IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. NATIONAL SOLUTIONS LLC, a Florida limited liability company, also d/b/a Blue Scape Timeshares International, Country Wide Timeshares, Countrywide Timesharesales MA, Landmark Timeshares, Propertys Direct, Quicksale Propertys, Sun Property Networks, Sun Property's, Universal Propertys, and VIM Timeshares; LANDMARK MARKETING LLC, a Florida limited liability company, also d/b/a Blue Scape Timeshares, Country Wide Timeshares International, Propertys DRK, Quick Sale Advisers, Quick Sale International, and Universal Propertys International; RED SOLUTIONS LLC, a Florida limited liability company, also d/b/a City Resorts, and Resort Advisors; ENTERPRISE AMERICA, LLC, a Florida limited liability company, also d/b/a American Timeshares, Exit Week, and Resort Advisors International; INVESTMENTS GROUP OF FLORIDA, LLC, a Florida limited liability company, also d/b/a Resort Advisors AM; MULTIGLOBE LLC, a Florida limited liability company, also d/b/a Universal Propertys; LEANDRO VELAZQUEZ; SAMUEL VELAZQUEZ; JOEL VELAZQUEZ; KIOMARY CRUZ; and EDGAR GONZALEZ, Defendants.	Civ. No. 11-cv-1131-ORL-22-GJK Judge Anne C. Conway Magistrate Judge Gregory J. Kelly

PLAINTIFF FEDERAL TRADE COMMISSION'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT LEANDRO VELAZQUEZ AND INCORPORATED MEMORANDUM IN SUPPORT THEREOF

[1] All of the other defendants in this case are in default or have signed and submitted proposed settlements to the FTC. The FTC has moved for a default judgment against all six Corporate Defendants and Individual Defendant Kiomary Cruz.

In truth, Defendants did not have buyers lined up and ready to purchase consumers' timeshares, and there were no closings, no refunds of the fees consumers paid to Defendants, and no review or approval by the FTC or anyone else. Essentially, consumers received nothing from Defendants in return for their money. This scheme was purely and simply a fraud, and in perpetrating it, Defendants took advantage of financially strapped consumers who often were desperate to sell timeshares they could no longer use or afford to maintain.

Velazquez, the mastermind and primary beneficiary of this scheme, has largely ignored these proceedings. At the outset of the case, he evaded service and transferred over $1 million in assets in violation of the Court's asset freeze. He skipped the preliminary injunction hearing, and he offered to pay co-defendant Kiomary Cruz to do the same.[2] After filing an answer in which he repeatedly invoked the Fifth Amendment, Velazquez thereafter failed to respond to written discovery, including extensive requests for admission. Due to his failure to respond to the Commission's requests for admission, those matters are now deemed admitted. Fed. R. Civ. P. 36(a)(3). Velazquez further failed to attend his duly-noticed deposition, several court hearings, and the Court-ordered mediation. Discovery has now closed.

The uncontroverted evidence compiled by the FTC clearly supports entry of summary judgment against Velazquez. This evidence includes Velazquez's own admissions, the deposition testimony of co-defendant Edgar Gonzalez, sworn declarations from fifteen consumer victims, a sworn declaration from a financial investigator with the Florida

[2] See DE 51, Att. B (Declaration of Kiomary Cruz) ¶ 4.

Department of Agriculture and Consumer Services, and key documents, including telemarketing scripts and consumer complaints found at Defendants' business premises.[3] Neither Velazquez nor any other Defendant has challenged the accuracy or authenticity of this evidence. Indeed, Velazquez conducted no independent discovery. His only response to the Commission's allegations has been to assert the Fifth Amendment in his answer and to thereafter completely ignore his discovery obligations.[4] Now that discovery has closed, Velazquez should be foreclosed from attempting to present evidence in response to this motion that he failed to identify or provide to the FTC in the course of discovery.

The Commission's evidence establishes that there is no genuine issue of material fact with respect to Velazquez's liability under both counts of the Commission's Complaint. Summary judgment on these counts is therefore warranted. Velazquez should be permanently enjoined from engaging in practices that violate Section 5 of the FTC Act and the TSR, as well as banned from any further involvement in telemarketing and the marketing

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[3] References to Plaintiff's Exhibit ("PX") 1 through PX 18 are to the exhibits filed on July 11, 2011, supporting the FTC's Ex Parte Motion for a Temporary Restraining Order With Asset Freeze, Appointment of a Receiver, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue [DE 6]. References to PX 19 are to the Supplemental Exhibit [DE 20] filed on July 21, 2011, supporting the FTC's Motion for Preliminary Injunction with Asset Freeze and Other Equitable Relief [DE 19]. References to PX 24 are to the Supplemental Exhibit [DE 136-2] filed on August 29, 2012, supporting the FTC's Motion for Entry of Default Judgment and Order for Permanent Injunction and Monetary Relief. References to PX 25 through PX 28 are to the supplemental exhibits filed herewith supporting the FTC's instant motion.

