

**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,)
)
 LATRESE HARGRAVE, also known as,)
 Latrese V. Williams, individually and as an)
 officer of Latrese & Kevin Enterprises Inc., and)
)
 KEVIN HARGRAVE, SR., individually and)
 as an officer of Latrese & Kevin Enterprises Inc.)
)
 Defendants.)

Case No. 3:08-cv-01001-MMH-34JRK

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

Table of Contents

I. INTRODUCTION. 1

II. JURISDICTION AND VENUE. 2

III. HARGRAVE & ASSOCIATES’ DECEPTIVE BUSINESS PRACTICES. 3

 A. H&A’s Deceptive Credit Repair Business. 3

 B. H&A’s Deceptive Advance Fee Credit Card Business. 8

IV. FTC IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW. 10

V. IT IS UNDISPUTED THAT H&A VIOLATED SECTION 5 OF THE FTC ACT. 11

 A. Legal Standard under Section 5. 11

 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). 13

 2. H&A Misrepresented That after Paying a Fee, Consumers Are Guaranteed to Receive a Major Credit Card (Count V) 15

VI. IT IS UNDISPUTED THAT H&A VIOLATED THE CROA. 17

 A. H&A Violated Section 404(a)(3) of CROA (Count I). 17

 B. H&A Violated Section 404(b) of CROA (Count II). 18

VII. IT IS UNDISPUTED THAT DEFENDANTS VIOLATED THE TSR. 19

 A. Defendants Violated Section 310.4(a)(4) of the TSR (Count III). 19

VIII. LATRESE AND KEVIN HARGRAVE ARE EACH INDIVIDUALLY LIABLE FOR THE VIOLATIONS OF THE CORPORATE DEFENDANT. 20

 A. Latrese Hargrave Is Individually Liable. 22

 B. Kevin Hargrave Is Individually Liable. 26

IX. THE REQUESTED RELIEF. 28

 A. Broad Injunctive Provisions are Appropriate in Order to Prohibit Future Violations by the Defendants. 28

 B. Defendants Should Be Held Jointly and Severally Liable to the Commission for a \$7,443,732.00 Monetary Judgment. 29

X. CONCLUSION. 31

Table of Authorities

Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970). 10

Am. Home Prods. Corp. v. FTC, 695 F.2d 681 (3d Cir. 1982). 12

Carter Prods. v. FTC, 323 F.2d 523 (5th Cir. 1963). 28

Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986). 10

Chanel, Inc. v. Italian Activeware, Inc., 931 F.2d 1472, 1477 (11th Cir. 1991). 10

Chierico, 206 F.3d at 1388 12, 30

FTC v. Amy Travel, 875 F.2d at 573. 11, 20, 21, 30

FTC v. Atlantex Assocs., 987 U.S. Dist. LEXIS 10911. 11, 21, 30

FTC v. Bay Area Bus. Council, Inc., 423 F.3d 627 (7th Cir. 2005). 12, 21

FTC v. Colgate-Palmolive Co., 380 U.S. 374 (1965). 29

FTC v. Direct Mktg. Concepts, Inc., 2004 U.S. Dist. LEXIS 11628, at *13 (D. Mass. June 23, 2004). 16

FTC v. Figgie Int’l, Inc., 994 F.2d 595 (9th Cir. 1993). 12, 30

FTC v. Freecom Commc’ns., Inc., 401 F.3d 1192 (10th Cir. 2005). 12, 21

FTC v. Gem Merch. Corp., 87 F.3d 466 (11th Cir. 1996). 20, 21, 29, 30

FTC v. Holiday Enters., Inc., 2008 U.S. Dist. LEXIS 35858, at *14-15 10, 12, 21

FTC v. Home Assure, LLC, 2009 U.S. Dist. LEXIS 32053 ((M.D. Fla. Tampa Div. Apr. 8, 2009). 11, 21

FTC v. Jordan Ashley, Inc., 1994-1 Trade Cas. (CCH) ¶ 70, 570 at 72,096 (S.D. Fla. 1994) 11, 12, 21

FTC v. Nat’l Urological Group, Inc., 2008 U.S. Dist LEXIS 44145 (N.D. Ga. Atlanta Div. June 4, 2008). 12

FTC v. Pantron I Corp., 33 F.3d 1088 (9th Cir. 1994). 30

FTC v. Peoples Credit First, LLC, 244 F. App’x. 942 (11th Cir. 2007). 11, 12, 29

FTC v. Ruberoid Co., 343 U.S. 470 (1952). 28

FTC v. Sharp, 782 F. Supp. 1445 (D. Nev.1991). 29

FTC v. Silueta Distrib. Inc., 1995-1 Trade Cas. (CCH) ¶ 70,918 at 74,100 (N.D. Cal. 1995)30, 31

