px. 3, Lee Dec. ¶¶ 2-8; Px. 4, Galagaza Dec. ¶¶ 2-8; Px. 5, Bond Dec. ¶¶ 2-8.

Therefore, Defendants have violated the TSR by making calls to phone numbers listed on the National Do Not Call Registry.

- iv. Defendants failed to transmit accurate Caller ID information with their outbound calls.

Sellers and telemarketers violate the TSR by “failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer’s carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call.” 16 C.F.R. § 310.4(a)(8). Defendants transmitted the FTC’s toll-free number, 877-382-4357 (877-FTC-HELP), with its outbound robocalls.³⁸ Accordingly, Defendants have violated the TSR by failing to transmit their telephone number with their outbound telemarketing calls.

- v. Defendants made calls that played a prerecorded message.

The TSR prohibits sellers and telemarketers from initiating an outbound telephone call that delivers a prerecorded message. 16 C.F.R. § 310.4(b)(1)(v). Defendants made robocalls to consumers that played a prerecorded message as part of their efforts to sell Defendants’ FTC refund services.³⁹ Therefore, Defendants have violated the TSR by making telemarketing calls that deliver a prerecorded message.

- vi. Defendants failed to make the required oral disclosures.

The TSR requires sellers and telemarketers to disclose “truthfully, promptly, and in a clear and conspicuous manner,” the identity of the seller, that the purpose of the call is to sell goods or services, the nature of the goods or services. 16 C.F.R. § 310.4(d). Defendants’ phone

³⁸ Px. 1, Tyndall Dec. ¶¶ 3-8.

³⁹ Px. 1, Tyndall Dec. ¶¶ 3-8; Px. 3, Lee Dec. ¶¶ 2-8; Px. 4, Galagaza Dec. ¶¶ 2-8; Px. 5, Bond Dec. ¶¶ 2-8.

calls make no such disclosures.⁴⁰ Accordingly, Defendants have violated the TSR by failing to make the required oral disclosures.

- vii. Defendants failed to pay the required fees to access the National Do Not Call Registry.

Under the TSR, sellers and telemarketers are prohibited 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 that are included in the National Do Not Call Registry. 16 C.F.R. § 310.8. Defendants have not paid the required fee to access to National Do Not Call Registry prior to making their calls.⁴¹ Therefore, Defendants violated the law by making calls prior to the paying the required fee.

2. *The balance of equities mandates preliminary injunctive relief.*

“[W]hen a district court balances the hardships of the public interest against a private interest, the public interest should receive greater weight.” *FTC v. World Wide Factors*, 882 F.2d 344, 347 (9th Cir. 1989); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988). The public has a compelling interest in halting Defendants’ unlawful and injurious conduct. By contrast, ceasing their illegal conduct and complying with the law is not a burden on Defendants. Defendants “can have no vested interest in a business activity found to be illegal.” *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972) (internal quotations and citations omitted). In addition, it is likely that only the entry of the requested temporary and preliminary injunctive relief will prevent Defendants from continuing to deceive and harm the public during the pendency of this litigation.

⁴⁰ Px. 1, Tyndall Dec. ¶¶ 3-8; Px. 3, Lee Dec. ¶¶ 2-8; Px. 4, Galagaza Dec. ¶¶ 2-8; Px. 5, Bond Dec. ¶¶ 2-8.

⁴¹ Px. 1, Tyndall Dec. ¶¶ 54-57.

C. Suhaylee Rivera is liable for CrediSure's illegal business practices.

Suhaylee Rivera is liable for her own violations of the FTC Act and the TSR as well as the Corporate Defendants' illegal practices. Once the FTC establishes that a corporate defendant violated Section 5(a) of the FTC Act, individual defendants will be personally liable for injunctive relief if the individual defendant: (1) participated directly in the illegal practices or acts or (2) had authority to control a corporation engaging in them. *FTC v. Amy Travel Servs., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989). Active involvement in the corporate business affairs and the making of corporate policy, including assuming the duties of a corporate officer, is evidence of an individual's authority to control. *Id.* And, in a small, closely-held corporation, the corporate officers are presumed to control the corporation. *See Standard Educ., Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973) *cert. denied*, 414 U.S. 828 (1973).⁴²

The evidence presented by the FTC demonstrates that Suhaylee Rivera is liable for the illegal practices of CrediSure. As previously discussed, Rivera incorporated CrediSure and filed the corporate documents necessary to register "CrediSure America" and "MyiPad.us" as trade names of The Cuban Exchange, Inc.⁴³ Rivera also registered the websites credisure.us and credisure.net.⁴⁴

⁴² An individual defendant is liable for consumer redress if the defendant also had some knowledge of the illegal practices or acts. *Amy Travel Servs., Inc.*, 875 F.2d at 573. The FTC can prove the requisite level of knowledge by showing that the individual (1) had actual knowledge of material misrepresentations; (2) was recklessly indifferent to the truth or falsity of such misrepresentations; or (3) had an awareness of a high probability of fraud along with intentional avoidance of the truth. *Id.*; *see also FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 259-60 (E.D.N.Y. 1998); *FTC v. Crescent Publ'g Group, Inc.*, 129 F. Supp. 2d 311, 324 (S.D.N.Y. 2001); *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 535 (S.D.N.Y. 2000).

⁴³ Px. 1, Tyndall Dec. ¶¶ 37, 50-53 & Att. H, M.

⁴⁴ Px. 1, Tyndall Dec. ¶¶ 31, 37. As noted previously, the credisure.net website is identical to the ftcrefund.com website. *Id.*, ¶ 36.

