

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**UNITED DEBT COUNSELORS, LLC, a
limited liability company, formerly known as
UNITED DEBT SERVICES, LLC, also d/b/a/
DEPARTMENT OF NEGOTIATIONS,**

**DAVID MELROSE, individually and as a
member of United Debt Counselors, LLC,**

**KIRK LANAHAN, individually and as an
officer of United Debt Counselors, LLC,**

**CORINNE MAPLES, individually and as an
officer of United Debt Counselors, LLC,**

Defendants.

Case No. 4:17-CV-143

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2), (c)(1), (c)(2), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices in or affecting commerce.

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

DEFENDANTS

6. Defendant United Debt Counselors, LLC (“United”), formerly known as United Debt Services, LLC, also doing business as Department of Negotiations, is a Texas limited liability company with its principal place of business at 2611 Internet Boulevard, Suite 201, Frisco, Texas 75034. United transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others,

United has advertised, marketed, or sold debt relief services to consumers throughout the United States.

7. Defendant David Melrose is a majority owner of United. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of United, including the acts and practices set forth in this Complaint. Defendant Melrose resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

8. Defendant Kirk Lanahan is an officer and a member of United. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of United, including the acts and practices set forth in this Complaint. Defendant Lanahan resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Defendant Corinne Maples is an officer and a member of United. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of United, including the acts and practices set forth in this Complaint. Defendant Maples resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMERCE

10. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

11. Since at least the summer of 2011, Defendants have engaged in a plan, program, or campaign conducted to induce the purchase of debt relief services by use of one or more telephones and which involves more than one interstate telephone call. United uses direct mail advertising pieces and an Internet site to solicit sales of its debt relief services to consumers across the United States.

12. When marketing their debt relief services, Defendants misrepresent how many consumers successfully complete Defendants’ program, how long it typically takes consumers to complete Defendants’ program, and how much money consumers are likely to save if they use Defendants’ services. Defendants also misrepresent that consumers are given a special savings account that only the consumer controls, and Defendants charge consumers unlawful advance fees for Defendants’ debt relief services.

Direct Mail Solicitations


13. During the time period relevant to this complaint, United has sent 60,000-100,000 direct mail solicitations to consumers every week. United has essentially used three mailers since its inception, each with a similar form that looks like a document from a bank, attorney or official source. Each of United’s solicitations includes as a program example that a debt of \$37,288 was settled for \$16,482, which is a 55 percent debt reduction. Each of the solicitations

also states that the consumer may lose money if they do not call the toll-free telephone number provided within 10 days.

14. One example of Defendants' solicitation (the fine print on the last full paragraph of the example is enhanced to make it legible) is as follows:

NOTICE	
Department of Negotiations 2611 Internet Blvd. #201 Frisco, TX 75034	Notice
	Notice Date October 2, 2014
	To contact us 1-866-544-4703

Attention:
RE: Credit Settlement



Please **contact our offices at 1-866-544-4703** within 10 days of receiving this notice regarding the adjustment of your credit accounts.

Our firm has recently settled accounts with JP Morgan, Chase, Citibank, Bank of America, Discover, Capital One, HSBC, GE Money, Target and Wells Fargo. If you have accounts with these or other Lenders, **you may be entitled to a settlement of your outstanding credit balance.**

**** Failure to Call ****

Failure to call and make your minimum monthly payments will likely result in interest accruing on your unsecured credit balances at an unreasonable rate. (In addition, penalties may accrue in the event of unpaid obligations.)

In order to determine the feasibility of an adjustment to your outstanding balance it is important for you to contact our firm at 1-866-544-4703 within 10 days of receiving this notice to avoid unnecessary delays in processing your request.

CONTACT OUR OFFICES:

M-F 8am-8pm CST, Sat. – Sun. 9am – 1pm CST

In reply refer to: 164AR-3

Sincerely yours,

Kirk Lanahan
Department of Negotiations

PROGRAM EXAMPLE

Credit Card Debt: \$37,288.08
Est. Settlement Amount: \$16,481.99
Current Credit Card Payments: \$1,118.64
New Proposed Program Payment: \$569.60
Program Terms From 12-36 Months

Individual results vary based on ability to save funds, type and amount of debt and historical willingness of creditors to negotiate. We do not lend, assume debt or provide legal and tax advice. Above is for illustration purposes only, based on a single consumer situation who completed the entire program. Not all consumers will complete our receive such results. Results from 2011 enrolled for 36 months. Program not available in all states. Application and illustration do not guarantee settlement or program approval. Program fees separate and not included in example.

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www.uniteddebtservices.com

The Company's Website

15. Consumers who are interested in United's debt relief service may access United's website, www.uniteddebt counselors.com. The website includes dozens of audio-recorded testimonials from satisfied customers and numerous claims regarding United's debt relief services. The testimonials describe instances in which United successfully negotiated large reductions of consumers' credit card debts. The testimonials do not contain disclaimers that the reported results are atypical nor disclosures of the results a typical consumer should expect.