FTC v. SlimAmerica, 77 F. Supp. 2d 1263 (S.D. Fla. 1999). 29, 30

FTC v. Stefanchik, 2009 U.S. App. LEXIS 5216, at *7 (9th Cir. Mar. 13, 2009). 12

FTC v. Tashman, 318 F.3d 1273 (11th Cir. 2003). 11

FTC v. Transnet Wireless Corp., 2007 U.S. Dist. LEXIS 19685, at *42 (S.D. Fla. March 20, 2007). 10

FTC v. Think Achievement Corp., 144 F. Supp. 2d 1013. 29, 30

FTC v. U.S. Oil & Gas Corp., 1987 U.S. Dist. LEXIS 16137, at *68 (S.D. Fla. July 1987), 12, 29

FTC v. US Sales, 785 F. Supp. 737 (N.D. Ill. 1992). 29, 30

FTC v. Windward Mktg., 1997 U.S. Dist. LEXIS 17114, at *27 (N.D. Ga. Sept. 30, 1997) 12, 13, 21, 29

FTC v. World Travel Vacation Brokers, 861 F.2d 1020 (7th Cir. 1988). 12

Global Mktg. Group, 2008 U.S. Dist. LEXIS 106775, at *20 21, 29

In Re Thompson Med. Co., 104 F.T.C. 648 (1984). 12, 16

Irby v. Bittick, 44 F.3d 949 (11th Cir. 1995). 10

Kraft, Inc. v. FTC, 970 F.2d 311 (7th Cir. 1992). 12

Lujan v. Nat’l Wildlife Fed’n, 497 U.S. 871 (1990). 10

FTC v. Magui Publishers, Inc., 1991-1 Trade Cas. (CCH) at 65,729.(C.D. of Cal. 1991) 30

Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). 10

Niresk Indust. Inc. v. FTC, 278 F.2d 337 (7th Cir. 1960). 28

Removatron Int’l Corp., v. FTC, 884 F.2d 1489 (1st Cir. 1989)..... 12
Standard Educators, Inc. v. FTC, 475 F.2d 401 (D.C. Cir. 1973)..... 21

Federal Statutes

15 U.S.C. § 44. 3
 15 U.S.C. § 53(b)..... 2
 15 U.S.C. § 57b. 2
 15 U.S.C. § 6101. 1
 15 U.S.C. § 6102(c) 2
 15 U.S.C. § 6105(b) 2
 28 U.S.C. § 1391(b)..... 2
 28 U.S.C. §§ 1331. 2
 28 U.S.C. § 1337(a)..... 2
 28 U.S.C. § 1345. 2
 Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 14
 FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Section 310..... 1, 19, 20
 Section 13(b) of the FTC Act 12, 29, 30
 Section 4 of the FTC Act, 15 U.S.C. § 44.. 3
 Section 403(3) of CROA. 17
 Section 404(a)(3) of CROA..... 17, 18
 Section 404(b) of CROA, 15 U.S.C. § 1679b(b)..... 18
 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a)..... 1, 2, 11, 17, 21, 29

Federal Rules of Civil Procedure

Fed. R. Civ. P. Rule 56(c). 1,10

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. Rule 56(c), Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), requests that this Court grant its Motion for Summary Judgment against Defendants Latrese & Kevin Enterprises Inc., a Florida corporation also doing business as Hargrave & Associates Financial Solutions (“H&A”), Latrese Hargrave, and Kevin Hargrave (collectively, the “Defendants”), finding that they deceptively marketed and sold credit repair services and advance fee credit cards. The FTC asks this Court to: (1) permanently enjoin the Defendants from deceptively selling credit repair services, credit cards, and any other credit-related product or service; (2) find the 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 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). To this date, the Defendants have not filed an Answer.

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

includes; the extensive record submitted by the FTC to support entry of the TRO¹ and indisputable new evidence filed with this memorandum (*e.g.*, Defendants' Admissions served in response to Plaintiff's Request for Admissions, deposition testimony and advertising and telemarketing scripts). Discovery has closed, and absolutely no evidence has emerged to exonerate the Defendants' sales tactics. In fact, either one or all of the Defendants, in response to Plaintiff's Request for Admissions, has admitted to the material facts needed to prove the elements of each count in the FTC's Complaint.² The uncontroverted evidence shows that no genuine issue of material fact remains in dispute that would prevent the Court from granting Plaintiff's Motion for Summary Judgment.

II. JURISDICTION AND VENUE

This 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 defined in Section 4

¹ Docket No. ("Dkt. No.") 6, 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. Dkt. No. 6, Vols. 1-III.

