No. 19-14248

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FEDERAL TRADE COMMISSION and STATE OF FLORIDA,
Plaintiffs-Appellees,

v.

KEVIN W. GUICE,
Defendant-Appellant.

On Appeal from the United States District Court
for the Middle District of Florida
No. 16-cv-982
Hon. Carlos E. Mendoza, Judge

BRIEF OF THE FEDERAL TRADE COMMISSION AND STATE OF FLORIDA

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Eleventh Circuit Rule 26.1 Certificate of Interested Persons

Pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1, Appellees the Federal Trade Commission ("FTC") and the State of Florida certify that, in addition to the names listed in Appellant's opening brief, the following persons or entities have an interest in the outcome of this appeal:

Bergman, Michael D. – FTC Attorney

Crotty, Patrick Christopher – Counsel, Florida Attorney General's Office

Doan, Joshua A. – FTC Attorney

Dolan, James Reilly – FTC Acting General Counsel

Duncan, Donna – Attorney for Appellant Kevin Guice

Grilli, Peter J. – Mediator

Guice, Laura – mother of Defendant Kevin Guice and wife of Relief Defendant Robert Guice

Guice, Robert – Relief Defendant

Jones, Christine a/k/a Christine Carter-Jones – Organized Shell Defendant YCC Solutions LLC

Kiesel, Bernard – Accountant for Defendant Kevin Guice

Marcus, Joel – FTC Deputy General Counsel

Miller, Victoria – Organized Shell Def. PW&F Consultants of Florida LLC

Moody, Ashley – Florida Attorney General

Norris, Wayne Thomas – Guice associate who assisted with the creation of certain Shell Defendants

Roberts, Matthew S. – Organized Shell Defendant URB Management, LLC

UAD Secure Services LLC – Shell Defendant

Vest, Inez – Organized Shell Defendant IVD Recovery, LLC

Wilhelm, Lisa – Plaintiffs'-Appellees' Expert Witness

Woods, Eleanor Miner – wife of Relief Defendant Timothy Woods

Yager, Jr., Michael L. – Organized Shell Defendants UAD Secure Service of FL LLC and UAD Secure Services LLC

The Federal Trade Commission and the State of Florida further state that, to the best of their knowledge, no publicly traded company or corporation has an interest in the outcome of the case or appeal.

STATEMENT REGARDING ORAL ARGUMENT

The issues in this case are straightforward. Plaintiffs-Appellees do not believe oral argument is necessary.

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INTRODUCTION

Uncontested evidence showed that Kevin Guice orchestrated a deceptive telemarketing scheme, operated through 13 interlinked companies, that preyed on financially distressed consumers by promising to relieve them of their debts while often making them even worse off than before. More than 10,000 consumers collectively paid Guice and his companies over $23 million for services that were not fulfilled as promised. The victims' resources were drained and their credit ratings ruined. Guice claims that there were facts in dispute, making summary decision inappropriate. In reality, the voluminous record amply supports the judgment below and Guice has identified no genuine dispute of material fact.

STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction over the Federal Trade Commission's claims under 28 U.S.C. §§ 1331, 1337(a), and 1345. The district court had supplemental jurisdiction over the State of Florida's state-law claims under 28 U.S.C. § 1367. The district court issued its summary judgment order and permanent injunction disposing of all parties' claims on December 7, 2018, GA.225,[1] and judgment was entered against Guice on December 10, 2018,

[1] "GA" refers to Kevin Guice's Appendix, cited as: "GA.[Tab #] at [district court ECF page #]." "SA" refers to the FTC's and Florida's Supplemental Appendix, cited as: "SA.[Tab #] at [district court ECF page #]." "Tab #" refers to the district court docket number. Exhibits on the electronic docket are cited to their docket

GA.226. Guice timely filed a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e) on January 4, 2019, D.232, which the district court denied on September 24, 2019. SA.291. Guice timely filed his notice of appeal on October 24, 2019. GA.309. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1) Whether the district court properly determined on summary judgment that Kevin Guice was personally liable for his companies' violations.

2) Whether the district court properly determined on summary judgment that Kevin Guice and his companies failed to provide their promised debt-relief services.

STATEMENT OF THE CASE

Voluminous unrebutted evidence shows that for at least three-and-a-half years, thirteen companies created and controlled by Kevin Guice sold fraudulent debt-relief services. His salesforce falsely promised consumers a permanent and substantial reduction in their credit-card interest rates, often to zero percent, and substantial savings. Consumers who fell for the first pitch and still had credit were

number. Exhibits supporting the plaintiffs' motion for a temporary restraining order were filed on a CD (*see* D.12 (docket entry); D.13 (list)), are not on the electronic docket, *see* GA.225 at 2 n.1, and were transmitted in the record on appeal on the CD; they are cited as: "SA.12(CD)-[PX #] at [exhibit page #]. Deposition transcripts are first cited to the district court ECF page # and then to the court reporter-assigned page # (cited as: "[Tr. #]").

pitched a second false promise that for a substantial up-front payment, their credit-card debt could be satisfied entirely using a government fund. Guice not only failed to provide the promised services, but often left consumers deeper in debt and with severely damaged credit.

Those facts were established through more than forty sworn consumer declarations, testimony of Guice's former employees and business associates, bank records revealing that Guice personally collected more than $8 million, and internal company documents. Instead of responding to the substance of that record, Guice repeatedly invoked the Fifth Amendment.

A. Guice's Unlawful Telemarketing Scheme

1. Illegal robocalls and calls to numbers on the Do-Not-Call Registry

The FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, prohibits telemarketing calls to phone numbers listed on the FTC's Do-Not-Call ("DNC") Registry unless the seller has obtained written consent or has an established business relationship with the recipient. 16 C.F.R. § 310.4(b)(1)(iii)(B).[2] The TSR also separately prohibits sellers or telemarketers from sending prerecorded telephone messages (or "robocalls") to consumers to induce a purchase unless the

[2] Sellers or telemarketers must also pay an annual fee to access phone numbers for a given area code on the Registry. 16 C.F.R. § 310.8.

message falls into a defined safe harbor category or the seller has obtained written consent. *Id.* § 310.4(b)(1)(v)(A).

Guice's two main operating companies, Loyal Financial & Credit Services, LLC ("Loyal") and Life Management Services of Orange County, LLC ("LMS"), caused an automatic dialer or lead generator to send calls which played a prerecorded message ("robocalls") to consumers nationwide. GA.163-48 at 6 [Tr. at 14:5-23]; GA.163-49 at 6, 9 [Tr. at 53:17-56:19, 92:10-14]. When the recipient answered, a prerecorded message played, which allowed the recipient to press a button to speak with a salesperson who worked for one of the defendant companies.[3] In addition, consumers who had listed their telephone numbers on the DNC Registry received calls even though they had no prior business relationship with Guice's companies nor had they given the companies written permission to

[3] SA.12(CD)-[PX 1 at 1 ¶¶ 2-11]; *id*.-[PX 4 at 1 ¶¶ 2-13] (KWP Services); *id*.-[PX 7 at 1 ¶¶ 2-7] (LPS of FLA); *id*.-[PX 10 at 1 ¶¶ 2-9] (LPS of FLA); *id*.-[PX 11 at 1 ¶¶ 2-11] (LMS); *id*.-[PX 12 at 1 ¶¶ 2-8] (YCC); *id*.-[PX 15 at 1 ¶¶ 2-9] (UAD Secure Services); *id*.-[PX 16 at 1 ¶¶ 2-9] (KWP Services); *id*.-[PX 23 at 1 ¶¶ 2-8] (UAD Secure Services); *id*.-[PX 29 at 1 ¶¶ 2-10] (LMS, Credit Assistance); *id*.-[PX 32 at 1 ¶¶ 2-20]; *id*.-[PX 33 at 1 ¶¶ 2-11] (LPS); *id*.-[PX 34 at 1 ¶¶ 2-13] (KWP Services); *id*.-[PX 35 at 1 ¶¶ 2-9] (KWP); *id*.-[PX 36 at 1 ¶¶ 2-6] (URB Management); *id*.-[PX 37 at 1 ¶¶ 2-8] (LPS); *id*.-[PX 111 at 1 ¶ 2-6] (YCC); *id*.-[PX 155 at 1 ¶¶ 2-6] (IVD Recovery); *see also id*.-[PX 46 at 1-5 ¶¶ 3-42] (linking robocall numbers to Guice and his businesses).

contact them.[4] Consumers complained to the FTC about these robocalls and DNC violations more than 27,000 times. *See id.*-[PX 46 at 5 ¶¶ 40-42].[5]

2. Guice's deceptive rate-reduction program

The robocalls promised lowering the consumer's credit card interest rate to "to as little as 1 percent." SA.12(CD)-[PX 51 at 4:4-6]; *id.*-[PX 52 at 4:6-8]. The ensuing sales calls pitches were deceptive in three main ways.

a. The companies used fake names and made false affiliation claims

Consumers who responded to the robocall were connected to a salesperson who often claimed to be a representative of, or affiliated with, the consumer's banks or credit-card issuers (like Citibank) or credit card associations (like Mastercard or Visa). *Id.*-[PX 13 at 1 ¶ 5]; *id.*-[PX 26 at 1 ¶ 8]; *id.*-[PX 46 at 2, 4 ¶¶ 16, 29, 31]; *id.*-[PX 51 at 8-9]; *id.*-[PX 52 at 7-9]. Call scripts developed by

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[4] SA.12(CD)-[PX 1 at 1 ¶¶ 10-11]; *id.*-[PX 2 at 1 ¶¶ 3-4]; *id.*-[PX 4 at 1 ¶¶ 3-4]; *id.*-[PX 7 at 1 ¶¶ 3-4]; *id.*-[PX 8 at 1 ¶¶ 3-4]; *id.*-[PX 10 at 1 ¶¶ 4-5]; *id.*-[PX 12 at 1 ¶¶ 3-4]; *id.*-[PX 15 at 1 ¶¶ 2-6]; *id.*-[PX 16 at 1 ¶¶ 3-4]; *id.*-[PX 18 at 1 ¶¶ 2-3]; *id.*-[PX 20 at 1 ¶ 3]; *id.*-[PX 21 at 1 ¶¶ 3-4]; *id.*-[PX 22 at 1 ¶¶ 3-4]; *id.*-[PX 23 at 1 ¶¶ 2-7]; *id.*-[PX 24 at 1 ¶¶ 3-4]; *id.*-[PX 25 at 1 ¶¶ 4-5]; *id.*-[PX 27 at 1 ¶¶ 2-3]; *id.*-[PX 28 at 1 ¶¶ 3-4]; *id.*-[PX 29 at 1 ¶¶ 4-5]; *id.*-[PX 30 at 1 ¶¶ 2-3]; *id.*-[PX 32 at 1 ¶¶ 8-10]; *id.*-[PX 33 at 1 ¶¶ 3-4]; *id.*-[PX 35 at 1 ¶¶ 3-4]; *id.*-[PX 37 at 1 ¶¶ 3-4]; *id.*-[PX 38 at 1 ¶¶ 3-4]; *id.*-[PX 111 at 1 ¶¶ 3-4].