[4] The Court is entitled to, and should, draw adverse inferences against Velazquez for his blanket invocation of the Fifth Amendment privilege in his answer. It is well established that a court may draw an adverse inference from a party's invocation of the right against self incrimination. See, e.g., Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298, 1304 (11th Cir. 2009) (the court may draw adverse inferences against a party that invokes the Fifth Amendment). When Velazquez's refusal to respond to the FTC's allegations is considered in conjunction with the overwhelming and incontrovertible evidence presented by the Commission, the Court is permitted to, and should, draw adverse inferences from his refusals to respond. See FTC v. Global Mktg. Group, 594 F. Supp. 2d 1281, 1287-88 (M.D. Fla. 2008).

[5] See DE 1 (Complaint for Permanent Injunction and Other Equitable Relief).

[6] See DE 6 (FTC's Ex Parte Motion for a Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction

Velazquez thereafter failed to respond to any of the FTC's discovery requests. On March 16, 2012, the FTC served Velazquez with interrogatories and document requests, to which he failed to respond. On June 29, 2012, the FTC served Velazquez with 156 requests for admission, to which he also failed to respond. Pursuant to Fed. R. Civ. P. 36(a) and (b), each of the 156 requests for admission are now "conclusively established." On June 6, 2012, the FTC noticed Velazquez's deposition in Orlando, but he failed to appear.[13] He also failed to participate in Court-ordered mediation scheduled for August 6, 2012.[14]

III. UNDISPUTED MATERIAL FACTS

A. Defendants' Telemarketing Calls

Defendants called consumers throughout the U.S. who owned timeshares and asked whether those consumers were interested in selling. Because many of the consumers Defendants targeted already had their timeshares listed for sale with other companies, Defendants often knew the consumer's timeshare location and property characteristics.[15]

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[12] (...continued)
24:4 to 25:4; 82:25 to 83:5, 197:18-21. Subsequent service on Velazquez of all of the Commission's documents has been made to this address.

[13] Velazquez's deposition originally was scheduled for June 25, 2012, but was reset to July 6, 2012, to coincide with a rescheduled Court hearing on July 5, 2012. Notice of the rescheduled deposition was sent to Velazquez on June 21, 2012, both by FedEx Express Overnight Delivery and electronic mail.

[14] See DE 132 (Notice Regarding Scheduled Mediation); DE 133 (Mediator's Report). The date of mediation had long been set by agreement of the parties. See DE 79 (Case Management Report); DE 84 (Notice of Date for Mediation Conference).

[15] PX 3, Baily ¶¶ 3-4; PX 5, T. Baldwin ¶ 3; PX 7, Barstow ¶ 3; PX 8, Bell ¶ 3; PX 10, Clinton ¶ 3; PX 11, Fangmeier ¶ 3; PX 12, Harvey ¶ 3; PX 13, Hegel ¶ 3; PX 14, Huffman ¶¶ 2-3; PX 15, Kalina ¶ 3; PX 16, Keith ¶ 3; PX 17, Rhodes ¶ 3; PX 25, Plaintiff FTC's First Request for Admissions to Defendant Leandro Velazquez ("RFA") Nos. 6, 16, 104-07, 136; PX 26, Gonzalez Dep. 24:15-18, 25:1-12, 27:3-9. Velazquez also purchased leads from employees who had access to guest information at various resorts. PX 26, Gonzalez Dep. (continued...)

Defendants told consumers in the telemarketing calls that they had buyers ready to purchase consumers' timeshares. Defendants claimed that the buyers were willing to pay specified prices that often were at or even above the consumer's asking price.[16] Defendants also often told consumers that the buyers already had put money into escrow for the purchase of the consumer's timeshare.[17] Understandably, consumers were delighted to learn that Defendants had a buyer for their timeshares, as many of the targeted consumers could no longer afford the costs associated with timeshare ownership.[18] Defendants also often told

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[15](...continued)
26:19-25.