² Exhibits 68, 69, and 70 are the Admissions of Defendants Latrese & Kevin Enterprises, Inc., Latrese Hargrave, and Kevin Hargrave, respectively ("Ex. 68 [H&A Admissions]"; "Ex. 69 [LH Admissions]"; "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 the volume of this submission, and because the same documents were served on each Defendant, only one copy of those documents is filed herein and is appended to Ex. 68.

of the FTC Act, 15 U.S.C. § 44.³

III. HARGRAVE & ASSOCIATES' DECEPTIVE BUSINESS PRACTICES

The Defendants admitted that H&A's "principal place of business was in 3450 Dunn Ave., Suite 101-104, Jacksonville, FL 32218,"⁴ and "[u]ntil sometime in 2008, Hargrave & Associates 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, the corporate Defendant used the fictitious name "Hargrave & Associates Financial Solutions" to market credit repair services and products,⁶ in a sweeping scheme in which it sold credit repair services to consumers throughout the United States.⁷ H&A used Internet, radio, and poster advertisements to solicit customers.⁸ In their 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 For

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. 26 p. 51, lines 22-25 to p. 52, lines 1-9; Ex. 27 p. 46, lines 14-20.

⁶ Ex. 68 [H&A Admissions] #38; Ex. 69 [LH Admissions] #34; Ex. 79 [KH Admissions] #39; Dkt. No. 6, Ex. 1, Atts. A, B.

⁷ Defendants H&A and Kevin Hargrave each 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. 69 [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-Y. Defendants admitted that Ex. 1, Atts. M-Y 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.

example, at least one of H&A's Web sites stated:

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 H&A's radio ads states:

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, and at least one of H&A's poster ads stated:

Hargrave & Associates Financial Solutions ERASE BAD CREDIT
\$250 YOU ARE APPROVED CREDIT CARD GUARANTEED
CALL 887 768-1988 HELPMYCREDITNOW.COM [emphasis in

¹⁰ *Id.* at Atts. M, N. Defendants admitted that 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 these transcripts of H&A's radio ads that were produced by radio stations pursuant to a civil investigative demand. Ex. 1, Att. JJ. Ex. 68 [H&A Admissions] #80; Ex. 69 [LH Admissions] #76.

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 As evidenced by the excerpt below from a sales script obtained from H&A's business premises, in initial sales calls, H&A's 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

¹³ Dkt. No. 6, Ex. 21, Att. A (poster ad). Defendants admitted that Ex. 21 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 (This transcript of an undercover call by an FTC investigator confirms that Defendants made these representations.).

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). (Tthe same exhibits were used for deposing both Kevin and Latrese Hargrave so only one set filed here and are referred to as "Ex. 71 at DepoEx. #"). When questioned about H&A's sales scripts during deposition, Mr. Hargrave claimed that most were drafts, however, only one of the scripts 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).

that Hargrave & Associates would remove derogatory information from 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 requested and received payment up front before fully performing credit repair services. 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

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 (An excerpt from an undercover call that confirms the Defendants required payment up front: **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, the contract Defendants provided to consumers also evidences that 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.

substantially improve consumers' credit profiles, credit histories, or credit ratings.²¹ Most consumers reported that there were no changes in their credit reports and that all of the negative items they expected to be removed were still being reported.²² Other consumers reported that the items deleted from their credit reports were removed because of the consumers' own efforts, not by anything the Defendants did.²³ A few consumers even stated that negative items were only temporarily removed from their credit reports and later reappeared.²⁴

The Admissions of H&A's president Latrese Hargrave provides indubitable evidence that H&A did not perform as promised. Ms. Hargrave admitted that "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, she admitted that "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

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; Ex. 20 ¶ 21.

²² *Id.*

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.

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

Alone and in conjunction with their credit repair scheme, beginning sometime in 2006 continuing through November 2008, H&A marketed and sold credit card cards,²⁷ using several methods, including Web site and poster ads²⁸ and upselling the credit card during inbound calls from consumers and outbound calls to H&A's existing credit repair customers.²⁹

As Defendants 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 INFORMATION³²

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. *See also*, Ex. 68 [H&A Admissions] #92(d); Ex. 69 [LH Admissions] #52, 92(d); Ex. 60 [KH Admissions] #96 (d).

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 excerpt from a telemarketing script that Defendant Kevin Hargrave, during deposition, admitted H&A used when consumers called in to apply for the credit card evidences that H&A guaranteed approval to everyone, but still required consumers to pay a fee 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 Defendant Latrese Hargrave substantiates consumers’ claims that H&A charged an advance fee for its credit cards. Specifically, Ms. Hargrave admitted 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.”³⁴

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

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 fee. **Call 800-927-1503 today to accept this limited-time offer.**”). [emphasis in original]. See also, Ex. 68

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 Summary judgment is not a disfavored procedural shortcut, but rather “an integral part” of the judicial system.³⁸

In moving for a summary judgment, the Commission bears the burden of establishing the absence of a genuine issue of material fact.³⁹ “Once a moving party has sufficiently supported its motion for summary judgment, the non-moving party must come forward with significant, probative evidence demonstrating the existence of a triable issue of fact.”⁴⁰ The non-moving party must “do more than simply show that there is some metaphysical doubt as to the material facts.”⁴¹

[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).