[5] Moreover, neither Guice, his companies, nor anyone on their behalf, paid the necessary fee to access the DNC Registry for any area code. *Id.*-[PX 46 at 6-7 ¶¶ 55-57].

Guice instructed the salesperson to state that "we work directly with the corporate office of Visa, Mastercard, American Express and Discover," and that "the corporate offices of Visa, MasterCard, American Express and Discover . . . sent out the automated message so when you pressed one you were transferred over to the first representative in the qualifications department available to speak with you." SA.41-1, Att. D at 12, 14; SA.41-2 at 7, 9–10, 12–13; GA.163-49 at 13 [Tr. 184:2–21] (company salespeople falsely told consumers that they were a "licensed enrollment center" for MasterCard, Visa, American Express, and Discover).[6] In fact, the companies were not affiliated with any of these financial institutions. SA.12(CD)-[PX 39 at 3-4 ¶¶ 27-32]; *id.*-[PX 40 at 1 ¶¶ 4-5]; *id.*-[PX 41 at 1-2 ¶¶ 7-11]; SA.163-52 at 11, 13, 19 [Tr. 88:3–6, 93:20–22, 136:18–23]. In some calls, Loyal's or LMS's salesforce falsely stated they worked for non-existent companies whose names suggested affiliation with a financial institution, such as

[6] Guice's rate-reduction salesforce used multiple calling scripts, both those that Guice or one of his companies had filed with the Florida Department of Agriculture and Consumer Services ("DOACS") and those that it had not. *See* SA.163-52 at 20 [Tr. 138:8-25, 139:1-5]. Both sets of scripts contained deceptive pitches. The DOACS issues telemarketing sellers' licenses; it also investigates and engages in administrative litigation concerning alleged violations of Florida telemarketing laws. SA.12(CD)-[PX 43 at 1 ¶ 7, 5 ¶¶ 29-31, 33, 80-83].

"Bank Card Services" and "Credit Card Services," or had consumer-friendly names, like "American Credit Assistance" and "Credit Assistance Program."[7]

Guice was aware of these misrepresentations. When one of his employees received an investigative demand addressed to "Bank Card Services" from the North Carolina Attorney General's Office, the employee forwarded it to Guice. SA.163-15. When confronted with all this evidence, Guice invoked the Fifth Amendment. *See* SA.163-43 at 16-17, 24-25 [Tr. at 58:3-60.7, 91:23-92:4, 92:17-94:11].

b. False rate-reduction service pitch

Guice's companies falsely promised that their rate-reduction program would substantially and permanently reduce consumers' credit card interest rates.[8] The

[7] SA.12(CD)-[PX 5 at 1 ¶ 2]; *id*.-[PX 11 at 1 ¶¶ 10–11]; *id*.-[PX 17 at 1 ¶ 3]; *id*.-[PX 19 at 1 ¶ 9]; *id*.-[PX 20 at 1 ¶ 5]; *id*.-[PX 21 at 1 ¶ 7]; *id*.-[PX 22 at 1 ¶ 2]; *id*.-[PX 33 at 1 ¶ 6]; *id*.-[PX 34 at 1 ¶ 8]; *id*.-[PX 46 at 2, 4 ¶¶ 15, 29]; *id*.-[PX 51 at 8-9 [Tr. 8:22–9:4]]; *id*.-[PX 52 at 7 [Tr. 7:18–8:7]]; SA.41-2 at 2 ¶ 9 & Ex. 1 at 7, 10, 13 (call scripts at LMS's call center with fake company names); SA.163-52 at 19-20 [Tr. at 135:18-136:7, 136:25-137:17] (identifying salesperson making representation as LMS employee).

[8] SA.12(CD)-[PX 2 at 2 ¶¶ 18-19]; *id*.-[PX 5 at 1-2 ¶¶ 5, 17]; *id*.-[PX 8 at 1-2 ¶¶ 12-13]; *id*.-[PX 10 at 1 ¶¶ 11-12]; *id*.-[PX 12 at 2 ¶¶ 17-18]; *id*.-[PX 13 at 1 ¶¶ 11-12]; *id*.-[PX 21 at 2 ¶¶ 19-20]; *id*.-[PX 23 at 2 ¶ 16]; *id*.-[PX 24 at 1 ¶¶ 11, 14]; *id*.-[PX 34 at 2 ¶¶ 22-23]; *id*.-[PX 35 at 1 ¶¶ 13-15]; *id*.-[PX 37 at 1 ¶¶ 12-13]; *id*.-[PX 38 at 1 ¶¶ 9-10]; *id*.-[PX 111 at 1 ¶ 10]; *id*.-[PX 112 at 1 ¶¶ 6-7]; *id*.-[PX 155 at 1 ¶¶ 6-7]; *see also id*. [PX 51 at 14-15].

companies also promised consumers they would save thousands of dollars in a short period of time, allowing them to pay off their credit card debt sooner, usually three-to-five times faster.[9]

Such promises were empty. Not a single consumer-declarant received a substantial and permanent reduction of their credit card interest rates. *See* SA.12(CD)-[PX 1– PX 38, PX 110 – PX 112, PX 155]. Card issuer statements refusing to lower consumers' interest rates buttress the consumers' experiences. *See id*.-[PX 22 at 1 ¶ 10]; *id*.-[PX 23 at 1 ¶ 11]; *id*.-[PX 34 at 2 ¶ 21]; *id*.-[PX 35 at 1 ¶ 12]. At most, consumers reported modest and temporary interest-rate reductions. *Id*.-[PX 12 at 2 ¶ 25]; *id*.-[PX 21 at 2 ¶ 18]. Other consumers indicated that they received new credit cards only with temporary teaser rates on carried-over balances.[10]

The unrebutted testimony of industry expert witness Lisa Wilhelm confirmed that these consumer experiences reflected industry practices. First,

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[9] *Id*.-[PX 2 at 1 ¶¶ 11-12, 2 ¶ 18]; *id*.-[PX 3 at 1 ¶ 5]; *id*.-[PX 12 at 1 ¶ 6]; *id*.-[PX 18 at 2 ¶ 25]; *id*.-[PX 20 at 1 ¶¶ 8-9]; *id*.-[PX 22 at 1 ¶ 8]; *id*.-[PX 23 at 1 ¶ 13]; *id*.-[PX 33 at 2 ¶ 16]; *id*.-[PX 34 at 2 ¶¶ 15-17]; *id*.-[PX 19 at 46-47 [Tr. 38:12-39:7]]; *id*.-[PX 43 at 33-35, 149-151, 345-47, 365-67] (company scripts filed with DOACS directing its salesforce to tell consumers they would save a minimum of $2,500 and get out of debt 3-5 times faster).

[10] *Id*.-[PX 5 at 2 ¶ 17, 4 ¶ 39]; *id*.-[PX 7 at 2 ¶ 21]; *id*.-[PX 10 at 3 ¶ 32]; *id*.-[PX 12 at 2 ¶ 26]; *id*.-[PX 18 at 2 ¶ 23]; *id*.-[PX 33 at 2 ¶ 22]; *id*.-[PX 34 at 4 ¶ 42]; *id.*-[PX 38 at 2 ¶ 20]; *id*.-[PX 111 at 2 ¶ 22].

credit card issuers would not lower existing cardholders' interest rates significantly, but might offer a 1-3% reduction for those in good standing. SA.12(CD)-[PX 42 at 16 ¶ 49]. Second, the issuers were unlikely to offer fixed (*i.e.* permanent) interest rates to cardholders. *Id*. at 16-17 ¶ 51. Third, "promotional rate" credit cards provide only temporary interest-rate savings with rates rising significantly thereafter. *Id.* at 11-12 ¶ 29, 17 ¶ 52. Fourth, fees charged by the issuers, such as cash-advance fees and balance-transfer fees, would reduce any modest temporary interest-rate savings the cardholder might receive. *Id*. at 13 ¶ 36, 21-22 ¶ 68, 28-31 ¶¶ 84, 86.

Ms. Wilhelm's testimony also established that Guice's salesforce lacked the information needed to make their promises. For example, one would need to know a consumer's particular economic, financial, credit, and personal circumstances before ascertaining if they would qualify for a lower interest rate card. *Id.* at 15 ¶ 46; *see also id*. at 8-11 ¶¶ 21–28 (discussing the numerous factors considered by issuers to determine whether a consumer qualified for such a card). Such an individualized assessment is required before a third-party like LMS could guarantee to provide the promised benefits. *Id*. at 16 ¶ 48. Guice's companies could not determine "the amount of interest that a particular consumer will save on his or her credit card debt, or how long it will take to pay off the debt[,]" without knowing: (1) the consumer's credit card debt balance; (2) the interest rate currently

paid by the consumer on his/her credit card debt; (3) the new, reduced interest rate he/she expects to pay, and (4) the monthly payment amount. *Id*. at 15-16 ¶ 47.

But the undisputed record shows that, at the time of their initial pitch, Guice's salespersons only had some of the requisite information from each consumer at the time the misrepresentations were made.[11] Guice presented no evidence to the contrary, and when confronted about these issues, he invoked the Fifth Amendment. SA.163-43 at 24-25 [Tr. 94:12-16, 94:25-96:2].

c. Failure to Disclose Additional Costs or Adverse Effects of Hardship Programs

Guice's primary method of attempting to lower interest rates involved getting customers new credit cards with low teaser rates and then directing the customer to transfer their existing credit card balance to the new cards. *See* GA.163-49 at 12 [Tr. 179:18–180:2]; SA.168-7 at 1-2.[12] But balance transfers

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[11] *See* SA.12(CD)-[PX 2 at 1 ¶¶ 9–12]; *id*.-[PX 4 at 1 ¶¶ 14–17]; *id*.-[PX 5 at 1 ¶¶ 6, 9]; *id*.-[PX 7 at 1 ¶¶ 8–10, 13]; *id*.-[PX 8 at 1 ¶¶ 7–8]; *id*.-[PX 10 at 1 ¶¶ 10–11]; *id*.-[PX 12 at 1-2 ¶¶ 12, 15]; *id*.-[PX 13 at 1 ¶¶ 7–9]; id.-[PX 16 at 1 ¶¶ 9–11]; *id*.-[PX 18 at 1-2 ¶¶ 10–11, 25]; *id*.-[PX 19 at 1-2 ¶¶ 11, 16–17]; *id*.-[PX 20 at 1 ¶¶ 6–9]; *id*.-[PX 22 at 1 ¶¶ 7–8]; *id*.-[PX 23 at 1 ¶¶ 9–13]; *id*.-[PX 24 at 1-2 ¶¶ 8–10, 26]; *id.*-[PX 25 at 1 ¶¶ 8–13]; *id*.-[PX 26 at 1 ¶¶ 6–7 10, 12]; *id*.-[PX 28 at 1 ¶¶ 5–7]; *id*.-[PX 33 at 1-2 ¶¶ 12–16]; *id.*-[PX 34 at 1-2 ¶¶ 13–18]; *id*.-[PX 35 at 1-2 ¶¶ 10-11, 13-16]; *id*.-[PX 37 at 1 ¶¶ 9–10, 12–15]; *id*.-[PX 38 at 1 ¶¶ 7-8, 13]; *id*.-[PX 111 at 1 ¶¶ 10–12]; *id*.-[PX 112 at 1 ¶¶ 5-7].