[16] PX 3, Baily ¶¶ 3-4; PX 5, T. Baldwin ¶¶ 3-5; PX 6, Barnes ¶¶ 4-6; PX 7, Barstow ¶¶ 4-5; PX 8, Bell ¶¶ 3-4; PX 9, Casaceli ¶ 4; PX 10, Clinton ¶ 3; PX 11, Fangmeier ¶ 3; PX 12, Harvey ¶ 3; PX 13, Hegel ¶¶ 3-4; PX 14, Huffman ¶¶ 2-4; PX 15, Kalina ¶ 3; PX 16, Keith ¶ 3; PX 17, Rhodes ¶ 3; PX 25, RFA Nos. 17-19, 138-39, 145; PX 26, Gonzalez Dep. 28:10-12, 37:2-6.

[17] PX 7, Barstow ¶ 7; PX 15, Kalina ¶ 3; PX 17, Rhodes ¶ 3; *see also* PX 5, T. Baldwin ¶ 20 & Att. F at p. 3, 4:17-19.

[18] PX 3, Baily ¶ 2; PX 6, Barnes ¶ 2; PX 8, Bell ¶ 2; PX 26, Gonzalez Dep. 41:23-25 ("[I]n this industry there's so many people that just want to get rid of their timeshares, they can't even give them away. . . .")

[19] PX 3, Baily ¶ 7; PX 7, Barstow ¶ 15; PX 8, Bell ¶ 9; PX 9, Casaceli ¶ 10; PX 13, Hegel ¶ 8; PX 14, Huffman ¶ 7; PX 15, Kalina ¶ 11; PX 16, Keith ¶ 7; PX 17, Rhodes ¶ 13; PX 25, RFA Nos. 28, 113; PX 26, Gonzalez Dep. 37:2-6.

[20] PX 3, Baily ¶ 4; PX 5, T. Baldwin ¶¶ 5, 9, 14; PX 6, Barnes ¶ 5; PX 7, Barstow ¶ 6; PX 8, Bell ¶ 5; PX 9, Casaceli ¶ 5; PX 10, Clinton ¶ 4; PX 11, Fangmeier ¶ 4; PX 12, Harvey ¶ 4; PX 13, Hegel ¶ 4; PX 14, Huffman ¶ 4; PX 15, Kalina ¶ 4; PX 16, Keith ¶ 4; PX 17, Rhodes ¶ 4; PX 25, RFA Nos. 22-27, 142-43; PX 26, Gonzalez Dep. 36:9-18, 39:4 to 40:3, 41:8-11; 42:1-12.

[21] PX 3, Baily ¶ 5; PX 5, T. Baldwin ¶ 20 & Att. at p. 3 (5:5-10, 7:1-5) and p. 4 (9:4-18); PX 6, Barnes ¶ 5; PX 7, Barstow ¶ 4; PX 8, Bell ¶ 6; PX 9, Casaceli ¶ 8; PX 10, Clinton ¶ 5; PX 12, Harvey ¶¶ 6, 9;

typically were told that the contract was not an advertising contract, but rather a standardized form contract sent to everyone who wanted to sell or rent their timeshares.[23] Defendants continued to reassure these consumers that they already had a buyer ready to purchase the consumer's timeshare.[24]

Once consumers sent in their payment and contract and provided Defendants a tracking number for the package, Defendants often called consumers again to create a recorded "verification." During this purported "verification," Defendants' representatives now referred for the first time to "advertising" the consumer's timeshare as opposed to already having a buyer to purchase that timeshare, as represented in the initial call. Defendants' representatives spoke quickly, however, to avoid raising any doubts in consumers' minds.[25] If consumers asked any questions during the verification, the representatives stopped the recording, reassured the consumers that Defendants had a buyer for their timeshares, and then started the recording again from the beginning. Defendants often instructed consumers how to respond during the verification recording and told them that if they did not respond as instructed, the sale of the consumer's timeshare could not proceed.[26]

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[23] PX 7, Barstow ¶ 10; PX 8, Bell ¶ 7; PX 9, Casaceli ¶¶ 9, 11-12; PX 10, Clinton ¶ 7; PX 13, Hegel ¶ 6; PX 15, Kalina ¶¶ 8-9; PX 17, Rhodes ¶¶ 7, 9-11; PX 26, Gonzalez Dep. 48:20 to 49:16.

[24] PX 15, Kalina ¶ 9; PX 17, Rhodes ¶¶ 9-11.