³⁸ *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

³⁹ *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).

⁴⁰ *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).

⁴¹ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Irby*, 44 F.3d at 953.

This case is especially suited for summary judgment. The overwhelming and unassailable evidence submitted, including the Defendants' Admissions, establishes conclusively that: 1) the Defendants violated Section 5 of the FTC Act, the CROA, and the TSR; 2) the Defendants caused substantial injury to the public; and 3) Latrese and Kevin Hargrave are individually liable for the violations because they had the ability to control the business practices of H&A and had knowledge of and participated in the violations. The record is undisputed. No genuine issue of material fact exists. Therefore, this Court should grant the FTC'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.”⁴² For liability under Section 5, the Court must find that Defendants made material misrepresentations that injured consumers.⁴³

A representation or omission is material if it is the kind usually relied upon by a reasonably prudent person.⁴⁴ Courts consider the overall net impression created by the acts or

⁴² See, Dkt. No. 6, Volume IV, Tab A, FTC Act.

⁴³ *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.

⁴⁴ *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.

practices when evaluating their deceptiveness;⁴⁵ 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.⁴⁶

“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.”⁴⁷ Express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service are presumed to be material.⁴⁸ Finally, Section 5 does not require proof that the Defendants possessed an intent to deceive or acted in bad faith.⁴⁹

⁴⁵ *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.

⁴⁶ *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).

⁴⁷ *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).

⁴⁸ *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.

⁴⁹ *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;

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 selling their credit repair services. Both orally and in writing, Defendants made deceptive express and deliberately implied claims to convince consumers that 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.⁵⁰ The Admission of Latrese Hargrave, H&A's president and co-owner, undeniably confirms that H&A committed this violation. Specifically, Ms. Hargrave admitted that "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."⁵¹ Defendants admitted that to the genuineness of the copies of H&A's Internet, radio, and poster ads containing the misrepresentations that H&A could "ERASE BAD CREDIT" from consumers' credit reports that Plaintiff filed to support entry of the TRO.⁵²

Windward Mktg., 1997 U.S. Dist. LEXIS 17114, at *39.

⁵⁰ See *supra*, Section IV.A. at pp. 3-8, the excerpts from Defendants' Web site ads, telemarketing scripts, and the discussion of representations Defendants made during conversations with consumers.

⁵¹ Ex. 69 [LH Admissions] #40.

⁵² 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] #20-21, 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).

H&A's misrepresentations systematically led consumers to believe that H&A 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.⁵³ 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.⁵⁴ Consequently, most 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.⁵⁵ Some consumers stated that even when negative information was removed, it later reappeared on their credit reports.⁵⁶ Moreover, Defendant Latrese Hargrave admitted that "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."⁵⁷ There is no

⁵³ 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.

⁵⁴ 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 [Declaration of TransUnion, LLC ("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 [Declaration of Experian Information Solutions ("Experian")] ¶¶ 7,8,11; Ex. 3 [TransUnion] ¶¶ 4-6.

⁵⁵ Dkt. No. 6, Exs. 1, Atts. CC-GG; Ex. 4 ¶ 9; Ex. 5 ¶ 15; 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. 18 ¶ 16; Ex. 19 ¶ 19; Ex. 20 ¶ 18. *See also*, In their Admissions, Defendants admitted that they received and responded to consumers' complaints (Ex. 68 [H&A Admissions] #91-94; Ex. 69 [LH Admissions] # 81, 83; Ex. 70 [LH Admissions] # 92-95), 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.

⁵⁶ Dkt. No. 6, Ex. 10 ¶ 18; Ex. 19 ¶ 18.

⁵⁷ Ex. 69 [LH Admissions] #41.

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.⁵⁸ As admitted by Defendants 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."⁵⁹ 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.⁶⁰ Consumers relied on H&A's representation that they would receive a credit card and paid the requested up-front cost.⁶¹ Instead of receiving the promised credit card, however, most consumers received letters inviting them to apply for a secured credit card, for which they would have to pay an additional \$59.⁶² Even more troubling is that some consumers reported that they did not receive anything at all for their money.⁶³

⁵⁸ Ex. 68 [H&A Admissions] #22, 55, 62, 95(d); Ex. 69 [LH Admissions] #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; and note. 26, *supra*.

⁵⁹ 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.

⁶⁰ Dkt. No. 6, Ex.1, Att. HH; Ex. 7 ¶ 3; Ex. 13 ¶¶ 4-5. *See also*, Ex. 69 [LH Admission] #52.