[12] Guice failed to include in his Appendix exhibits supporting his opposition to summary judgment upon which he has relied in this appeal. By doing so, he

incurred significant transfer fees. Consumers complained they were charged fees equaling 3-5% of their credit-card balance, *see* SA.12(CD)-PX 12 at 2 ¶ 27; *id.*-[PX 17 at 3 ¶ 22]; *id.*-[PX 21 at 3 ¶ 41]; *id.*-[PX 24 at 3 ¶ 33]; *id.*-[PX 25 at 3 ¶ 32]; *id.*-[PX 33 at 2 ¶ 21]; *id.*-[PX 38 at 2 ¶ 21]; *id.*-[PX 111 at 2 ¶ 24]; *id.*-[PX 155 at 3 ¶ 21]. Ms. Wilhelm confirmed that, during the relevant period, card issuers charged approximately 3% of the balance transferred as fees. *Id.*-[PX 42 at 11, 13 ¶¶ 29, 36]. Guice's salespeople did not inform consumers about such fees.[13] Instead, they told some consumers they would incur only a "one time" service fee (*i.e.*, an advance fee paid before any services had been provided). SA.12(CD)-[PX 5 at 2 ¶ 20]; *id.*-[PX 8 at 5]; *id.*-[PX 12 at 6]; *id.*-[PX 13 at 5]; *id.*-[PX 19 at 5 ¶ 63]. Guice refused to say whether his companies disclosed these fees and instead invoked the Fifth Amendment again. SA.163-43 at 17, 25-26 [Tr. 62:19-63:22, Tr. 96:14-97:19].

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violated Fed. R. App. P. 30(a)(1)(D), which requires the appellant to include those "parts of the record" it "wish[es] to direct the court's attention." The Government has included in its Supplemental Appendix those defendant exhibits addressed by the parties on appeal.

[13] *See id.*-[PX 7 at 1 ¶ 12]; *id.*-[PX 8 at 2 ¶ 14]; *id.*-[PX 10 at 1 ¶ 15]; *id.*-[PX 13 at 1 ¶13]; *id.*-[PX 16 at 1 ¶ 13]; *id.*-[PX 17 at 2 ¶ 15]; *id.*-[PX 21 at 2 ¶ 21]; *id.*-[PX 23 at 2 ¶ 15]; *id.*-[PX 25 at 1 ¶ 15]; *id.*-[PX 33 at 2 ¶ 17]; *id.*-[PX 34 at 2 ¶ 24]; *id.*-[PX 35 at 2 ¶ 18]; *id.*-[PX 37 at 2 ¶ 17]; *id.*-[PX 38 at 1 ¶ 12]; *id.*-[PX 111 at 1 ¶ 14]; *id.*-[PX 155 at 1-2 ¶ 11]; GA.163-49 at 12-13 [Tr. 180:23-182:4].

The other method Guice used to "permanently" lower credit card interest rates was to request the customer's credit card companies place accounts in "hardship" status. If granted, the accounts would be closed and the customer provided a low interest rate for a limited time within which she was required to pay off the card balance. SA.163-52 at 6 [Tr. 23:5–19]; SA.168-7 at 1; SA.12(CD)-[PX 42 at 35 ¶¶ 100-01]. Not only did this approach not result in a permanent lower interest-rate card, but it severely affected the consumer's credit rating. SA.12(CD)-[PX 39 at 2-3 ¶¶ 10-18]; GA.175-4 at 1-2 ¶¶ 5-15. Consumers were not told about this approach in the initial sales pitch nor were they told about the adverse effects of hardship status in subsequent discussions with LMS representatives.[14] Guice invoked the Fifth Amendment when asked about Loyal's and LMS's failure to disclose their use of hardship status in their rate-reduction programs and the related adverse effects to consumers. SA.163-43 at 26 [Tr. 97:20-99:8].

Between January 2013 and June 2016, Guice's companies deceptively sold rate-reduction services to approximately 7,500 consumers who collectively paid more than $11.4 million. SA.163-18 at 2-3 ¶¶ 6-12.

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[14] SA.12(CD)-[PX 2 at 3 ¶¶ 33-35]; *id.*-[PX 3 at 2 ¶¶ 18-20]; *id.*-[PX 6 at 1 ¶ 8]; *id.*-[PX 14 at 1 ¶ 5]; *id.*-[PX 16 at 3 ¶¶ 29-31]; *id.*-[PX 18 at 3 ¶ 37]; *id.*-[PX 20 at 2 ¶¶ 23-25]; *id.*-[PX 25 at 3 ¶¶ 42-43]; *id.*-[PX 111 at 3 ¶¶ 33-36].

3. Guice's debt-elimination program

Guice hawked an especially deleterious scheme to customers, often senior citizens, who had already purchased his interest rate-reduction plan and remained sufficiently in debt, but had enough available credit to pay another advance fee. SA.163-50 at 6-7, 10 [Tr. 84:10-85:5, 140:12-15]. Guice and his sister Heather Cline (a manager at Loyal and LMS) told their primary debt-elimination salesperson, Lea Brownell, how to pitch the program. SA.163-50 at 9-10, 16, 18 [Tr. 163:24-164:9, 136:17-137:6, 212:16-23]; *see* SA.12(CD)-[PX 7 at 2 ¶ 25]; *id*.-[PX 16 at 3 ¶ 25]; *id*.-[PX 112 at 1 ¶ 5]; *id*.-[PX 30 at 1 ¶ 10]; SA.163-52 at 6, 7 [Tr. 23:23-24, 24:24-25:6].

Brownell and other salespersons told consumers that this program tapped into a "government fund" subsidized by the credit card companies' settlement of a lawsuit or fines paid by them for charging illegally excessive interest rates to consumers, to pay off their credit card balances.[15] Ms. Brownell directly told consumers that "throughout the last 10 to 15 years, credit card companies had been fined money" and that her company had a "staff of coordinators who utilize the

[15] SA.12(CD)-[PX 2 at 3 ¶ 31]; *id*.-[PX 3 at 2 ¶ 16]; *id*.-[PX 4 at 2 ¶ 29]; *id*.-[PX 6 at 1 ¶ 6]; *id*.-[PX 7 at 2 ¶ 26]; *id*.-[PX 9 at1 ¶ 8]; *id*.-[PX 10 at 3 ¶ 37]; *id*.-[PX 16 at 2 ¶ 24]; *id*.-[PX 20 at 2 ¶ 16]; *id*.-[PX 25 at 3 ¶ 38]; *id*.-[PX 28 at 1 ¶ 5]; *id*.-[PX 30 at 2 ¶ 16]; *id*.-[PX 31 at 1 ¶ 8]; *id*.-[PX 36 at 2 ¶ 18]; *id*.-[PX 38 at 2 ¶ 24]; *id*.-[PX 110 at2 ¶ 12]; *id*.-[PX 111 at 2 ¶ 27]; *id*.-[PX 112 at 1 ¶ 5].

laws and regulations to be able to have a portion of [the consumer's] debt legally discharged." SA.163-50 at 18 [Tr. 209:17–210:8, 210:24–211:16]. Clark Hampton, an LMS employee who worked with purchasers of the company's debt-elimination services, confirmed that he was told by some of them that they believed a government fund would be used to settle their credit card debts. SA.163-51 at 28, 30 [Tr. 141:2-142:2, 149:23-150:3].

But no fund, government or otherwise, was available to pay off the consumers' credit-card debts. SA.12(CD)-[PX 2 at 3 ¶¶ 33-35]; *id*.-[PX 39 at 5 ¶¶ 34-35]; SA.163-51 at 28, 30 [Tr. 141:15-22, 149:23-150:3]. Instead, the debt-elimination program "worked" by directing the consumer to stop paying their bill, which would place them in past-due status. SA.163-50 at 11-12 [Tr. 144:21-145:9, 147:6-9]; SA.163-51 at 11 [Tr. 58:21-59:7]. The company would then send consumers a "new client packet" that included a form to give Guice's company power of attorney and the authority to negotiate with the consumers' credit card issuer. SA.163-51 at 11, 22 [Tr. 58:6-9, 101:15-102:7]; SA.163-53 at 7 [Tr. 29:5-18]. Debt-elimination negotiators would then attempt to settle the consumer's debt with the issuer, but the debt was not completely eliminated, and the consumer remained on the hook for at least a negotiated amount. SA.163-51 at 6, 11, 33 [Tr. 20:2–12, 58:25–59:19, 177:11-18]. And where the card issuer wrote off a significant portion of the debt, the consumer owed taxes on the amount forgiven.

SA.12(CD)-[PX 42 at 38-40 ¶ 107]; *id*.-[PX 31 at 3 ¶ 23 & Ex. 9 at 25]; SA.175-5 at 2 ¶ 19; SA.175-3 at 1 ¶ 14. Unsuccessful negotiations left the consumer subject to collections or suit, impaired credit, and even more debt due to fees and interest charges.

Ms. Brownell, the program's main salesperson, acknowledged that the debt-elimination program was not funded with payments by credit card companies. S.A.163-50 at 18 [Tr. 210:24-211:16, 212:6-15]. She also knew that consumers' failure to pay their debt would lead to default, but failed to warn them that doing so would likely result in the adverse consequences described above. *Id.* at 12 [Tr. 147:6-25]. Without being warned of such consequences, consumers in the debt-elimination program incurred these problems when they stopped paying their credit card bills.[16] Debt-elimination sales were highly lucrative and salespersons faced no discipline when they gave their deceptive debt-elimination pitch. SA.163-52 at 18, 24-25 [Tr. 120:4-9, 207:2-13, 209:25-210:2]. Guice's companies garnered more than $11.6 million from approximately 2,500 consumer victims of this fraud. SA.163-18 at 3 ¶¶ 14-16; SA.163-50 at 5 [Tr. 59:6–7]; SA.163-43 at 39 [Tr.

[16] SA.12(CD)-[PX 2 at 3 ¶¶ 33-35]; *id*.-[PX 3 at 2 ¶¶ 18-20]; *id*.-[PX 6 at 1 ¶ 8]; *id*.-[PX 16 at 3 ¶¶ 29-31]; *id*.-[PX 18 at 3 ¶ 37]; *id*.-[PX 20 at 2-3 ¶¶ 23-27]; *id*.-[PX 25 at 3 ¶¶ 42–43]; *id*.-[PX 28 at 2, 4 ¶ 11, 22]; *id*.-[PX 110 at 2 ¶¶ 16-18]; *id*.-[PX 111 at 3 ¶¶ 33-36]; *id*.-[PX 112 at 3 ¶¶ 25-27, 4 ¶ 38]; SA.175-4 at 1-2 ¶¶ 14-15; SA.175-5 at 1-2 ¶¶ 14-16; *see also* SA.163-50 at 12 [Tr. 147:6–25].