[25] PX 7, Barstow ¶¶ 15-16; PX 8, Bell ¶ 9; PX 9, Casaceli ¶¶ 20-26; PX 12, Harvey ¶ 9; PX 14, Huffman ¶ 8; PX 16, Keith ¶¶ 6-7; PX 17, Rhodes ¶ 13; PX 26, Gonzalez Dep. 29:2-14, 44:16-25, 51:14 to 52:20.

[26] PX 7, Barstow ¶ 16; PX 9, Casaceli ¶¶ 20-26; PX 26, Gonzalez Dep. 52:21 to 54:8.

C. Everything Defendants Told Consumers Was False

After paying Defendants' fee, consumers soon learned that Defendants provided no services whatsoever. Contrary to Defendants' representations on the telephone, Defendants had no buyers for consumers' timeshares, and did nothing at all to attempt to sell those timeshares.[27] Defendants also often failed to answer or return consumers' telephone calls once they had received the consumers' payments and signed contracts. In other instances, Defendants strung consumers along to delay them from seeking refunds or complaining to the authorities.[28] The closing dates Defendants had promised would pass, and no closings would ever take place. Defendants simply took consumers' money and provided nothing in return.[29] Defendants' claims about the FTC's involvement in reviewing and approving the purported sale also were utterly false.[30]

When consumers realized Defendants had no buyers for their timeshares, they often requested their money back. However, consumers' calls to Defendants requesting refunds

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[27] PX 3, Baily ¶¶ 8-9; PX 5, T. Baldwin ¶ 12; PX 6, Barnes ¶ 14; PX 7, Barstow ¶¶ 19, 22; PX 8, Bell ¶¶ 11-13; PX 9, Casaceli ¶ 34; PX 10, Clinton ¶ 10; PX 11, Fangmeier ¶¶ 12-13; PX 12, Harvey ¶ 16; PX 13, Hegel ¶ 9; PX 15, Kalina ¶¶ 13-15; PX 16, Keith ¶¶ 8, 10; PX 17, Rhodes ¶¶ 18-19; PX 25, RFA Nos. 29, 31, 140-41, 146-49. Defendants did have websites that purported to provide listings of timeshares that were for sale. There is no evidence, however, that these websites were promoted to the public or generated any sales. PX 1, McKenney ¶¶ 108-12; PX 26, Gonzalez Dep. 92:6 to 93:2. Even if Defendants did list consumers' timeshares for sale on their websites, this is not the service consumers had agreed to purchase.

[28] PX 3, Baily ¶ 8; PX 5, T. Baldwin ¶ 12; PX 6, Barnes ¶ 13; PX 7, Barstow ¶ 19; PX 8, Bell ¶¶ 11-12; PX 10, Clinton ¶ 10; PX 11, Fangmeier ¶ 12; PX 12, Harvey ¶¶ 10-11; PX 13, Hegel ¶ 9; PX 14, Huffman ¶¶ 11-18; PX 15, Kalina ¶¶ 13-14; PX 16, Keith ¶¶ 8, 10; PX 26, Gonzalez Dep. 33:5-14.

[29] PX 3, Baily ¶¶ 8-9; PX 6, Barnes ¶¶ 13-14, 17; PX 7, Barstow ¶¶ 19, 22; PX 8, Bell ¶¶ 11, 13; PX 10, Clinton ¶ 10; PX 11, Fangmeier ¶¶ 10, 13; PX 12, Harvey ¶ 16; PX 13, Hegel ¶¶ 8-9; PX 14, Huffman ¶¶ 10-13, 17; PX 15, Kalina ¶¶ 11-14; PX 16, Keith ¶¶ 10, 17; PX 17, Rhodes ¶ 18; PX 25, RFA Nos. 29, 31, 140-41, 146-49; PX 26, Gonzalez Dep. 90:6-10.

[30] PX 25, RFA Nos. 20-21; PX 26, Gonzalez Dep. 53:24 to 54:14.

were generally ignored.[31] Many consumers sent complaint letters but received no response. In fact, the complaint letters, per Velazquez's instructions, were simply thrown in the garbage unless they came from the Florida Department of Agriculture and Consumer Services.[32] Defendants' promises of buyers-at-the-ready and imminent sales of consumers' timeshares never materialized. Defendants' scheme was pure fraud.