⁶¹ Dkt. No. 6, Ex. 1, Att. HH; Ex. 7 ¶ 3; Ex. 13 ¶¶ 4-6.

⁶² Ex. 68 [H&A Admissions] #65, 70 (H&A admitted Defendants Latrese and Kevin 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, a sample of the letter consumers who paid for H&A's credit card received instead of the credit card they paid for.

⁶³ Dkt. No. 6, Ex.1 , Atts. HH; Ex.13 ¶¶ 4-5; Ex. 6 ¶ 2, 4-5.

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."⁶⁴ 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."⁶⁵

The record conclusively shows that H&A's express and deliberately implied representations regarding its credit repair service and credit cards 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.⁶⁶ As a result, cumulatively, consumers who relied on H&A's misrepresentations lost more than \$7.4 million.⁶⁷ Reasonable consumers have no obligation to doubt the veracity of express claims, and false claims are "inherently likely to mislead."⁶⁸ Accordingly, it is incontestible that H&A's

⁶⁴ Ex. 68 [H&A Admissions]# 62.

⁶⁵ Ex. 69 [LH Admissions] #61.

⁶⁶ Dkt. No. 6, Ex. 1, Att. HH; Ex. 7 ¶ 3; Ex. 13 ¶¶ 4-5.

⁶⁷ As explained *infra* at p. 29, Plaintiff estimates the total injury to consumers to be \$7,443,732.

⁶⁸ *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).

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.⁶⁹ Based on the evidence and the Admissions of the Defendants, it is undisputed that H&A has violated two provisions of the CROA.⁷⁰

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 3-8 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 permanently removing negative information from consumers’ credit reports, even when such information was accurate and not obsolete.⁷¹ However, H&A did not, and in fact could not, perform as promised.⁷² Accurate negative information can legally be and is reported on credit reports for up to 10

⁶⁹ 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] # 38-42; Ex. 69 [LH Admissions] #34-35, 37-40; Ex. 70 [KH Admissions] #38-42.

⁷⁰ From the above discussion of the Defendants’ business practices, it is clear that the Defendants knew or should have known that their business practices violated CROA. Ex. 74 contains excerpts from CROA and state laws regarding credit repair organizations downloaded from WestLaw in 2005 that Defendants produced during discovery provides further proof of the Defendants’ knowledge.

⁷¹ Ex. 68 [H&A Admissions] # 81; Ex. 69 [LH Admissions] #39-42, 75-77. See also, Dkt. No. 6, Ex. 1, Atts. M-Y, JJ at 5; Ex. 4 ¶ 9; 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. 18 ¶ 16; Ex. 19 ¶ 19; Ex. 20 ¶18; Ex. 21, Att. A.

⁷² Ex. 69 [LH Admissions] #40-42; Dkt. No. 6, Ex. 1, Atts. CC-GG; Ex. 2 ¶¶ 3, 11, 14-20, 23, 27; Ex. 3 ¶¶ 4, 6, 8, 10-13; Ex. 4 ¶ 9; 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. 18 ¶ 16; Ex. 19 ¶ 19; Ex. 20 ¶18.

years.⁷³ Indeed, Latrese Hargrave admitted that H&A misrepresented its credit repair service to induce consumers to purchase the service.⁷⁴ 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.⁷⁵ Consumers' claims are fully substantiated by the Defendants' own Admissions that they charged between \$250 and \$450⁷⁶ and “requested or received money for its credit repair services before fully performing those services.”⁷⁷ 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

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

⁷⁴ Ex. 69 [LH Admissions] #40.

⁷⁵ Dkt. No. 6, Ex. 1, Atts. CC-GG; Ex.2 ¶¶ 3, 11, 14-20, 23, 27; Ex. 3 ¶¶ 4, 6, 8, 10-13; Ex. 4 ¶ 9; 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. 18 ¶ 16; Ex. 19 ¶ 19; Ex. 20 ¶18.

⁷⁶“ Hargrave & Associates requested and received a fee from consumers of at least \$250 and \$270 per person, and \$450 per couple.” Ex. 68 [H&A Admissions] #41; Ex. 69 [LH Admissions] #37; Ex. 70 [KH Admission] #42.

⁷⁷ Ex. 68 [H&A Admissions] #42; Ex. 69 [LH Admissions] #38.

