

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**THE CUBAN EXCHANGE, INC., and
SUHAYLEE RIVERA,**

Defendants.

Case No. 1:12-cv-05890-NGG-RML

**~~PROPOSED~~ FINAL DEFAULT JUDGMENT AND
ORDER FOR PERMANENT INJUNCTION**

On November 28, 2012, Plaintiff, the Federal Trade Commission (“FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, against Defendants, The Cuban Exchange, Inc. (also d/b/a CrediSure America and also d/b/a MyiPad.us) and Suhaylee Rivera (collectively, “Defendants”). (Doc. No. 1.) Simultaneously, the FTC moved for a temporary restraining order. (Doc. Nos. 2, 6.) On November 30, 2012, the Court granted the FTC’s motion for temporary restraining order. (Doc. No. 14.) On January 7, 2013, the Court converted the temporary restraining order to a preliminary injunction. (Doc. No. 23.) Despite being properly served and having notice of this action, Defendants have failed to respond to the Complaint, make an appearance in this action, or otherwise take any steps to contest these proceedings. Accordingly, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Clerk of Court entered defaults against Defendants on December 4, 2013. (Doc. No. 26.)

The FTC has moved this Court for entry of a default judgment on all counts of the Complaint against Defendants pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. (Doc. No. 27.) Upon consideration of the FTC's Motion for Entry of Default Judgment and the Memorandum in support, the Court hereby GRANTS the FTC's motion.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED AS FOLLOWS:

I. FINDINGS

The Court, having considered the Complaint and all motions, declarations, exhibits, and memoranda of points and authorities filed in this action, finds that:

- A. The Court has jurisdiction over the subject matter of this case and the parties.
- B. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).
- C. Defendants' activities as alleged in the Complaint are "in or affecting commerce" as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. §44.
- D. The FTC's Complaint states a claim upon which relief may be granted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C §§ 45, 53(b).
- E. Defendants have been properly served with the Summons and Complaint, as required by Rule 4 of the Federal Rules of Civil Procedure and as evidenced by the Proofs of Service filed with this Court. (Doc. Nos. 12-13.) Further, the Court finds that the FTC has provided reasonable notice to Defendants of the pendency of these proceedings, as described in affidavits filed by the FTC's counsel in this action. (Doc. Nos. 10, 11, 15, 19, 24, & 25.)
- F. Despite proper service and prior notice, Defendants have failed to file a responsive pleading in response to the Complaint or to otherwise defend this action.

- G. The Clerk of Court properly entered defaults against Defendants on December 4, 2013. (Doc. No. 26.)
- H. The Court finds that, due to Defendants' default, the FTC is now entitled to a default judgment against Defendants pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure.
- I. Because of Defendants' default, all factual allegations in the Complaint, except those relating to damages, are deemed admitted and taken as true. *Au Bon Pain Corp. v. Arctect, Inc.*, 653 F.2d 61, 65 (2d Cir. 1981).
- J. As to Count One of the Complaint, the Court finds that, Defendants, in connection with the advertising, marketing, promotion, offering for sale, or sale of FTC refund services, have represented, directly or indirectly, expressly or by implication, that: (1) Defendants were affiliated with or endorsed by the FTC; (2) Defendants could obtain refunds/redress from the FTC on behalf of consumers; (3) Defendants could reduce FTC refund/redress wait times to 5 to 7 business days from 8 to 10 weeks; (3) Defendants knew whether a consumer was entitled to a refund or redress from the FTC; and (4) Defendants assisted more than 13,000 clients in receiving refunds/redress from the FTC.
- K. The Court finds that the above representations are false and misleading. Defendants have never been affiliated with or endorsed by the FTC, could not obtain refunds/redress from the FTC on behalf of consumers, could not reduce FTC refund/redress wait times, and have not assisted more than 13,000 clients in receiving refunds from the FTC.
- L. The Court finds that Defendants' misrepresentations were material to consumers determining whether to purchase Defendants' FTC refund services and, therefore,

constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

- M. Defendants, therefore, are liable under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), for these deceptive acts or practices.
- N. As to Count Two of the Complaint, the Court finds that, in connection with the telemarketing of goods and services, Defendants have misrepresented, directly or by implication, their affiliation with, or endorsement or sponsorship by, the FTC -- a government entity -- in violation of Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii).
- O. As to Count Three of Complaint, the Court finds that Defendants, in connection with the telemarketing of goods and services, have misrepresented, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of such goods and services, including that: (1) Defendants could obtain refunds/redress from the FTC on behalf of consumers; (2) Defendants could reduce FTC refund/redress wait times to 5 to 7 business days from 8 to 10 weeks; (3) Defendants knew whether a consumer was entitled to a refund or redress from the FTC; and (4) Defendants have assisted more than 13,000 clients in receiving refunds/redress from the FTC.
- P. The Court finds that Defendants' misrepresentations described above constitute deceptive telemarketing acts or practices that violate the Section 301.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).
- Q. As to Count Four of the Complaint, the Court finds that Defendants, in the course of telemarketing goods and services, have initiated, or caused a telemarketer to initiate, an

outbound telephone call to telephone numbers on the National Do Not Call Registry in violation of Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

- R. As to Count Five of the Complaint, the Court finds that Defendants, in the course of telemarketing goods and services, have failed to transmit, or have caused telemarketers to fail to transmit, the telephone number and name of the telemarketer or of Defendants to any caller identification service in use by a recipient of a telemarketing call, in violation of Section 310.4(a)(8) of the TSR, 16 C.F.R. § 310.4(a)(8).
- S. As to Count Six of the Complaint, the Court finds that Defendants, in the course of telemarketing goods and services, have made, or caused others to make, outbound telephone calls that delivered prerecorded messages to induce the purchase of goods or services in violation of Section 310.4(b)(1)(v) of the TSR, 16 C.F.R. § 310.4(b)(1)(v).
- T. As to Count Seven of the Complaint, the Court finds that Defendants, in the course of telemarketing goods and services, have made, or caused others to make, outbound telephone calls that deliver a prerecorded message in which the telemarketer or message failed to disclose truthfully, promptly, and in a clear and conspicuous manner to the recipient of the call: (1) the identity of the seller; (2) that the purpose of the call is to sell goods or services; and/or (3) the nature of the goods or services. The Court finds that, by failing to make these disclosures, Defendants violated Section 310.4(d) of the TSR, 16 C.F.R. § 310.4(d).
- U. As to Count Eight of the Complaint, the Court finds that Defendants, in the course of telemarketing goods and services, have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code when Defendants had not, either directly or through another Person, paid the required annual fee for access to the

telephone numbers within that area code that are included in the National Do Not Call Registry, in violation of Section 310.8 of the TSR, 16 C.F.R. § 310.8.

- V. The Court finds that, pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), Defendants' violations of the TSR set forth in Counts II through VIII of the Complaint constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
- W. Defendants, therefore, are liable under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), for their violations of the TSR.
- X. The Court has authority, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to grant injunctive and other ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violations of any provision of law enforced by the FTC.
- Y. The Court has authority, pursuant to Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.
- Z. The Court finds that, absent a permanent injunction, Defendants will likely violate the FTC Act and the TSR in the future.

- AA. The Court finds that none of the Defendants is an infant, has been declared incompetent, or is currently in the military or otherwise exempted from default judgment under the Soldiers' and Sailors' Civil Relief Act of 1940. (Doc. No. 24, 25.)
- BB. The Court finds that the equities weigh in favor of granting a permanent injunction, and that such injunction is in the public interest.
- CC. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.
- DD. Entry of this Order resolves Plaintiffs' claims as to Defendants. Because Defendants are in default and unrepresented and thus unlikely to either make any further filings before this Court, and because entry of final default judgment as to Defendants would aid in the expeditious resolution of the case and is not likely to lead to inconsistent adjudications or logically inconsistent results, there is no just reason for delay in certifying this Order as final pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Accordingly, the Court expressly directs entry of this Default Final Judgment and Order.