D. Leandro Velazquez Owned and Controlled the Business

Velazquez was the 100 percent owner of this fraudulent business, and he controlled its operations.[33] While ostensibly made up of six separate corporations, the scheme functioned as a common enterprise, sharing the same business premises, management, employees, and revenues, and engaging in a common scheme.[34] Velazquez held various official titles, including incorporator, registered agent, president, and managing member. He also actively participated in the business.[35] Among other things, he hired and fired managers of the sales room. He purchased and handed out the leads. He opened and was signatory to numerous corporate bank accounts. He signed corporate filings and other records,

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[31] PX 6, Barnes ¶ 14; PX 11, Fangmeier ¶ 12; PX 12, Harvey ¶ 12; PX 14, Huffman ¶¶ 15-16, 18; PX 25, RFA Nos. 33-34.

[32] PX 13, Hegel ¶ 12; PX 17, Rhodes ¶ 18; PX 26, Gonzalez Dep. 70:1 to 73:10.

[33] PX 25, RFA Nos. 35, 41, 43-46, 49-70, 72, 93-94, 96-97; PX 28, McKenney ¶¶ 4-11 & Atts. A, B.

[34] PX 1, McKenney ¶¶ 5-13 (corporate records), 90-95 (bank and merchant processor records), 92-99 (mail drop box records); PX 25, RFA Nos. 8, 10.

[35] PX 1, McKenney ¶¶ 6-11 & Atts. A; B at pp. 1-3, 32; C at pp. 3-8; D, E, F at pp. 1-3; PX 2, Velez ¶¶ 35, 40; PX 25, RFA Nos. 36-44, 47-74, 95-128, 131-32, 156; PX 26, Gonzalez Dep. 88:12-17.

established website domain names, and set up mail drops.[36] All the while, he was fully aware that his telemarketers were falsely claiming to consumers in telemarketing calls that Defendants had buyers for consumers' timeshares, that the fees paid to Defendants would be

[36] PX 1, McKenney ¶¶ 7-10, 18, 21, 25, 28, 31, 34, 41, 54, 57, 60, 64, 68, 71, 94-97, 99, 103 & Atts. B at p. 32; C at pp. 12, 14-15; D at pp. 8-9; E at pp. 1-7; J at pp. 1-8; K at pp. 3-10, 13-15; N at pp. 1-7, 15, 17, 20; O at pp. 1-12; P; V; W; X at p. 10; Y at p. 6; and AA at pp. 7-8, 12; GG; PX 2, Velez ¶¶ 19, 33, 35, 40; PX 18, Frankola ¶ 4 & Att. A; PX 25, RFA Nos. 36, 39-45, 59, 65; PX 26, Gonzalez Dep. 26:19-22, 55:22 to 57:10, 61:3 to 62:4, 66:21 to 67:7, 87:20 to 88:11, 121:24 to 122:16 & Dep. Ex. 2, 128:9 to 130:10 & Dep. Ex. 3, 144:3-16 & Dep. Ex. 7.

[37] PX 25, RFA Nos. 14, 71-74, 112-13, 116-17, 119-22, 125-32, 152-53; PX 26, Gonzalez Dep. 29:23 to 30:25, 41:8 to 43:13, 69:11 to 73:14; 89:21 to 90:5.

[factfinder] could reasonably find for that party." FTC v. Transnet Wireless Corp., 506 F. Supp. 2d 1247, 1266 (S.D. Fla. 2007) (internal quotation marks omitted) (citing Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1990)). If the non-moving party's evidence "is merely colorable," or is not significantly probative, summary judgment should be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986).

B. Count I – Defendants Violated Section 5 of the FTC Act

Section 5(a) of the FTC Act prohibits "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a). An act or practice is deceptive under Section 5(a) if there was a representation that was likely to mislead consumers acting reasonably under the circumstances, and the representation was material. FTC v. Tashman, 318 F.3d 1273, 1277 (11th Cir. 2003). In divining whether a particular representation is likely to mislead consumers acting reasonably, courts consider the overall "net impression" created. See FTC v. Stefanchik, 559 F.3d 924, 928 (9th Cir. 2009); see also FTC v. Cyberspace.com LLC, 453 F.3d 1196, 1200 (9th Cir. 2006). "A representation or omission is material if it is of the kind usually relied on by a reasonably prudent person." FTC v. SlimAmerica, Inc., 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999). "Express claims or deliberately-made implied claims . . . are presumed to be material." Id. (citing FTC v. Pantron I Corp., 33 F.3d 1088, 1096 (9th Cir. 1994); FTC v. Wilcox, 926 F. Supp. 1091, 1098 (S.D. Fla. 1995)).