16. The website also claims that consumers "can be debt-free in around 36 months." A video that appears on the website describes a consumer with \$20,000 in credit card debt who settled for \$7,500, a 63 percent savings.

17. The bottom of the website's FAQ page includes a footer that proclaims:

As you can see, we're not just "legitimate"; we are VERY good at what we do! We help people like you get out from under suffocating amounts of debt in 18-36 months so you can finally get on with your life.

18. United's website represents that it offers consumers a special savings account.

According to the website, funds in the savings account are controlled only by the consumer. The website's "How It Works" page states:

Once you have enrolled and at your option, you may setup a **special purpose savings account** with an independent third party financial institution. Generally, we suggest using Global Client Solutions, LLC (GCS), but the ultimate choice remains with the client. The funds that accrue in this account will eventually be the funds used to pay off the settlements and our program fees. The funds in this account are **controlled by you and are FDIC insured for safety**. We will simply be able to see the balance and monitor account activity.

Telemarketing

19. Consumers who are interested in United's debt relief services are directed to speak with a United telemarketer. Some consumers call United directly, using the telephone number listed on the company's direct mail solicitations. Other consumers call or request information through the company's website.

20. United's telemarketers follow a script when speaking with consumers that discusses the alleged benefits of United's debt relief services.

21. Sales scripts used by United expressly state that United's customers have a "very high success rate," and one script has stated that United's customers "seldom ever cancel."

22. Likewise, United's scripts claim that consumers who work with United "typically find" they are out of debt "in about 3 years" and their debt is "typically cut in half."

23. United's sales scripts also state that United's debt relief program is set up so that consumers are provided a special purpose savings account over which the consumer alone has complete control. The script expressly states, "The account belongs to you, it's in your name, and you remain in complete control of it." Another portion of the script states, "At all times you are in complete control of your settlement funds."

Meetings with Notaries Public

24. If a consumer desires to purchase United's debt relief services, United arranges an in person meeting with the consumer. United tells consumers that it is sending an experienced sales representative to fully describe the features of its debt relief program. In fact, however, United locates an independent notary public in the consumer's locality and hires the notary to attend the meeting.

25. The independent notaries public do not fully describe the features of United's debt relief program or give a sales presentation to the consumer. Instead, the independent notaries play a 10-minute video recording on a computer laptop or mobile device. If the video does not work or is unavailable, notaries are instructed to read a prepared script that tracks the video. The video notaries play repeats many of the same claims concerning the company's purported success used in United's prior marketing. In one portion of the video, consumers are told that "our [United's] success rate and partnership best ensures you will meet your financial goals." The video also proclaims that United's goal "is always to graduate people within their elected term length," which is usually 36 months. The video also explains that the first settlement will occur when the consumer has saved 20-50 percent of their smallest debt.

26. United also provides notaries a 2½-page FAQ sheet and instructs notaries that they may only respond to questions as outlined on the FAQ sheet. If the consumer asks a

question not on the FAQ sheet, the notary is required to instruct the consumer to call United and speak to a telemarketer. The FAQ sheet expressly tells notaries not to discuss United's fees or the costs of the debt relief program with consumers. Instead, notaries are instructed that United's policy requires them to direct consumers to call United to discuss fees with one of the company's telemarketers or sales agents.

27. After playing the video and answering any questions on the FAQ sheet, the notary helps consumers sign paperwork to enroll in the debt relief program. The enrollment package includes a contract, a disclaimer form, a savings account application, and other documents. None of the documents clearly state that United charges an advance fee for its services or that it removes its fees automatically from the consumer's special purpose savings account. Specifically, the only portions of the contract that appear to authorize the payment of advance fees are located on pages 5 and 7 of the 19 page document. The first reference is in a paragraph entitled "Fees" and states:

Fees: CUSTOMER agrees to pay COMPANY a onetime non-refundable Administrative Fee of \$ 197.00 and a total fee of _____, 15% of the whole amount of Enrolled Debt and \$18.85 monthly fee starting in month 2, until the end of the program. CUSTOMER agrees to have fees debited monthly as shown on the Electronic Funds Authorization Form attached to this AGREEMENT.

28. The second reference is an unnamed and unnumbered paragraph on page 7. This paragraph states:

As a duly authorized check signer on the financial institution account identified above, I authorize COMPANY to perform scheduled electronic funds transfer debits from my account identified for Service Fee payments specified above on the EFT form, or when applicable apply electronic funds transfer credits to the same account. This applies to check by phone payments as well as any other electronic payment.

29. This language is immediately followed by a paragraph that states:

20 **Special Purposes Savings Account:** Client understands that Client is solely in control of all savings funds. Client will designate an account for program savings funds. Client selects:

FDIC Insured Bank thru GCS
 Another account of Client's Choosing

30. Notably, there is no form attached to the contract labeled “Electronic Fund Authorization” or “EFT form” as referenced in the contract. There is an ACH Form, which does authorize electronic funds transfers, but it says nothing about advance fees. Rather, the ACH form authorizes United to perform “scheduled electronic funds transfer debits from my/our account identified below for fee payments due, or when applicable.” The ACH form is page 10 of the 19-page document.