II. DEFINITIONS

For the purpose of this Final Default Judgment and Order for Permanent Injunction ("Order"), the following definitions shall apply:

- A. **"Corporate Defendant"** means The Cuban Exchange, Inc., also d/b/a CrediSure America and also d/b/a MyiPad.us, as well as all of its divisions, subsidiaries, affiliates, predecessors, successors, and assigns.
- B. **"Defendants"** means the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination, and each of them by whatever names each might be known.

- C. **“Document” or “Documents”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and encompasses both paper documents and electronically stored information—including writings, drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence (including email, instant messages, text messages, and other correspondence transmitted on cell phones, smart phones, and other mobile devices), photographs, audio and video recordings, contracts, accounting data, advertisements (including advertisements placed on the Internet), FTP logs, server access logs, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business cancelled checks, check registers, bank statements, appointment books, computer records and files, mobile electronic records and files, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by Defendants into a reasonably usable form. A draft or non-identical copy is a separate Document within the meaning of the term.
- D. **“FTC Act”** means the Federal Trade Commission Act codified at 15 U.S.C. §§ 41-58.
- E. **“Individual Defendant”** means Suhaylee Rivera and all Persons acting on her behalf.
- F. **“National Do Not Call Registry”** means the registry of telephone numbers maintained by the FTC, pursuant to Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), of individuals who do not wish to receive Outbound Telephone Calls to induce the purchase of goods or services.
- G. **“Outbound Telephone Call”** means a telephone call initiated by a Telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

- H. **“Person”** shall be construed in its broadest sense and means both natural persons and artificial entities, including sole proprietorships, general partnerships, limited partnerships, joint ventures, limited liability partnerships, limited liability companies, corporations, sub-chapter S corporations, closely held corporations, professional corporations, business associations, business trusts, and all past and present officers, directors, managers, members, agents, employees, parent companies, subsidiaries, predecessors, successors, affiliates, assigns, divisions, or other persons acting or purporting to act on such person’s behalf.
- I. **“Representative”** or **“Representatives”** means Defendants’ officers, directors, managers, members, agents, servants, employees, and attorneys, and any other Person or entity in active concert or participation with them, who receives actual notice of this Order by personal service or otherwise.
- J. **“Seller”** means any Person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.
- K. **“Telemarketer”** means any Person who, in connection with Telemarketing, initiates or receives telephone calls to or from a customer or donor.
- L. **“Telemarketing”** means any plan, program, or campaign that is conducted to induce the purchase of goods or services or a charitable contribution by use of one or more telephones.
- M. **“Telemarketing Sales Rule”** or **“TSR”** means the Telemarketing Sales Rule set forth in 16 C.F.R. Part 310.

III. PROHIBITED MISREPRESENTATIONS

IT IS HEREBY ORDERED that, in connection with the marketing, advertising, promotion, distribution, offering for sale, or sale of any good or service, Defendants and their Representatives, whether acting directly or indirectly through any Person, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including any of the following:

- A. That Defendants are affiliated with or endorsed by the FTC;
- B. That Defendants can obtain refunds or redress from the FTC on behalf of consumers;
- C. That Defendants can reduce FTC refund or redress wait times to 5 to 7 business days from 8 to 10 weeks;
- D. That Defendants know that the consumer is entitled to a refund or redress from the FTC;
- E. That Defendants have assisted more than 13,000 clients in receiving refunds or redress from the FTC.
- F. That Defendants are affiliated with, endorsed by, or sponsored by any Person or any government entity;
- G. That Defendants can obtain refunds, redress, or payments from any government entity on behalf of consumers;
- H. That Defendants can reduce the time period for a consumer to receive any refund, redress, or payment from any government entity;
- I. That Defendants know that a consumer is entitled to refund or redress from any government entity;
- J. That Defendants have assisted consumers in receiving refunds, redress, or payments from any government entity;

- K. Any material restrictions, limitations, or conditions to purchase, receive, or use any goods or services;
- L. Any material terms regarding the total cost to purchase, receive, or use, and the quantity of, any goods or services that are subject to any sales offer;
- M. Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of any sales offer; or
- N. Any other fact material to a consumer's decision to purchase any goods or services.