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 that the Defendants are “sellers” or “telemarketers,” engaged in “telemarketing,” as these terms are defined in the TSR,⁷⁸ and that 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 IV.B at pages 8-10, 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 MasterCard credit card, for such consumers.⁷⁹ The Admissions of Defendants H&A and Latrese Hargrave provide unquestionable substantiation that H&A guaranteed approval to everyone who applied for a

⁷⁸ 16 C.F.R. §§ 310.2(z), (bb) and (cc); Ex. 68 [H&A Admissions] #13. Although Section 310.6(b)(5) of the TSR provides an exemption for telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, the Defendants are not exempt. Excluded from this exemption are, among other things, calls initiated by consumers in response to advertisements involving goods or services described in § 310.4(a)(2) for credit repair and § 310.4(a)(4) for advance fee loans or extensions of credit. 16 C.R.R. § 310.6(b)(5). *See*, Dkt. No. 6, Volume IV, Tab F, TSR.

⁷⁹ Dkt. No. 6, Ex. 1 ¶ 26, Att. HH; Ex. 7 ¶ 8; Ex. 13 ¶¶ 4-5.

credit card.⁸⁰ 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.”⁸¹ Thus, it is undisputed that H&A violated Section 310.4(a)(4) of the TSR by requesting and receiving advance payment after having guaranteed every consumer 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, the Commission 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.”⁸²

The FTC may establish the knowledge requirement by showing “actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional

⁸⁰ “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.

⁸¹ 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.

⁸² *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 470 (11th Cir. 1996)(quoting *Amy Travel*, 875 F.2d at 573).

avoidance of the truth.”⁸³ “An individual’s status as a corporate officer gives rise to a presumption of ability to control a small, closely-held corporation.⁸⁴ ‘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.’”⁸⁵

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, the CROA, and the TSR. Once the FTC has established corporate liability, the analysis then focuses upon showing that (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.⁸⁶ As discussed below, the

⁸³ 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.

⁸⁴ *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)).

⁸⁵ *Id.*

⁸⁶ *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., 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).

evidence clearly demonstrates that Defendants 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. Consequently, Latrese and Kevin Hargrave are each individually liable for the corporate Defendants' violations of the FTC ACT, CROA, and the TSR.

A. Latrese Hargrave Is Individually Liable

Latrese Hargrave had the ability 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 of the company and that she and her husband Kevin Hargrave were its owners.⁸⁷ In addition to being listed as the president, in corporate documents filed with the Florida Secretary of State, Ms. Hargrave is also listed as the treasurer and registered agent of the corporate Defendant.⁸⁸ Ms. Hargrave admitted that she registered the corporate Defendant's fictitious names, one of which was "Hargrave & Associates Financial Solutions,"⁸⁹ the name the Defendants used to advertise, market and sell their sham credit repair service. During her deposition, Ms. Hargrave also admitted that she opened bank accounts and lines of credit for the corporation.⁹⁰ In her response to the FTC's Request for Admissions, Ms. Hargrave admitted that

⁸⁷ 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.").

⁸⁸ 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.

⁸⁹ Ex. 69 [LH Admissions] #2. *See also*, Ex. 68 [H&A Admissions] #6; Dkt. No. 6, Ex.1, Att. B.

⁹⁰ Ex. 72 at p. 33 lines 5-21. *See also*, Ex. 69 [LH Admissions], Ms. Hargrave admitted to the genuineness of the bank records contained in Dkt. No. 6, Ex.1, Atts. KK, LL, MM.

she had authority to use corporate bank and credit card accounts and that she used them to pay business and personal expenses.⁹¹

Ms. Hargrave, during deposition, also stated that she had an office at H&A's business premises.⁹² In her Admissions, Ms. Hargrave admitted that she participated in the management and business operation of H&A with her husband Kevin Hargrave.⁹³ She also admitted that she helped train its employees and telemarketers.⁹⁴ Ms. Hargrave attended staff meetings and was responsible for H&A's payroll.⁹⁵ According to the corporate Defendants Admission's that were made by and through its president Ms. Hargrave, "Defendant Latrese Hargrave had authority to control the content of the scripts used by Hargrave & Associates' telemarketers."⁹⁶ Additionally, in her Admissions, 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."⁹⁷ Further, Ms. Hargrave placed H&A's deceptive ads,⁹⁸ received and responded to consumers'

⁹¹ Ex. 69 [LH Admissions] #95-96. *See also*, Ex. 68 [H&A Admissions] #97; Ex. 70 [KH Admissions] #101; Dkt. No. 6, Ex.1, Atts. KK, LL, MM.

⁹² 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. 25 Adm. 15. Interestingly, Mr. Hargrave in his Admissions, stated that Defendant Latrese Hargrave **did** maintain an office at H&A. Ex. 70 [KH Admissions] #15.

⁹³ Ex. 69 [LH Admissions] #6, 14.

⁹⁴ Ex. 69 [LH Admissions] #8; Ex. 68 [H&A Admissions] #11, 14-15; Ex. 25 Adm. 20.

⁹⁵ Ex. 72 at p. 11, lines 19-24, p. 32 lines 11-25.