149:15-22]; SA.163-52 at 25 [Tr. 212:14–25]. Confronted with all this evidence, Guice once again pleaded the Fifth. SA.163-43 at 17 [Tr. 61:24-62:18], at 25 [Tr. 96:3-13] (when asked about the government fund); at 17-18, 26 [Tr. 63:23-65:16, 97:20-99:8] (when asked about his companies' failure to disclose the use of hardship status and related adverse effects to consumers), and at 20-21, 35-39 [Tr. 75:2-77:22, 135:11-139:2, 140:12-25, 141:5-25, 144:2-12, 144:24-145:9, 147:4-14, 148:17-149:14] (when asked about statements and omissions made to consumer-declarants who were pitched debt-elimination services).

4. Illegal up-front fees

The TSR bars sellers and telemarketers of debt-relief services from requesting or receiving any fees until they have actually changed the terms of the customer's debt and the customer has made at least one payment based on the modified terms. 16 C.F.R. § 310.4(a)(5)(i). In other words, the Rule outlaws the collection of up-front fees. Salespersons for both of Guice's debt-relief programs unlawfully requested, and often collected, such up-front fees.

For the rate-reduction program, the companies charged consumers between $500 and $5,000 at the outset before the consumer had made her first payment on a

credit card with a new lower interest rate (if she got one at all).[17] For the debt-elimination program, Ms. Brownell asked consumers to pay the companies' advance fees ranging between $2,000 and $26,000 when she made her initial pitch without waiting for the company to even begin negotiations with the consumer's credit-card companies.[18] Guice refused to explain whether up-front fees were

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[17] GA.163-49 at 15 [Tr. at 280:22-24]; SA.163-52 at 26 [Tr. 213:1-4]; SA.12(CD)-PX 2 at 2 ¶¶ 15, 20–25; *id*.-[PX 3 at 1 ¶¶ 5–10]; *id*.-[PX 4 at 1-2 ¶¶ 16, 19, 23, 25–26]; *id*.-[PX 5 at 1-2 ¶¶ 10, 12–16]; *id*.-[PX 7 at 1-2 ¶¶ 10–11, 14–20]; *id*.-[PX 8 at 1-3 ¶¶ 9, 16–19, 25]; *id*.-[PX 10 at 1-3 ¶¶ 14, 17–19, 22–27, 29–30]; *id*.-[PX 12 at 2-3 ¶¶ 17, 24–31, 35]; *id*.-[PX 13 at 1-3 ¶¶ 8, 10–12, 15–16, 20, 24–26]; *id*.-[PX 15 at 2 ¶¶ 14, 18–21]; *id*.-[PX 16 at 1-2 ¶¶ 12, 14–20]; *id*.-[PX 17 at 2-3 ¶¶ 15–16, 20–21, 25–27]; *id*.-[PX 18 at 2-3 ¶¶ 16–18, 26–28, 31–34]; *id*.-[PX 19 at 2, 4-7 ¶¶ 22, 47–50, 55–56, 63–64, 78–79]; *id*.-[PX 20 at 1-2 ¶¶ 9–14]; *id*.-[PX 21 at 3 ¶¶ 30–32, 35–39]; *id*.-[PX 22 at 1-2 ¶¶ 9–16, 22]; *id.*-[PX 23 at 1-3 ¶¶ 10–12, 26–33, 35–37]; *id*.-[PX 24 at 2-3 ¶¶ 15, 17–28]; *id.*-[PX 25 at 1, 2-3 ¶¶ 12, 22–31]; *id*.-[PX 26 at 1, 2 ¶¶ 13, 17–21]; *id*.-[PX 33 at 2-3 ¶¶ 20, 24–28]; *id*.-[PX 34 at 3, 4 ¶¶ 28–31, 43]; *id*.-[PX 35 at 2, 3 ¶¶ 25, 30–35]; *id*.-[PX 36 at 1-2 ¶¶ 9–16]; *id*.-[PX 37 at 1-3 ¶¶ 15–16, 22, 24–32]; *id*.-[PX 38 at 1, 2 ¶¶ 11, 17–19, 22]; *id*.-[PX 111 at 1, 2 ¶¶ 11, 16–21]; *id*.-[PX 155 at 3 ¶¶ 21-22].

[18] SA.163-18 at 3 ¶ 15; SA.163-50 at 5 [Tr. 59:6–7], at 14 [Tr. 153:24–154:7]; SA.163-51 at 11 [Tr. 57:9-59:19]; SA.163-52 at 21 [Tr. 141:3-142:7], at 25 [Tr. 212:14–25]; SA.163-43 at 39 [Tr. 149:15-22]; *see* SA.12(CD)-[PX 2 at 3 ¶¶ 32, 37–38]; *id.*-[PX 3 at 2 ¶¶ 21–23]; *id*.-[PX 6 at 1 ¶¶ 3, 9]; *id*.-[PX 7 at 3 ¶¶ 27–28, 31–35]; *id*.-[PX 9 at 1 ¶¶ 4–7]; id.-[PX 10 at 3,4 ¶¶ 38–40, 45–49]; *id*.-[PX 16 at 3 ¶¶ 26–28, 32-37]; *id*.-[PX 18 at 3-4 ¶¶ 38, 45–52]; *id*.-[PX 20 at 2-3 ¶¶ 18–22, 29–30]; *id*.-[PX 25 at 3-4 ¶¶ 39–41, 46–53]; *id*.-[PX 26 at 3 ¶¶ 29, 38–42]; *id*.-[PX 27 at 1-2 ¶¶ 10, 13, 20–22]; *id*.-[PX 28 at 2, 5 ¶¶ 15–16, 28]; *id*.-[PX 30 at 3 ¶¶ 31, 33–35]; *id*.-[PX 31 at 1, 2 ¶¶ 8, 14-15]; *id*.-[PX 36 at 2, 3 ¶¶ 19, 21–22]; *id*.-[PX 38 at 2-3 ¶¶ 26–28, 32]; *id*.-[PX 110 at 2 ¶¶ 20, 22]; *id*.-[PX 111 at 3, 4 ¶¶ 29–32, 37–39, 44]; *id.*-[PX 112 at 2-3 ¶¶ 17, 18, 28].

charged for his debt-relief programs by pleading the Fifth. SA.163-43 at 18, 26 [Tr. 65:17-66:6, 99:9-23].

B. Guice's Common Corporate Enterprise

In November 2011, Guice created Loyal and undisputed evidence reflects his ownership. SA.12(CD)-[PX 43 at 65–66, 83]; *id*.-[PX 48 at 108]; SA.163-44 at 35 [Tr. 133:23–134:4]; SA.109 at 14; *see also* SA.163-42 at 3 [Tr. 9:24–10:2)]; SA.163-43 at 15-16 [Tr. 55:16-19, 56:10-57:5]. He filed with DOACS the application to obtain Loyal's telemarketing license (which listed him as its "Registered Agent" and "Manager"), SA.12(CD)-[PX 43 at 3 ¶¶ 16, 22-27]; *id*.-[PX 47 at 22-23], opened its bank account, PX 121, and paid its employees (sometimes personally signing the checks). PX 157 at 1. He also submitted deceptive sales scripts to DOACS on behalf of Loyal containing lies about its rate-reduction program. SA.12(CD)-[PX 43 at 3-4 ¶¶, 5-6 ¶¶ 16-25, 35, Exs. 2, 19, 28, 31] ("we do not charge until the work has been completed," "no out of pocket expense," "save [consumers] at least $2,500.00," and "out of debt 3-5 times faster"). Guice first set up Loyal's interest rate-reduction program, *id*.-[PX 43 at 3 ¶¶ 16-17, 5-6 ¶¶ 30-36], and in 2013, created its debt-elimination service. SA.163-50 at 5 [Tr. 60:8-17]; SA.163-51 at 24 [Tr. 111:14-17]; SA.163-52 at 6, 7 [Tr. 23:23–24, 25:3-6].

Guice soon ran into trouble with both the authorities and consumers. In February 2013, DOACS arrested Guice for running an unlicensed telemarketing boiler room and employing unlicensed telemarketers, SA.12(CD)-[PX 43 at 5 ¶ 32]; it also imposed civil fines against Guice for being affiliated with unlicensed telemarketers and for failing to provide required scripts and other documents. *Id*.-[PX 43 at 5 ¶¶ 29-33]; *see also* SA.163-43 at 13-14 [Tr. 48:15-49:24]. DOACS thereafter refused to allow Guice to renew Loyal's telemarketing license. SA.12(CD)-[PX 43 at 5-6 ¶¶ 35, 36, Ex. 10 at 101]; SA.163-44 at 58 [Tr. 226:5-14]; SA.163-43 at 14 [Tr. 50:8-17]. Later that year, Guice and Loyal were sued by a nursing home resident in Ohio for deceptive telemarketing practices (the case later settled). SA.163-3; SA.163-4; *see also* SA.163-43 at 21-22 [Tr. 79:20-83:20].

In February 2014, Guice directed Wayne Norris to set up LMS. Guice explained to Norris that he wanted to form a new telemarketing company due to Loyal's then "open court case" in Ohio, but that Norris needed to form the company because Guice had to take care of the court proceedings before he could renew the license himself. SA.163-44 at 58 [Tr. 225:19-226:4; 226:24-227:6]. Norris assigned a friend, Adrien Brezinski, as LMS's Registered Agent until Guice got the Ohio case "cleared up." GA.225 at 6-7; SA.163-44 at 10, 43, 57-58 [Tr. 36:19-21, 168:9-12; 224:1-5, 227:5-10]; SA.12(CD)-[PX 47 at 2 ¶ 10]. Norris testified, however, that he knew Guice was the real owner of both Loyal and LMS.

SA.163-44 at 35 [Tr. 133:23–134:4]. In the face of that information, Guice refused at his depositions to answer questions about LMS, instead invoking the Fifth Amendment. SA.163-42 at 3 [Tr. 9:15–18]; SA.163-43 at 22, 23 [Tr. 84:2-9, 86:18-87:9].

LMS offered the same rate-reduction and debt-elimination programs, and used the same scripts and documents, as Loyal. SA.12(CD)-[PX 43 at 137–142, 146–153]; c*ompare id*. at 30–36] (Loyal) with *id*. at 146–153 (LMS). Virtually the same scripts Guice submitted on behalf of Loyal were filed with DOACS for LMS and KWP Services. *Id*. at 3 ¶¶ 19-20, 7 ¶ 45 and Ex. 19 at 146-153 (LMS); *id.* at 12 ¶¶ 60-61 and Ex. 31 at 362-69 (KWP Services). Guice refused to answer whether he developed any scripts by invoking the Fifth Amendment. Doc. 163-42 PX 188 at 30 [Tr. 117:21-25]. The companies also shared employees: 42 Loyal telemarketers began working for LMS shortly after it began operating in May 2014. SA.12(CD)-[PX 43 at 8-11 ¶¶ 55-56]. Yet the employees saw no change in business operations, SA.163-50 at 4 [Tr. 56:1–18], and learned they were working for LMS only when they received paychecks or renewed telemarketing licenses reflecting LMS as their employer. *Id.* at 4-5 [Tr. 56:13–57:1]; SA.163-49 at 7 [Tr. 81:4–8, 82:15–83:23].