Post-Sale Disclosures

31. Generally, within two days after completing the enrollment packet, United requires consumers to complete an orientation. The orientation consists of a short introductory telephone call with a United representative, followed by a 7-minute audio recording that summarizes the debt relief program. Approximately two minutes into the recording, United expressly discloses—for the first time—that the company will withdraw advance fees from the consumer’s saving account every month for the first 15 months of the contract period.

Defendants’ Claims are False or Unsubstantiated

32. Contrary to United’s assertions, the company does not have a high success rate and most consumers do not complete their debt relief program. The company’s records demonstrate that the representations that a typical United customer is debt free within 36 months and realizes a 50 percent reduction of their credit card debt are false or unsubstantiated.

33. A large percent of consumers fails to complete the program or drops out. Less than half of consumers who start the program complete in 36 months. Even those who complete the program according to their contract will pay more than 50 percent of their debt if United's fees are included.

34. Finally, United's claim that consumers are in complete control of their special savings accounts is false. United maintains access to and uses its customers' accounts to withdraw its fees every month.

VIOLATIONS OF THE FTC ACT

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

36. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

Count I

Deceptive Marketing Representations Pursuant to Section 5(a) of the FTC Act

37. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of debt relief services, Defendants represent, directly or indirectly, expressly or by implication, that consumers who purchase United's debt relief services:

- a. have a high success rate in completing United's debt relief program or seldom fail to complete the program or cancel;
- b. will typically be debt free in 36 months;
- c. will typically reduce the total amount of their debt by approximately 50 percent; and
- d. will maintain sole control of a special savings account.

38. In truth and in fact, in numerous instances the representation[s] set forth in Paragraph 37 are false or not substantiated at the time Defendants make them.

39. Therefore, Defendants' representations as set forth in Paragraph 37 of this Complaint are false or misleading and constitute deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

40. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices when it enacted the Telemarketing Act, 15 U.S.C. §§ 6101- 6108, in 1994. The FTC adopted the original TSR in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

41. Defendants are “seller[s]” or “telemarketer[s]” engaged in “telemarketing” as defined by the TSR, 16 C.F.R. § 310.2(dd), (ff), and (gg). A “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 a customer in exchange for consideration. 16 C.F.R. § 310.2(dd). A “telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(ff). “Telemarketing” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. 16 C.F.R. § 310.2(gg).

42. Defendants are sellers or telemarketers of “debt relief services” as defined by the TSR, 16 C.F.R. § 310.2(o). Under the TSR, a “debt relief service” means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt

collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector. 16 C.F.R. § 310.2(o).

43. The TSR prohibits sellers or telemarketers from requesting or receiving payment of any fees or consideration for any debt relief service until and unless:

- a. the seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;
- b. the customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and
- c. to the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:
 - i. bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or
 - ii. is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was

enrolled in the services and the amount actually paid to satisfy the debt. 16 C.F.R. § 310.4(a)(5)(i)

44. The TSR has a partial exemption for sales resulting from “[t]elephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c).” 16 C.F.R. § 310.6(b)(3). However, as detailed in paragraphs 24-27, *supra*, United’s in-person meetings between notaries public and consumers do not qualify for the face-to-face sales presentation exemption.

45. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, any material aspect of any debt relief service, including, but not limited to: (a) the amount of money or the percentage of the debt amount that a customer may save by using the service; (b) the amount of time necessary to achieve the represented results; and (c) the percentage or number of customers who attain the represented results. 16 C.F.R. § 310.3(a)(2)(x).

46. 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), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II
Requesting and Receiving Advance Fees

47. In numerous instances in connection with the telemarketing of debt relief services, Defendants request or receive payment of fees or consideration for debt relief services before:

- a. they have renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer; and
- b. the customer has made at least one payment pursuant to that agreement.

48. Defendants' acts and practices, as described in Paragraph 47, are abusive telemarketing acts or practices that violate Section 310.4(a)(5)(i) of the TSR, 16 C.F.R. § 310.4(a)(5)(i).

Count III Misrepresentations

49. In numerous instances in connection with the telemarketing of debt relief services, Defendants misrepresent, directly or indirectly, expressly or by implication, material aspects of their debt relief services, including, but not limited to, that consumers who purchase United's debt relief services:

- a. have a high success rate in completing United's debt relief program or seldom fail to complete the program or cancel;
- b. will typically be debt free in 36 months;
- c. will typically reduce the total amount of their debt by approximately 50 percent; and
- d. will maintain sole control of a special savings account.

50. Defendants' acts or practices, as described in Paragraph 49, constitute deceptive telemarketing acts or practices that violate Section 310.3(a)(2)(x) of the TSR, 16 C.F.R. § 310.3(a)(2)(x).

CONSUMER INJURY

51. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

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

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

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to

preserve the possibility of effective final relief, including but not limited to temporary and preliminary injunctions;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

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

Respectfully submitted,

DAVID SHONKA
Acting General Counsel

DAMA J. BROWN
Regional Director

Dated: February 27, 2017

/s/ Eric N. Roberson

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