⁹⁶ Ex. 68 [H&A Admissions] #14. Curiously, in her own set of Admissions, Ms. Hargrave denied that she had authority to control the content of H&A's telemarketing scripts. Ex. 69 [LH Admissions] #7.

⁹⁷ Ex. 69 [LH Admissions] #107.

⁹⁸ Dkt. No. 6, Ex.1, Atts. JJ.

complaints,⁹⁹ and made decisions regarding issuing refunds.¹⁰⁰

Unquestionably, Ms. Hargrave had knowledge of H&A's deceptive acts and practices. In her Admissions, Ms. Hargrave admitted: a) she knew that "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;"¹⁰¹ 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;"¹⁰² 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, garnishments, collections, judgments, and charge-offs;"¹⁰³ d) "Hargrave & Associates requested or received

⁹⁹ 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.

¹⁰⁰ 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*, Ex. 1, Atts. JJ; Ex. 6 ¶ 7; Ex. 13 ¶11; Ex. 20 ¶24.

¹⁰¹ Ex. 69 [LH Admissions] #40.

¹⁰² Ex. 69 [LH Admissions] #41.

¹⁰³ Ex. 69 [LH Admissions] #42. Additionally, Latrese Hargrave in her capacity as president of H&A was sued and found liable for failing to perform the promised credit repair services. Ex. 20 ¶¶ 25-26.

money for its credit repair services before fully performing those services,”¹⁰⁴ and “consumers complained that Hargrave & Associates was misrepresenting its credit repair services and requested refunds;”¹⁰⁵ 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;”¹⁰⁶ 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;”¹⁰⁷ 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.”¹⁰⁸ 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 suggested changes and continued to mislead consumers.¹⁰⁹ That Latrese Hargrave had the ability to control the corporate Defendant and participated in and had knowledge of its deception is

¹⁰⁴ Ex. 69 [LH Admissions] #37-38. *See also*, Ex. 68 [H&A Admissions] #41-42.

¹⁰⁵ 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 Defendant Latrese Hargrave responses to those complaints) and Attachment HH (copies of complaints consumers filed with the Better Business Bureau (“BBB”) regarding the corporate Defendants’ credit card that the BBB forwarded to the corporate Defendant and Latrese Hargrave and Kevin Hargrave’s responses to those complaints.).

¹⁰⁶ Ex. 69 [LH Admissions] #51.

¹⁰⁷ Ex. 69 [LH Admissions] #52.

¹⁰⁸ Ex. 69 [LH Admissions] #61.

¹⁰⁹ Ex. 3 ¶ 16. To warn potential new customers, the BBB gave H&A an “unsatisfactory” rating. *Id.* at ¶ 7, Att. A. ¶ 15.

incontrovertible, as a result, Latrese Hargrave should be found individually liable.¹¹⁰

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. In his Admissions, Kevin Hargrave admitted that “he and Defendant Latrese Hargrave were the only officers and owners of the corporate Defendant.”¹¹¹ 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.”¹¹² Mr. Hargrave admitted that he had the authority to control the “content of H&A’s Web sites,”¹¹³ “the scripts used by H&A’s telemarketers,”¹¹⁴ and “the content and placement of Hargrave & Associates’s marketing and advertising materials.”¹¹⁵ Furthermore, he jointly controlled the finances of the corporate Defendant. He signed opening documents for corporate bank and credit card accounts and admitted that he used those accounts to pay personal and business expenses.¹¹⁶

¹¹⁰ 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.

¹¹¹ Ex. 70 [KH Admissions] #6. *See also*, Dkt. No. 6, Ex. 1, Atts. A.

¹¹² Ex. 70 [KH Admissions] #2. *See also*, note 80, *supra* at p.22.

¹¹³ Ex. 70 [KH Admissions] #24. *See also*, Ex. 68 [H&A Admissions] #26; Ex. 69 [LH Admissions] #15, 24.

¹¹⁴ Ex. 70 [KH Admissions] #12.

¹¹⁵ Ex. 70 [KH Admissions] #76. *See also*, *Id.* at 81 (admitted signing advertising agreement for broadcasting H&A’s ads).

¹¹⁶ 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).

Additionally, Mr. Hargrave admitted that he maintained an office at H&A's business,¹¹⁷ controlled and participated in its management and operation¹¹⁸ and the placement of H&A's marketing and advertising materials,¹¹⁹ and registered at least one of its Web sites.¹²⁰ He also admitted that he participated in training H&A's employees and telemarketers and had authority to hire and fire them.¹²¹

It is undebatable that Kevin Hargrave had knowledge of H&A's deceptive business practices. He admitted that he had knowledge of consumer complaints the BBB forwarded to H&A and that consumers filed directly with H&A regarding its business practices.¹²² Mr. Hargrave also admitted that he reviewed and responded to consumers' complaints¹²³ and made decisions regarding refunds.¹²⁴ Additionally, the deposition testimony of Latrese Hargrave corroborates that Mr. Hargrave exercised control over H&A and had knowledge of all aspects of

¹¹⁷ Ex.70 [KH Admissions] #10. *See also*, Ex. 68 [H&A Admissions] #10; Ex. 69 [LH Admissions] #13.