Guice played the same central role at LMS as he had at Loyal. LMS managers and employees testified that he oversaw LMS's revenue flow, SA.163-

44 at 68 [Tr. 265:2–266:17]; SA.163-47 at 5 [Tr. 14:12–14, 14:25–17:2]; SA.163-52 at 15 [Tr. 102:14–20], and established hiring criteria for some employees. SA.163-45 at 4-5 [Tr. 12:15–13:4]. He supervised and consulted with managers including Kara Andrews, Heather Cline (his sister), and Lea Brownell, the primary debt-elimination salesperson. They testified – and documents confirm – that Guice participated in LMS operational matters. These included monitoring and making payments on behalf of customers, and dealing with refund requests, billing errors, and debt-elimination fulfillment. He also addressed customer complaints forwarded by regulatory agencies throughout the country. *See* SA.163-15 (employee forwarding to Guice letters from the three state law enforcement agencies concerning consumer complaints); SA.163-45 at 5 [Tr. 13:5-18]; SA.163-50 at 5, 16 [Tr. 57:14–20, 59:15–16, 163:24–164:7]; SA.163-51 at 17 [Tr. 84:10–15]; SA.163-52 at 4, 14-15, 23 [Tr. 10:15-11:16, 99:24–101:20, 161:3-6]; SA.163-7; SA.163-8; SA.163-9; SA-163-10; SA.163-11.

Guice also orchestrated the formation of eleven shell companies to support Loyal's and LMS's business operations. He asked Norris and Clarence ("Harry") Wahl to set up the shell companies to hold "merchant accounts" for Loyal or LMS that could bill customers and collect payments. SA.163-44 at 39, 40, 49, 59 [Tr. 149:14–150:14, 154:13–19, 189:9–25, 229:10–18]. Wahl and Norris, in turn,

either created or recruited others to create the shell companies.[19] At all times, however, they acted at the behest of and under the control of Guice.[20] Again, when confronted with the evidence showing his control of the enterprise, Guice refused to testify, invoking the Fifth Amendment instead. *See* SA.163-43 at 15-16, 28 [Tr. 55:16-19, 56:10-57:5, 107:18-108:10].

Loyal and LMS employees were instructed to lie about their true employer and told consumers they worked for one of the shell companies.[21] Thus, when

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[19] Wahl formed defendant KWP Services of Florida, LLC (SA.12(CD)-[PX 47 at 3 ¶ 14, 56–57 ¶ 14]), and recruited his wife Karen Wahl and a friend to form KWP Services LLC *(id*. at 3 ¶ 13, 51–52) and IVD Recovery, LLC (*id.* at 3 ¶¶ 12-13, 47–48; *see* SA.163-46 at 6, 11 [Tr. 6:21-24, 66:2-21]. Norris recruited others to form defendants LPSofFLA LLC (SA.12(CD)-[PX 47 at 3-4 ¶ 15, 64–65); LPSofFlorida L.L.C (*id*. at 4 ¶ 16, 60–61); YFP Solutions LLC (*id*. at 5 ¶ 22, 87-88); PW&F Consultants of Florida LLC (*id*. at 4 ¶ 17, 68–69); UAD Secure Service of FL LLC (*id*. at 4 ¶ 19, 75–76]; UAD Secure Services, LLC (*id*. at 4 ¶ 18, 71–72); URB Management, LLC (*id*. at 5 ¶ 20, 79–80) and YCC Solutions LLC (*id*. at 5 ¶ 21, 83–84); SA.163-44 at 10, 45, 59 [Tr. 36:4-14, 174:8-175:5, 231:5-16].

[20] *See* SA.163-43 at 18 [Tr. 67:13–68:2]; SA.163-46 at 67-68 [Tr. 67:17–68:3] (IVD Recovery); SA.163-43 at 27 [Tr. 101:12–21; SA.163-44 at 59 [Tr. 229:10–18]; SA.163-46 at 6 [Tr. 6:21–24], SA.12(CD)-[PX 43 at 3 ¶ 19] (KWP Services); SA.163-44 at 60 [Tr.234:9–12] (KWP Services of Florida); *id.* at 59 [Tr. 232:9–14] (LPSofFla); *id*. at 59-60 [Tr. 232:25–233:3] (LPSofFlorida,); *id.* at 59 [Tr. 230:24–231:1) (PW&F); *id.* at 57 [Tr. 221:1–5, 222:17–25] (UAD Secure Services); *id.* at 57 [Tr. 217:-25] (UAD Secure Services of Florida); *id.* at 56 [Tr. 219:20–24] (URB Management); *id.* at 60 [Tr. 233:7-12] (YCC); *id.* at 60 [Tr. 234:1–8] (YFP).

[21] SA.163-51 at 8-9 [Tr. 46:14–49:23, 50:16–51:13]; SA.163-52 at 21-22 [Tr. 144:4–145:7]; *see also* SA.12(CD)-[PX 4 at 2 ¶ 27]; *id*.-[PX 11 at 1 ¶11]; *id*.-[PX 21 at 1, 3 ¶¶ 5, 32–36]; *id*.-[PX 28 at 4 ¶¶ 22–24]; *id*.-[PX 49 at 8 [Tr. 8:6–15]]; SA.163-51 at 9 [Tr. 49:16-20, 49:24–50:2].

consumers complained to consumer protection agencies, they named the shell companies and not Loyal or LMS. *See* SA.12(CD)-[PX 48 at 3-4 ¶ 20]; *see also id*.-[PX 2–PX 10, PX 12–PX 28, PX 30–PX 31, PX 33–PX 38, PX 110–PX 112].

In addition to line employees, the companies also shared managers; Heather Cline admitted she supervised all the corporate defendants from 2008 to 2016. SA.168-7 at 1. They shared physical addresses (SA.12(CD)-[PX 47 at 2-3 ¶¶ 11–12, 4 ¶¶ 18–19], *id*.-[PX 48 at 6 ¶ 29]), IP addresses (*id*.-[PX 49 at 5-6 ¶¶ 24-27]), and telephone numbers (*id.* at 6 ¶ 28). And they shared documents and program information. *Id.* at 5 ¶¶ 21-23; *see, e.g*., SA.41-2 at 2 ¶¶ 13-14 (materials at LMS's call center referencing other corporate defendants); SA.163-51 at 8-9 [Tr. 45:13-52:10]; SA.163-40, SA.163-41 (LMS debt-elimination employee had "Debt Elimination Contact Info" for several shell companies).

The nominal owners of the shell companies opened up more than a dozen bank accounts under Guice's control. *See* SA.12(CD)-[PX 115 –PX 154] (bank signature cards); SA.163-44 at 65-66, 68 [Tr. 256:6-257:8, 265:2-266:17]; SA.163-47 at 5, 9 [Tr. 15:23-17:2, 30:6-21]. The shell companies opened up mail drops where consumers were told to send payments.[22]

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[22] *See* SA.12(CD)-[PX 2 at 4 ¶ 50]; *id*.-[PX 3 at 3 ¶ 35]; *id*.-[PX 7 at 2 ¶ 16]; *id*.-[PX 10 at 2 ¶ 27]; *id*.-[PX 21 at 3 ¶ 34]; *id*.-[PX 25 at 4 ¶ 58]; *id*.-PX 33 at 2 ¶ 25;

Despite the separate accounts, undisputed evidence showed that payments sent to the shell companies often were routed to Loyal and LMS to cover payroll and office rent.[23] Shell company revenue was also transferred to, and commingled with, other companies' accounts. *Id*.-[PX 45 at 8-10 ¶¶ 25-39] (detailing $8.8 million in corporate transfers); *see also id*.-[PX 98 at 3, 5, 7]; *id*.-[PX 99 at 1-2]; *id*.-[PX 103 at 1-3]; *id*.-[PX 113]. Ultimately, money wound up in Guice's pockets. Between January 2013 and June 2016, he received $8,593,352.60 in traceable payments from his debt-relief companies. SA.163-33 at 2 ¶ 7. Again, confronted with the financial evidence, Guice invoked the Fifth Amendment. He refused to say whether he received any money from the companies, SA.163-43 at 18, 19, 29-31 [Tr. 68:10-15, 72:2-20, 111:5-7, 112:11-13, 113:7-24, 114:13-21, 116:3-16, 117:18-20, 118:2-22], whether the companies operated in an integrated fashion, or whether he created and controlled each one or collectively as a common enterprise, *id*. at 15, 32-35, 39-40 [Tr. 55:2-8, 121:22-122:9, 126:4-134:15, 152:18–153:6, Tr. 153:7-22].

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id.-[PX 34 at 3 ¶ 31]; *id*.-[PX 37 at 3 ¶ 30]; *id*.[PX 38 at 2 ¶ 16]; *id*.-[PX 48 at 6 ¶ 29]; *id*.-[PX 55 – PX 59]; *id*.-[PX 110 at 1 ¶ 7]; *id*.-[PX 111 at 2 ¶¶ 18-19].

[23] *See* SA.163-44 at 60, 64, 65 [Tr. 235:17–236:4, 249:17–251:10, 254:11–21]; SA.163-47 at 3, 4-6, 9 [Tr. 6:10–15, 9:6–16, 13:6-15:8, 14:2–15:11, 17:6–19:21, 30:6–21]; SA.12(CD)-[PX 46 at 12 ¶ 91]; *id*.-[PX 94 at 1–2]; *id*.-[PX 96 at 1]; *id*.-[PX 101 at 1]; *id*.-[PX 102].

C. The Government's Enforcement Lawsuit

1. The Complaint and TRO

The FTC and the Office of the Attorney General, State of Florida, Department of Legal Affairs (collectively, the "Government") filed suit in June 2016 alleging that Guice and four other individual defendants and the thirteen corporations engaged in deceptive debt-relief services in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 501.204 of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), and the Telemarketing Sales Rule, 16 C.F.R. pt. 310.[24] GA.1.

The complaint charged that Loyal, LMS, and the shell companies, operating as a common enterprise, made false promises to consumers about their debt-relief services, called consumers on the DNC Registry and charged them illegal upfront fees. *Id*. It asked that Guice be held personally liable for the unlawful corporate practices because he controlled, participated in, and knew about them. *Id*. The Government sought a permanent injunction and monetary relief, *id.*, as well as an immediate halt to the scheme and other preliminary relief. GA.11, 14. The next

[24] The TSR implements the Telemarketing Act, 15 U.S.C. § 6101, *et seq*., which prohibits deceptive and abusive telemarketing acts or practices. Pursuant to § 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), misrepresentations and omissions that violate the TSR constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act and the FDUTPA. *See FTC v. Lalonde*, 545 F. App'x 825, 840 (11th Cir. 2013); § 501.203(3), Fla. Stat. (2020).

day, the court issued a temporary restraining order and asset freeze, and appointed a receiver to take over operations of the defendant corporations. SA.36. On June 30 and July 6, 2016, the court issued preliminary injunctions against all defendants. SA.75-81, 83, GA.89. LMS and two shell companies defaulted in April 2017, GA.153-156, and in April 2019, the court issued stipulated permanent injunctions and monetary judgments against all defendants except Guice. GA.274, 275.