In addition, both the credisure.us and myipad.us websites state that Ms. Rivera operates CrediSure.⁴⁵ The credisure.us website includes a picture captioned “Suhaylee Rivera – Founder.”⁴⁶ Both ftcrefund.com and credisure.net discuss the services provided by credisure.us and link to the credisure.us website.⁴⁷ Moreover, CrediSure’s principal place of business is Ms. Rivera’s home address.⁴⁸ Given Ms. Rivera’s ability to control CrediSure and active involvement in the business, the FTC has demonstrated that she is liable for CrediSure’s illegal business practices.

D. The scope of the proposed Temporary Restraining Order is appropriate in light of defendants’ conduct.

As the evidence has shown, the FTC will ultimately succeed in proving that Defendants are engaging in deceptive practices in violation of the FTC Act and TSR, and that the balance of equities strongly favors the public interest. Preliminary injunctive relief is thus warranted.

The FTC requests injunctive relief of three general types. As explained below, each type of preliminary relief is necessary to protect consumers and to preserve the Court’s ability to grant complete relief.

1. The Court should stop Defendants’ ongoing illegal conduct.

First, the FTC seeks preliminary relief designed to stop the Defendants’ ongoing violations of the FTC Act and the TSR. The proposed temporary restraining order (“TRO”) includes provisions enjoining the Defendants from continuing their violative conduct.

⁴⁵ Px. 1, Tyndall Dec., Att. E at 3-4, K at 19.

⁴⁶ Px. 1, Tyndall Dec., Att. E at 4.

⁴⁷ Px. 1, Tyndall Dec., Att. B at 4, G at 5.

⁴⁸ Px. 1, Tyndall Dec. ¶¶ 50-53 & Att. M.

2. *The Court should shut down the offending websites.*

Additionally, because Defendants rely on their seemingly legitimate websites to lure consumers into their scheme and process consumers' payments, the TRO also includes provisions directing webhosting and website registration companies to disable the Defendants' websites and urls related to the fraudulent FTC refund scheme. Similar TRO provisions have been included in appropriate FTC cases in the past. *See, e.g., FTC v. Edge Solution, Inc.* No. 07-4087 (E.D.N.Y. Oct. 12, 2007) (granting TRO which, in part, enjoined Defendants from violating the FTC Act and suspended Defendants' websites); *FTC v. Finmaestros, LLC et al.*, No. 12-cv-7195 (S.D.N.Y. Sept. 25, 2012) (granting *ex parte* TRO which in part enjoined Defendants from violating the FTC Act and suspended Defendants' websites); *accord FTC v. PCCare247 Inc. et al.*, No. 12-cv-7189 (S.D.N.Y. Sept. 25, 2012); *FTC v. Pecon Software Ltd.*, No. 12-cv-7186 (S.D.N.Y. Sept. 25, 2012); *FTC v. Lakshmi Infosoul Services Pvt. Ltd.*, No. 12-cv-7191 (S.D.N.Y. Sept. 25, 2012); *FTC v. Marczak et al.*, No. 12-cv-7192 (S.D.N.Y. Sept. 25, 2012); *FTC v. Zeal IT Solutions Pvt. Ltd.*, No. 12-cv-7188 (S.D.N.Y. Sept. 25, 2012); *FTC v. Navestad*, No. 09-6329 (W.D.N.Y. June 25, 2009).

3. *The Court should order the preservation and production of Defendants' business records.*

And third, the FTC seeks preliminary relief designed to provide access to Defendants' records before those records can be destroyed. In the FTC's experience, it is likely that Defendants will take steps to destroy documents that relate to their scams.⁴⁹ The proposed order includes several provisions designed to grant access to Defendants' documents before they can be destroyed including requiring Defendants to turn over records, requiring Defendants to preserve records of their business activities, and authorizing expedited discovery. Again, these

⁴⁹ Px. 1, Tyndall Dec. ¶ 59.

provisions have been included in FTC cases in the past. *See, e.g., FTC v. Medical Billers Network, Inc.*, No. 05-2014 (S.D.N.Y. Feb. 18, 2005) (TRO requiring defendants to preserve records and authorizing expedited discovery); *FTC v. Navestad*, No. 09-6329 (W.D.N.Y. July 1, 2009) (TRO requiring defendants to preserve documents and produce documents related to the merits of the case); *FTC v. Premier Nationwide Corporation*, No. CIV120009 (D. Ariz. Jan. 4, 2012) (TRO requiring defendants to preserve documents and produce documents related to the merits of the case); *accord FTC v. 9107-4021 Quebec, Inc.*, No. 1:08-cv-1051 (N.D. Ohio April 25, 2008).

As Defendants operate multiple websites and the extent of their illegal conduct is unknown, expedited discovery will allow the FTC to quickly identify all victims that have fallen prey to Defendants' false claims. Moreover, expedited discovery will permit the FTC to learn if consumers have had assets removed from their bank accounts after providing bank account numbers to the Defendants.

IV. CONCLUSION


The Defendants' business relies upon illegal conduct from start to finish. Defendants start their customer contact by placing an illegal robocall, calling consumers on the National Do Not Call Registry, using the FTC's toll free number as the Caller ID number, and using a prerecorded message to tell consumers to go to a website seemingly affiliated with the FTC – ftcrefund.com. Defendants' website is full of false statements and misinformation which falsely claims that Defendants know whether consumers are due restitution from an FTC enforcement action and promising a "refund" from the FTC in a matter of days, falsely claiming that they have helped 13,000 people obtain "refunds" from the FTC. Defendants engage in this illegal behavior for one reason: to spur consumers into providing Defendants their personal information,

including bank account numbers. In order to put an end to these unlawful practices, the FTC requests that this Court grant the FTC's motion for a TRO and ancillary equitable relief.

Respectfully submitted,

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