¹¹⁸ Ex. 70 [KH Admissions] #11. *See also*, Ex. 68 [H&A Admissions] #114; Ex. 69 [LH Admissions] #10, 14. During his deposition, when questioned about his responsibilities, Mr. Hargrave testified that 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 that was authored by Kevin Hargrave. Dkt. No. 6, Ex. 6 ¶ 11; Ex. 12, Att. A; Ex. 15, Att. A; Ex.16, Att. A.

¹¹⁹ Ex. 70 [KH Admissions] #78, 108; Ex. 68 [H&A Admissions] #76-77, 83; Ex. 69 [LH Admissions] #75.

¹²⁰ Ex. 70 [KH Admissions] #23 (admitted that he registered H&A's www.helpmycreditnow.com Web site); Ex. 68 [H&A Admissions] #28; Ex. 69 [LH Admissions] #22.

¹²¹ Ex. 70 [KH Admissions] #13, 14.

¹²² Ex. 70 [KH Admissions] #91-92.

¹²³ 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..

¹²⁴ Ex. 70 [KH Admissions] #106. *See also*, Ex. 68 [H&A Admissions] # 108; Ex. 69 [LH Admissions] # 108.

its operations. 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 the ability to control the corporate Defendant and participated in and had knowledge of its deceptive acts and practices. Consequently Kevin Hargrave should be found individually liable for the violations of H&A.¹²⁷

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 transgressors from violating the law in a new guise: "Congress envisioned, it cannot be required to confine its road block to 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 Defendants should also expect some reasonable fencing in provisions to prevent them from engaging in illegal practices

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.

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)).

in the future.¹²⁹

For these reasons, the FTC respectfully requests that the Defendant Latrese & Kevin Enterprises, Inc., its successor corporation Kevetrese Enterprises, Inc.,¹³⁰ and Latrese and Kevin Hargrave be prohibited from, among other things, engaging in certain business activities, distributing or selling customer information. Defendants should also be required to adhere to provisions that will prevent them from engaging in illegal activities in the future, including record keeping and compliance monitoring provisions, as provided in the attached proposed order.¹³¹

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

This 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

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 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 marketing and selling credit repair services and credit cards through a new company, Kevetrese Enterprises Inc. (“Kevetrese”) incorporated November 3, 2008. Ex. 68 [H&A Admissions] #114, 118; Ex. 70 [KH Admissions] #115, 119. Defendants admit that Kevetrese is the successor corporation and is operating from the same location at 3450 Dunn Avenue, Jacksonville, FL 32218. (Ex. 68 [H&A Admissions] #117, 129; Ex. 69 [LH Admission] #117, 132 (no response was provided, so is deemed to be admitted); Ex. 70 [KH Admissions] # 118, 130). Kevetrese, using the fictitious name “BFS Credit Services,” advertises and sells credit repair services and credit cards using three Web sites: www.bfscard.com, makelifebetternow.net, and www.bfscard.com (Ex. 68 [H&A Admissions] #118, 122, 130; Ex. 69 [LH Admissions] #118, 126a-b, 133 no response provided so deemed admitted); 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)).

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*

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

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 Merchandising*, 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).

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 the 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.").

value received.¹³⁸

Based on the financial records provided, the total injury to consumers from Defendants' credit repair and credit card scheme is \$7,443,732. This amount is 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). Using these earnings, Under a theory of restitution, the Defendants are jointly and severally liable for this amount, and the Commission asks this Court to enter an order requiring the Defendants to pay, jointly and severally, \$7,443,732 to be used to redress consumers for their loss.

X. CONCLUSION

The evidence submitted clearly demonstrates that no genuine issue of material fact remains in dispute. Accordingly, the Court should enter summary judgment in the Commission's favor, holding the Defendants jointly and severally liable for their egregious violations of the FTC Act, CROA and the TSR. The Commission also respectfully requests that the Court enter the [*Proposed*] Final Judgment and Order for Permanent Injunction and Other Equitable Relief, filed with the Commission's Motion.

Dated: July __, 2009

Respectfully submitted,

s/Jessica D. Gray
JESSICA D. GRAY, Trial Counsel
Special Florida Bar Number A5500840
FEDERAL TRADE COMMISSION

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

Southeast Regional Office
225 Peachtree Street, N.E., Suite 1500
Atlanta, Georgia 30303
Office: 404-656-1350 (Gray)
Facsimile: 404-656-1379
Email: jgray@ftc.gov