2. The Summary Judgment Order and Relief

The Government moved for summary judgment against Guice, GA.163, which the district court granted in December 2018, ordering a permanent injunction and monetary relief for victims. GA.225, 226. It relied on substantial direct evidence of defendants' law violations along with adverse inferences drawn against Guice for invoking the Fifth Amendment. GA.225 at 12 n.11.

The court first concluded that undisputed evidence showed that Loyal, LMS and the shell companies constituted a common enterprise created by Guice. *Id*. at 5-10. Guice incorporated Loyal and directed Wayne Norris to form LMS when Guice and Loyal were entangled in litigation. *Id*. at 6. The undisputed evidence showed that Loyal and LMS offered the same debt relief programs, used the same scripts, and hired substantially the same employees. *Id*. at 6-7. Guice also instructed Wayne Norris and Harry Wahl to find others to form shell companies, which acted "as fronts for Loyal and LMS." *Id.* at 7-8. Loyal and LMS employees

represented they worked for a shell company when speaking to consumers, and customers sent their payments to the shells, which were used to pay Loyal or LMS expenses, sent to other companies, or paid to Guice. *Id*. at 8-10.

Unrebutted evidence reflected Guice's control over the corporate entities. He owned Loyal and controlled its operations by setting up its bank accounts and telemarketing practices. *Id*. at 11-13. He controlled LMS, as demonstrated by its use of the same scripts and procedures he implemented at Loyal, his often daily consultation with the manager of Loyal and LMS's debt-elimination program about how to deal with all aspects of the program, and his decision making about LMS's revenue stream, hiring criteria, paying customer debts, and dealing with refunds and regulatory complaints. *Id*. at 13, 29. Guice also controlled the shell companies as he was behind their creation and operation, and the allocation of their revenue flow, directing funds to other companies and paying himself over $8.5 million. *Id*. at 15.

The court then analyzed whether Guice's companies broke the law and his liability for such misconduct. *Id*. at 15-33. Undisputed facts reflected Loyal's and LMS's violation of the DNC Registry rules by causing robocalls to be placed to people on the Registry and failing to pay Registry fees. *Id.* at 16-17. Guice was liable because he set up the automated calling procedures at Loyal, which carried over to LMS, and knew of complaints about the calls. *Id*. at 17-18.

The court next held that undisputed facts showed that Loyal and LMS made several misrepresentations when pitching their debt-relief services in violation of the FTC Act, the FDUTPA, and the TSR, and that Guice was responsible for these practices. *Id.* at 18-31. First, the companies misrepresented their affiliations with financial institutions, which Guice knew about through consumer complaints and an investigative demand from a state regulator. *Id*. at 18-21. The companies failed to disclose the total cost of the rate-reduction program by omitting the balance transfer fees consumers would incur when switching credit cards; Guice knew of this deception because he submitted the calling scripts which failed to disclose these additional fees, spoke to company managers aware that consumers were not informed about the fees, and based on adverse inferences arising from his pleading the Fifth about fee disclosure. *Id*. at 21-23. The companies also indisputably falsely promised rate-reduction customers receipt of a permanent zero or near zero percent interest rate card, substantial savings, and a faster time to pay off their debts. *Id.* at 24-26. But Guice presented *no evidence* that any consumer received such a card. *Id.* at 26 n. 17, 27 n. 18. Further, the companies could not have made such promises in their initial pitch because they lacked information necessary to determine the consumer's eligibility for a promotional lower interest rate card or hardship status. *Id.* at 27. Guice knew about these false promises through his involvement in day-to-day operations of the common enterprise, close supervision

of the companies, discussions with managers aware of these misstatements, along with adverse inferences from pleading the Fifth. *Id.* at 28.

Unrebutted evidence also showed Guice's companies' misrepresentations about their debt-elimination program. They failed to tell consumers the likely adverse effects of failing to pay their credit card bills, including impacting their creditworthiness, increasing their debt when counting accrued fees and interest, and subjecting them to suit or collections. *Id.* They also falsely claimed that their program would erase customers' debt using a government fund where no such fund existed. *Id.* at 30. Guice's liability arose because he set up the program, hired and regularly conferred with its negotiators giving the pitch, and told his managers how to deal with customer complaints, in conjunction with adverse inferences by invoking the Fifth. *Id.* at 31.

Finally, the court determined that undisputed facts showed that Loyal and LMS violated the TSR additionally by unlawfully requesting (and often receiving) advance payments from customers before they made a payment on a lower rate card. *Id.* at 31-32. Guice was liable for these infractions because he controlled company practices requesting the upfront payments and knew consumers complained about them. *Id.* at 32-33.

The court issued a permanent injunction against Guice, *id*. at 33-35, 40-41, and ordered him to pay $23,099,878.02 in monetary relief. *Id.* at 36; GA.226 at 2.[25] On February 1, 2021, this Court denied a stay of the judgment pending appeal.

STANDARD OF REVIEW

1. Undisputed facts show that Guice carried out a deceptive debt-relief scheme through corporate defendants acting as a common enterprise that he

[25] Guice does not challenge the court's remedy on appeal.

controlled. The massive volume of direct evidence is supplemented by adverse inferences permissibly drawn from Guice's repeated invocation of the Fifth Amendment. In response, Guice cites no record evidence showing disputes of fact, offering only unelaborated arguments and passing references to pleadings below. F.R.A.P. 28 requires more. Guice has waived his arguments, and the Court may affirm on that ground alone.

2. In response to overwhelming and undisputed evidence that Guice controlled a common enterprise comprising Loyal, LMS, and the shell companies, Guice offers a perfunctory, single-sentence response: that his summary judgment response and record evidence showed "sufficient facts to survive summary judgment." That's it. Even if the argument isn't simply waived, it fails on the merits in the face of the record. Guice conceded that he owned and controlled Loyal. Unrebutted facts showed that he controlled LMS, Loyal's successor, which marketed the same debt-relief programs as Loyal and borrowed its practices, telemarketing scripts, managers, and employees. The record also showed without dispute that Guice oversaw and participated in LMS's daily operations, directing its income flow, developing its hiring criteria, and addressing refund requests and consumer complaints (among other things). In response, Guice invoked the Fifth Amendment. It was immaterial below, as it is now, that some employees did not

think he owned LMS; those employees did not know who owned the company, and none disputed that Guice controlled it.

3. Guice's claim that he bears no liability for violating the Telemarketing Sales Rule because he personally did not make the illegal calls is frivolous. The TSR forbids a seller from "caus[ing] a telemarketer" to make calls, which the unrebutted facts proved is exactly what Guice did.

4. Unrebutted evidence showed that Guice controlled the corporations that directly deceived consumers, which makes him personally liable for the deceit, even if he did not lie to consumers directly. That liability also remains undiminished even if the company had a policy prohibiting his employees from misleading consumers. Any such policy existed only on paper. Indeed, sales scripts submitted by Guice to Florida regulators instructed the telemarketers to lie to consumers about the interest-rate reduction program. Beyond that, the companies' primary debt-elimination salesperson knew she misled consumers, yet faced no sanction.

5. Guice cannot escape liability on the ground that his programs provided "helpful services" to consumers. The claim is unsupported by even a single consumer declaration. Employee declarations do not create a genuine dispute of fact over whether he provided the promised services. The declarants lacked personal knowledge of consumers' satisfaction or their interest rates after the

promotional period ended; the declarants also said nothing about undisclosed balance transfer fees or adverse credit effects. Consumer files likewise do not clearly reflect the provision of new cards with permanently low interest rates; every consumer who could be located swore they did not receive the promised benefits and were unsatisfied with Guice's service. Guice's trivial evidence is insufficient to create a dispute of fact in the face of dozens of consumer declarations documenting false promises of permanent interest rate reductions or elimination of debt through a "government fund." Their experiences were buttressed by unrebutted expert testimony about industry practices. The record shows conclusively that even consumers who may have received a short-term benefit were deceived by Guice's opening pitch and often left worse off in the end.

ARGUMENT

THE DISTRICT COURT PROPERLY ENTERED SUMMARY JUDGMENT AGAINST GUICE

The district court held that undisputed facts established the corporate violations and Guice's liability for that misconduct. GA.225. Guice's brief on appeal fails to identify specific record facts that render summary judgment inappropriate. Indeed, his brief barely makes an argument in two scanty pages, offering conclusory citations to pleadings filed below. In effect, Guice asks the

Court to discern his argument and the Government to rebut arguments he could have made but did not.

The Court therefore may affirm the ruling below on the basis that Guice has waived his claims. Fed. R. App. P. 28(a)(8)(A) requires that argument in a brief "must contain ... [the] appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies[."] The failure to cite record support for a claim "may result in waiver or abandonment" of that claim on appeal, *Nat'l All. for Mentally Ill, St. Johns Inc. v. Bd. of Cty. Comm'rs of St. Johns Cty.*, 376 F.3d 1292, 1295–96 (11th Cir. 2004) (citations omitted);[26] the same is true when an appellant "makes only passing references to [a claim] or raises it in a perfunctory manner without supporting arguments and authority," *Sapuppo v. Allstate Floridian Ins. Co.,* 739 F.3d 678, 681 (11th Cir. 2014); see *also Nat'l Mining Ass'n v. United Steel Workers,* 985 F.3d

[26] Similarly, Guice's Statement of the Case fails to include *any* "facts relevant to the issues submitted for review . . . with appropriate references to the record," required by Fed. R. App. P. 28(a)(6). Instead, he cites only to party pleadings and the district court's summary judgment order. Br. 5-8. Such practices "make exceedingly difficult this Court's task of determining what material facts are in genuine dispute." *Green v. Hooks*, 798 F. App'x 411, 419 n. 13 (11th Cir. 2020), *cert. denied,* 141 S. Ct. 249 (2020); *see also Reese v. Herbert*, 527 F.3d 1253, 1268 (11th Cir. 2008) ("[J]udges are not like pigs, hunting for truffles buried in briefs.") (citation omitted).

1309, 1326 n.16 (11th Cir. 2021) ("conclusory" and "unsupported" arguments lacking "sufficient detail" or "significant discussion" deemed abandoned).

Should the Court reach the issues, voluminous undisputed evidence shows that Guice formed every corporate defendant (either directly or through a proxy) and that those companies operated as a common enterprise under his control to promote his deceptive debt-relief schemes. Underscoring the evidence, Guice's pervasive reliance on the Fifth Amendment permitted the district court to draw adverse inferences against him. *See* GA.225 at 12 n.11 (citing *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1304 (11th Cir. 2009)); *see also Coquina Invs. v. TD Bank, N.A.*, 760 F.3d 1300, 1310 (11th Cir. 2014) (refusal to answer accusation reflects the reliability of an adverse inference where "it would have been natural" to object) (citations omitted). When silence – "often evidence of the most persuasive character," *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 153-54 (1923) – is coupled with direct supporting evidence, such inferences are particularly justified. *Baxter v. Palmigiano*, 425 U.S. 308, 317-20 (1976).[27]

[27] District courts in this Circuit have applied this principle to find individual liability under the FTC Act. *See, e.g.*, *FTC v. Global Mktg. Group*, 594 F. Supp. 2d 1281, 1289 (M.D. Fla. 2008); *FTC v. Transnet Wireless Co.*, 506 F. Supp. 2d 1247, 1270, 1272 (S.D. Fla. 2007).