IV. PROHIBITIONS REGARDING TELEMARKETING

IT IS FURTHER ORDERED that, in connection with Telemarketing, Defendants and their Representatives, whether acting directly or through any Person, are restrained and enjoined from violating the TSR, including initiating, or causing others to initiate, an Outbound Telephone Call:

- A. That misrepresents, directly or by implication: (1) the total costs to purchase, receive, or use any goods or services that are the subject of a sales offer; (2) any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer; or (3) any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;
- B. That misrepresents, directly or by implication, a Seller's or Telemarketer's affiliation with, or endorsement or sponsorship by any Person or government entity;
- C. To a Person whose telephone number is on the National Do Not Call Registry;
- D. That fails to transmit the telephone number and/or name of the Telemarketer or Seller to any caller identification service in use by the recipient of the call;
- E. That delivers a prerecorded message;

- F. That fails to disclose truthfully, promptly, and in a clear and conspicuous manner to the recipient of the call: (1) the identity of the Seller; (2) that the purpose of the call is to sell goods or services; and/or (3) the nature of the goods or services;
- G. That delivers a prerecorded message and fails to disclose truthfully, promptly, and in a clear and conspicuous manner to the recipient of the call: (1) the identity of the Seller; (2) that the purpose of the call is to sell goods or services; and/or (3) the nature of the goods or services; or
- H. To a telephone number within a given area code when Defendants have not, either directly or through another Person, paid the required annual fee for access to the telephone numbers within that area code that are included on the National Do Not Call Registry.

V. PROHIBITIONS RELATING TO WEBSITES

IT IS FURTHER ORDERED that, Defendants and their Representatives, whether acting directly or through any Person, are permanently restrained and enjoined from creating, using, or allowing public access to: (A) the Internet websites www.ftcrefund.com, www.credisure.net, or www.credisure.org; (B) any Internet website that advertises, markets, promotes, offers for sale, sells, or provides government refund or redress services; or (C) any Internet website that represents that Defendants are affiliated with, endorsed by, or sponsored by any government entity.

VI. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any Person, are permanently restrained and enjoined from:

- A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, credit card number, bank account number, email address, or other

identifying information or data of any Person that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the use of any Internet website that: (1) advertised, marketed, promoted, offered for sale, sold, or provided refund or redress services; or (2) represented that Defendants were affiliated with, endorsed by, or sponsored by any government entity; or

- B. Failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after entry of this Order.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

- A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 5 years after entry of this Order, the Individual Defendant for any business that she, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section VIII (Compliance Reporting). Delivery must occur within 7 days of entry of

this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

- A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:
1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendant must describe if she knows or should know due to her own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
 2. Additionally, the Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b)

identify all business activities, including any business for which she performs services whether as an employee or otherwise and any entity in which she has any ownership interest; and (c) describe in detail her involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

- B. For 20 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
 2. Additionally, the Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which she performs services whether as an employee or otherwise and any entity in which she has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.
- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. §1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. The Cuban Exchange, Inc. & Suhaylee Rivera*, No. 12-CV-05890 (E.D.N.Y.) (FTC No. X130012).

IX. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendant and the Individual Defendant for any business that she, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each individual providing services, whether as an employee or otherwise, that individual’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. a copy of each unique advertisement or other marketing material; and
- F. copies of any website used to market goods or services.

X. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce Documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other Person affiliated with any Defendant who has agreed to such an interview. The Person interviewed may have counsel present.
- C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