Guice argues that the district court erroneously concluded that undisputed evidence supported summary judgment in four ways. Br. 10-11. He is wrong on all counts.

A. The District Court Properly Held Guice Personally Liable for His Companies' Illegal Acts

Three of Guice's four arguments dispute the district court's ruling that Guice is personally liable for his companies' illegal conduct. An individual may be held personally liable for injunctive relief based on unlawful corporate practices if he "participated directly in the [deceptive] practices or acts or had authority to control them." *FTC v. IAB Mktg. Assocs., LP*, 746 F.3d 1228, 1233 (11th Cir. 2014) (citation omitted). Authority to control can be shown through "active involvement in business affairs and the making of corporate policy," including assuming the duties of a corporate officer. *Id.* (citations omitted).

To obtain monetary relief against an individual defendant for corporate conduct, the Government also must show that a defendant had "some knowledge" of the deception. *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 470 (11th Cir.1996). "Knowledge" can be shown where the individual had "actual knowledge of the deceptive conduct, was recklessly indifferent to its deceptiveness, or had an awareness of a high probability of deceptiveness and intentionally avoided learning of the truth." *FTC v. Primary Grp., Inc.*, 713 F. App'x 805, 807 (11th Cir. 2017)

(citing *FTC v. Ross*, 743 F.3d 886, 892 (4th Cir. 2014)). The degree of an individual's participation in business affairs is probative as to knowledge. *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1101-02 (9th Cir. 2014). The same standard applies to finding individual liability under the FDUTPA.[28]

1. Undisputed Evidence Showed That Guice Controlled the Common Enterprise

Guice conceded below that he owned and controlled Loyal, the company that first undertook the debt-relief scam, *see* GA.168 at 16; GA.225 at 11, but contested his control over LMS, which principally carried out the scam after February 2014. The district court determined that Loyal and LMS were essentially "the same company." GA.225 at 6. The evidence showed that Guice orchestrated the formation of LMS as the successor to Loyal after he and Loyal became embroiled in a criminal investigation and private civil damages suit. *Id*. at 6-7; *see* pp. 19-20, *supra*. LMS offered the same two debt relief programs as Loyal and

[28] Liability under the FTC Act and FDUTPA is to be construed the same. *See* § 501.204(2), Fla. Stat. (legislative intent reflects that, in construing FDUTPA's prohibition against unfair and deceptive practices, "due consideration and great weight shall be given to the interpretations of the [FTC]" and judicial construction of Section 5); § 501.202(3), Fla. Stat. (state statutory provisions "shall be construed liberally . . . [t]o make state consumer protection and enforcement consistent with established policies of federal [consumer protection] law."); *KC Leisure, Inc. v. Haber*, 972 So. 2d 1069, 1072–74 (Fla. 5th DCA 2008) (noting that "[i]nstead of defining specific elements for an action under the statute," FDUTPA directs courts to rely on interpretations of the FTC Act).

used the same policies, scripts, and procedures that Guice had implemented at Loyal. GA.225 at 13; *see* p. 20, *supra*. Indeed, Loyal's employees saw no change in operations when LMS took over operations and only noticed the change of ownership when they received paychecks or telemarketing licenses identifying LMS as their new employer. GA.225 at 7; *see* p. 20, *supra*.

The court also found that undisputed "evidence establishes that Guice participated in the day-to-day oversight of LMS," by controlling its income flow and developing its hiring criteria. GA.225 at 13; *see* pp. 20-21, *supra*. He consulted regularly with LMS managers and Lea Brownell, the main debt-elimination program salesperson; he also engaged in LMS operational matters, such as monitoring and making payments on behalf of customers; dealing with refund requests and debt-elimination fulfillment; and addressing consumer complaints forwarded from several state law enforcement agencies. *See* GA.225 at 13; *see* p. 21, *supra*. Guice could have offered direct testimony contradicting that evidence, but he instead invoked the Fifth Amendment and refused to say whether he controlled LMS and the other companies. SA.163-43 at 40 [Tr. 153:18–22]; *see* GA.225 at 11-13.

The entire substance of Guice's argument that the district court erred consists of a single sentence: "Mr. Guice's response in opposition and exhibits, deposition testimony and plaintiffs' exhibits provided sufficient facts to survive

summary judgment." Br. 10. Such a passing contention without any specific record cites does not preserve the argument. *Nat'l All. Mentally Ill*, 376 F.3d at 1295-96; *Sapuppo*, 739 F.3d at 681. But even if the issue is preserved, it does not demonstrate an error below. Rather, Guice's burden, both below and on appeal, is to "show that specific facts exist that raise a genuine issue for trial." *Dietz v. SmithKline Beecham Corp.*, 598 F.3d 812, 815 (11th Cir. 2010). He has not nearly done so.

Below, Guice argued that his ownership of LMS was disputed because employees Randi Stickles and Lea Ann Brownell never saw Guice at LMS's office, because Stickles "did not consider Kevin Guice to be her boss," and because Brownell and employee Jessica Hernandez believed that Harry Wahl owned LMS. GA.168 at 13. That testimony did not create a dispute of material fact – one "that may affect the outcome of the suit[,]" *Allen v Bd. of Pub. Educ. for Bibb Cty.*, 495 F.3d 1306, 1313 (11th Cir. 2007) – because such "low-level" employees did not know who owned LMS. GA.225 at 14.[29] Brownell and Hernandez admitted that their belief that Wahl was their boss was based only on second-hand sources; Brownell even admitted she spoke to Guice weekly about the

[29] The court recognized that Guice failed to enter the Stickles and Brownell testimony excerpts in the record, but that they were "inconsequential" even if considered. GA.225 at 13-14.

debt-elimination program. *Id.*; *see* SA.163-49 at 7 [Tr. 82:20–84:9] (Stickles); SA.163-50 at 16 [Tr. 163:2–164:3] (Brownell); SA.163-53 at 8 [Tr. 34:6–24] (Hernandez). The district court determined, moreover, that none of the employees contradicted substantial evidence showing that Guice *controlled* LMS, which is sufficient to hold him personally liable for its acts whether or not he owned the company. GA.225 at 14.

2. Undisputed Evidence Showed That Guice is Liable for His Companies' Robocall and Do-Not-Call Registry Violations

Guice next argues that the court could not find him liable for his companies' Do-Not-Call Registry violations because the telephone calls were placed by a third-party automatic dialer or lead generator and not directly by him or his employees. Br. 10 (citing SA.163-48 at 6 [Tr. 14:5-23]; SA.163-49 at 6 [Tr. 54:5-8; 55:12-18]).[30]

This is sophistry; there is no dispute of material fact. The evidence showed without contradiction that Guice's companies utilized an automatic dialer to make the unlawful robocalls. *See* SA.163-48 at 5-6 [Tr. 13:11-20, 14:12-23] (supervisor Kunz describing companies' use of off-site dialer); SA.163-49 at 6 [Tr. 53:17-

[30] Guice did not contest below the Government's DNC arguments and evidence including those showing his personal liability for such calls. *See* GA.175 at 1 n.1. He does not challenge on appeal the district court's conclusion that his companies were liable for those calls. GA.225 at 16-17.

56:19] (salesperson Stickles describing their use of a lead generator dialer to send automated messages); SA.163-44 at 38-41 [Tr. 147:21-159:14] (Norris discussing particular dialers and their connection to, and appearance at, LMS): PX 43 at 5 ¶ 29 (Loyal employee interviews revealed they were using a dialer at that time); GA.225 at 16-17. In the face of this evidence, Guice invoked the Fifth Amendment and chose to remain silent. SA.163-43 at 46 [Tr. 179:1-13], SA.163-42 at 9 [Tr. 33:18-34:9], at 10 [Tr. 37:1-15], at 24 [Tr. 95:17-24, 96:1-21].

As described above at 3-4, the TSR expressly prohibits "a seller" from "caus[ing] a telemarketer" to make telephone calls that (1) send "prerecorded marketing message[s]," or robocalls, to anyone. 16 C.F.R. § 310.4(b)(1)(v)(A), or (2) call persons on the DNC Registry, *id.* § 310.4(b)(1)(iii)(B). *See also United States v. Dish Network L.L.C.*, 954 F.3d 970, 976–77 (7th Cir. 2020) (seller of services liable for DNC violations committed by its agent telemarketer where the seller knew of – but failed to stop – illegal calls, while benefitting from the calls) (citations omitted), *cert. dismissed*, 141 S. Ct. 729 (2021). The plain language of the Rule thus makes Guice liable for calls placed on his behalf by a third party. Guice identifies no disputed fact contradicting the district court's determination that Guice set up the automatic calling procedures at Loyal, which carried over to LMS's operations. GA.225 at 17-18.

3. Undisputed Evidence Showed that Guice is Liable for His Companies' Misrepresentations and Omissions

Guice next claims that that the district court erred in finding him liable for his companies' conduct because 1) he did not directly participate in any misleading statements, and 2) company policy prohibited employees from lying to consumers. Br. 11 (citing GA.168 at 17-18 (citing SA.168-30 and SA.163-52 [Tr. 195:1-15]). Both contentions fail.

First, Guice may be held personally liable for illegal practices if he had authority to control them, even if he did not carry them out directly. *IAB Mktg.*, 746 F.3d at 1233; *FTC v. World Media Brokers*, 415 F.3d 758, 764 (7th Cir. 2005). Guice did not dispute that he controlled Loyal, and undisputed evidence showed he controlled LMS (which adopted the identical business practices Guice created at Loyal) and the shell companies. *See* pp. 18, 20-22, *supra*.

Second, even assuming that there was a corporate policy that prohibited misrepresentations, undisputed evidence showed that it had no effect. Indeed, Loyal's scripts submitted by Guice to DOACS (which were adopted wholesale by LMS) instructed company salespeople to lie about their interest-rate reduction services. *See, e.g.*, SA.12(CD)-[PX 43 at 3, 4 ¶ 21, Exs. 2, 19, 28, 31] ("we do not charge until the work has been completed", "no out of pocket expense", "save [consumers] at least $2,500.00", and "out of debt 3-5 times faster"); *see also id.*-

[PX 42 at 6-7, 17 ¶¶ 6, 48]. While the company did not use scripts to sell its debt-elimination services, unrebutted testimony reflects that Ms. Brownell, the companies' primary salesperson, knew that her sales pitch was misleading, and that she was never disciplined by her management for making such misleading statements to consumers. SA 163-50 at 15, 18 [Tr. 158:20-159:16, 209:17-212:23]; SA 163-52 at 18 [Tr. 120:2-9].

The record thus reflects no effort by the company to bar misrepresentations by its telemarketers; to the contrary, record evidence showed company practices that seemingly encouraged such misleading statements. At the very least, Guice provided no evidence that any employees were fired or reprimanded for lying to consumers or that misrepresentations were limited to rogue employees; indeed, he provides no specific record support reflecting his purported robust corporate compliance efforts as it was his burden to do. *Nat'l All. Mentally Ill*, 376 F.3d at 1295–96; *see also World Media Brokers*, 415 F.3d at 765 (corporate officer liable where he provided no specific facts showing "*how* he prevented [his] telemarketers from misleading consumers") (emphasis in original). And even if Guice had tried to stop his employees from lying to consumers, he would still be liable for the misrepresentations. *FTC v. Stefanchik*, 559 F.3d 924, 930-31 (9th Cir. 2009); *FTC v. Partners In Health Care Ass'n*, 189 F. Supp. 3d 1356, 1365–66 (S.D. Fla. 2016).

B. Undisputed Evidence Showed That Guice's Companies Did Not Provide the Promised Debt-Relief Services

Finally, Guice contends in a single-paragraph argument that the district court could not have found that he engaged in deception because the record showed that his "lower interest rate services and debt elimination services were legitimate and helpful services to consumers." Br. 11. Specifically, he claims that consumer files, employee affidavits, and unspecified Government exhibits create a dispute of fact on the question of whether his promises to consumers were deceptive. *Id.* (citing GA.168 at 6-7, 9). In the face of the overwhelming record of deceit, that evidence creates no triable issue. "The mere existence of a scintilla of evidence in support of [the nonmoving party's] position [is] insufficient" to defeat summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–52 (1986).

Section 5(a) of the FTC Act and the FDUTPA both prohibit "unfair or deceptive acts or practices in or affecting commerce," 15 U.S.C. § 45(a); Fla. Stat. § 501.204(1) (2020), which bar material misrepresentations or omissions that are likely to mislead consumers acting reasonably under the circumstances. *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003). The TSR likewise prohibits misrepresentations concerning "[a]ny material aspect of any debt relief service," including "the amount of money . . . that a customer may save by using such service; the amount of time necessary to achieve the represented results . . . the

effect of the service on a customer's creditworthiness . . . [and] on collection efforts of the customer's creditors or debt collectors[.]" 16 C.F.R. § 310.3(a)(2)(x).

Over forty consumer declarations show that Guice's employees falsely promised permanent and substantial reductions in credit card interest rates, significant savings and/or greatly reduced pay-off times, that were never in fact realized. GA.225 at 23-28; *see* pp. 7-8, *supra*. The declarations also show that consumers were not told that any actual reduction in rates would be temporary, or that they would likely incur significant balance transfer fees, or be based on the use of hardship programs that can lead to lower credit ratings. *See* pp. 10-12, *supra*. GA.175-4 at 1 ¶¶ 5-10. The consumer declarations were further supported by unrebutted expert testimony showing that standard industry practices made fulfillment of the promises made by Guice's salesforce to consumers exceedingly unlikely. *See* pp. 8-10, *supra*.

The declarations and testimony likewise showed that the debt-elimination program, which rested on false claims that a "government fund" would pick up debts, failed to provide consumers the promised benefit (and often put them in worse financial condition). D.225 at 28-30; *see* pp. 13-16, *supra*. Guice provided no evidence showing that any consumers had their entire credit card debt paid off or rebutting the Government's evidence that many consumers were left worse off.

It is also undisputed that Guice's employees, including his main debt-elimination program closer, Ms. Brownell, failed to tell consumers about the likely adverse consequences of enrolling in the program. *See* p. 15, *supra.*

Guice does not dispute that his telemarketers made these false promises. He claims only that there is some evidence that consumers received "helpful services." Br. 11. But Guice *failed to provide a single declaration from a customer* showing that his promises were fulfilled. Instead, he relies on a handful of consumer files found "at the receiver's warehouse," *id*. (citing GA.168 at 6-7 (citing D.168-9 to D.168-18)), and employee declarations claiming they "saved consumers money," *id.* (citing GA.168 at 9 (citing D.168-2 to D.168-6)). Those materials are insufficient to defeat summary judgment.

The five employee declarations cited by Guice are identical, devoid of any references to the record, and make the conclusory claim that their fulfillment worked "to the satisfaction of the consumer." *See* SA.168-2 through SA.168-6. But the employees lacked personal knowledge of whether consumers were satisfied with the promised service. A declaration may create a dispute of material fact, but only where it is "made on personal knowledge, set[s] out facts that would be admissible in evidence, and show[s] that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4). The declarations relied on by Guice do not meet those criteria, but are conclusory and speculative. *See*

Walace v. Cousins, 783 F. App'x 910, 913 (11th Cir. 2019) (citations omitted); *Hornsby-Culpepper v. Ware*, 906 F.3d 1302, 1314-15 (11th Cir. 2018) (citations omitted). They failed to mention any balance transfer fees for those customers whose rate-reduction was based on obtaining successive promotional rate cards or the adverse effects attendant to those placed in a hardship program; indeed, their "competen[ce] to testify" is highly questionable given their assertion that some consumers obtained "permanent hardship status," which undeniably is contrary to industry practice. *See* SA.12(CD)-[PX 39 at 2-3 ¶¶ 10-18]. Guice's employee declarations are insufficient to defeat summary judgment in the face of more than forty consumer declarations, expert testimony, and other overwhelming evidence that Guice's operations were deceptive.

Guice gets no help from ten consumer files "picked at random" which he claims showed that those customers benefitted from his rate-reduction program. Br. 11 (citing GA.168 at 6-7 (citing D.168-9 through D.168-18 [DX10-19]. First, as the district court recognized, Guice failed to cite specific pages in the consumer records to support his factual assertions, instead citing generally to scribbled, partially unreadable, multipage documents. GA.225 at 27 n.18. The Court is not required to decipher such records to substantiate Guice's assertions. And the district court determined that, to the extent it could interpret the notes, Guice's evidence undercut his claims. *See*, *e.g.*, *id*. at 26-27 (remarking that one consumer

Guice claimed had obtained a permanent zero percent card appeared to have the lowered rate last only four years, *see* SA.168-13 at 11); *see also* SA.168-9 at 13 (consumer file seemingly reflecting the same misstatement by Guice); SA.168-15 at 6 (same). The files also failed to indicate if the consumers paid balance transfer fees to get a lower rate card. And while Guice claimed consumers received lower rates due to being placed in hardship permanently, *see, e.g.*, GA.168 at 7 (claiming two such cards for consumer Masser), it is undisputed that hardship status is temporary. *See* p. 12, *supra*. Guice also failed to explain whether hardship status resulted in adverse effects to his customers' creditworthiness.

Moreover, after Guice introduced the customer files for the first time in response to summary judgment, the Government located several of the consumers whose files Guice relies on, and their experiences only buttress the Government's case. Six of them submitted declarations stating, like the other consumer declarants, that Guice's programs did not provide the promised benefits, that they were not satisfied with the service, did not benefit or save money, that their interest rates are now higher, that their debt has increased, and/or that their creditworthiness was significantly damaged in the process. GA.175-2 at 1, 2 ¶¶ 2–9, 12–13; GA.175-3 at 1 ¶¶ 2–9, 13–14; GA.175-4 at 1-2 ¶¶ 5–10, 13–14; GA.175-5 at 1-2 ¶¶ 2–6, 11–16, 18–19; GA.175-6 at 1 ¶¶ 2–11, 13–14; GA.175-7 at 1 ¶¶ 2–

5, 10–11; *see* D.225 at 24 n.16.[31] Far from showing a dispute of fact, these customers' experiences ratify the absence of genuine dispute.

Even if Guice had shown some satisfied customers, that still would be insufficient to defeat the Government's showing of deception. *See Tashman*, 318 F.3d at 1278; *FTC v. Freecom Communications, Inc.*, 401 F.3d 1192, 1206 n.8 (10th Cir. 2005); *Partners in Health Care*, 189 F. Supp. 3d at 1367 (collecting cases). The transaction was tainted by misrepresentations from the get-go and was therefore deceptive even if, for example, some consumers received cards with (temporarily) lower rates. *See McGregor v. Chierico*, 206 F.3d 1378, 1388 (11th Cir. 2000); *Tashman*, 318 F.3d at 1278. Liability for deceptive sales practices does not require that the underlying product be worthless, *IAB*, 746 F.3d at 1233, because it is "[t]he fraud in the selling, not the value of the thing sold" that governs. *FTC v. Figgie Int'l Inc.*, 994 F.2d 595, 606 (9th Cir. 1993).

Finally, Guice points to a single page in his opposition to the Government's motion for summary judgment that, without elaboration, he claims shows "specific facts contradicting" the Government's claims. Br. 11 (citing GA.168 at 9). This contention fails off the bat because Guice does not identify any actual disputes of

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[31] Consumers' experiences showed that Guice did not obtain a successive card after the initial low teaser rate expired. *See*, *e.g.*, GA.175-7 at 1. Guice never provided evidence of having obtained a second low-rate promotional credit card for *any* customer.

fact nor explain which Government claims are disputed or how they conflict with his asserted facts. *Nat'l Mining,* 985 F.3d at 1326 n.16; *Nat'l All. Mentally Ill*, 376 F.3d at 1295–96; Fed. R App. P. 28(a)(8)(A).

The single citation to a pleading filed below does not show a dispute of fact anyway. The page Guice refers to in turn relied on a recorded conversation between company employees and a consumer, which Guice argued showed that whether the company deceptively promised savings in a short amount of time was in dispute. GA.168 at 9 (citing SA.12(CD)-[PX 19]). In fact, the recording reflected no such thing; rather, it showed that the salesperson stated that she was working to lower the consumer's interest rate within 60 days, but that the consumer would realize her savings over a longer period as she made payments on her new card. *See* SA.12(CD)-[PX 19 at 139:8-11]. But that is not inconsistent with the Government's claim that defendants falsely promised consumers that they would save thousands of dollars in a short period of time, which would allow them to pay off their credit-card debt faster, typically three-to-five times faster than they would ordinarily be able to. *See* GA.163 at 14. The Government never claimed that defendants promised savings within 60 days or any other specific time period. Indeed, the same consumer was told the unfounded guarantee that defendants' services would allow her to "pay off [her] account three to five times faster than [her] current payment practices." SA.12(CD)-[PX 19 at 46:18-22].

The recording is consistent with the Government's overwhelming showing of deception in additional ways. For example, it reveals that Guice's salesperson falsely claimed to work for "Bank Card Services," *id*. at 137:22-24, promised to transfer the consumer's outstanding card balances to a new card that would keep its zero percent interest rate until her debt was paid off, *id.* at 68:21-69:8, and offered $2000 in "guaranteed savings" in exchange for an unlawful $1000 up-front "processing fee," *id.* at 138:9-10. Far from supporting Guice's position, the recording strongly affirms the Government's case.

CONCLUSION

For the forgoing reasons, the district court's summary judgment order should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the type-volume limitation in Fed. R. App. P. 32(a)(7)(B)(i) because it contains 12,938 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), and that it complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 point Times New Roman type.

April 17, 2021 /s/ *Michael D. Bergman*
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CERTIFICATE OF SERVICE

I certify that on April 17, 2021, I served the foregoing brief on counsel of record using the Court's CM/ECF electronic case filing system. All counsel of record are registered CM/ECF filers.

Dated: April 17, 2021 /s/ *Michael D. Bergman*
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