The uncontroverted evidence establishes that Defendants violated Section 5 in three distinct ways, any one of which, by itself, would be sufficient for the Commission to prevail on Count I of the Complaint. Defendants consistently misled consumers into believing: (1)

that Defendants had buyers for consumers' timeshares who would pay a specified price; (2) that the fees consumers paid Defendants would be refunded at closing; and (3) that the purported sales of the consumers' timeshares would be reviewed and approved by the FTC. The evidence further shows that all three of these representations were false.

At the core of Defendants' scheme was the express representation that Defendants had buyers for consumers' timeshares who would pay a specified price. Undisputed evidence, including Velazquez's own admissions, sworn declarations from fifteen of Defendants' consumer victims, and consumer complaints found at Defendants' business premises, conclusively establishes that Defendants routinely told consumers that they had buyers at-the-ready to purchase the consumers' timeshares, and that those buyers were willing to pay a price at or near the consumer's asking price.[38] Defendant Edgar Gonzalez ("Gonzalez") testified, for example, that Defendants' telemarketers "were telling consumers that they had buyers."[39] As he described the sales pitch, "basically you would tell [the consumers] you do have a buyer, it wasn't a prospective buyer, you do have a buyer, that [the] property is going to be sold within 30 days."[40]

The undisputed evidence also shows that Defendants had no buyers for consumers'

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[38] PX 3, Baily ¶¶ 3-4; PX 5, T. Baldwin ¶¶ 3-5; PX 6, Barnes ¶¶ 4-6; PX 7, Barstow ¶¶ 4-5; PX 8, Bell ¶¶ 3-4; PX 9, Casaceli ¶ 4; PX 10, Clinton ¶ 3; PX 11, Langmeier ¶ 3; PX 12, Harvey ¶ 3; PX 13, Hegel ¶¶ 3-4; PX 14, Huffman ¶¶ 2-4; PX 15, Kalina ¶ 3; PX 16, Keith ¶ 3; PX 17, Rhodes ¶ 3; PX 25, RFA Nos. 17-19, 138-39, 145; PX 26, Gonzalez Dep. 28:10-12, 37:2-6.

[39] PX 26, Gonzalez Dep. 28:10-12. Gonzalez started at National Solutions as a telemarketer in May 2009, became manager of another Velazquez-owned company operating from the same office in February 2010, became manager of National Solutions in April/May of 2010, and left in October 2010 to work at a new Velazquez venture that soon closed. *Id.* 17:20 to 18:22 & Dep. Ex. 1, p. 4; 24:2-3, 57:11 to 64:20.

[40] PX 26, Gonzalez Dep. 37:2-4.

timeshares. Velazquez admitted no buyers existed, and none of the Commission's consumer victims had buyers purchase their timeshares as a result of Defendants' services.[41] As Gonzalez testified, "nobody here [was] going to a closing."[42] Moreover, Defendants failed to produce any evidence that a single sale resulted from their timeshare resale services, let alone that Defendants ever had a buyer at-the-ready to purchase a consumer's timeshareer

[41] PX 3, Baily ¶ 9; PX 6, Barnes ¶¶ 17-18; PX 7, Barstow ¶ 22; PX 8, Bell ¶ 13; PX 10, Clinton ¶ 10; PX 11, Fangmeier ¶ 13; PX 12, Harvey ¶¶ 12, 16, 18; PX 13, Hegel ¶¶ 9, 12, 17; PX 14, Huffman ¶¶ 17-18, 20; PX 15, Kalina ¶¶ 14-15; PX 17, Rhodes ¶¶ 18-20; PX 25, RFA Nos. 29, 140, 146-49.

[42] PX 26, Gonzalez Dep. 33:5-6.

[43] PX 3, Baily ¶ 4; PX 5, T. Baldwin ¶¶ 5, 14; PX 6, Barnes ¶ 5; PX 7, Barstow ¶ 6; PX 8, Bell ¶ 5; PX 9, Casaceli ¶ 5; PX 10, Clinton ¶ 4; PX 11, Fangmeier ¶ 4; PX 12, Harvey ¶ 4; PX 13, Hegel ¶ 4; PX 14, Huffman ¶ 4; PX 15, Kalina ¶ 4; PX 16, Keith ¶ 4; PX 17, Rhodes ¶ 4; PX 25, RFA Nos. 22-27, 142-43.

[44] PX 26, Gonzalez Dep. 36:9-17.

consumer victims shows that none of those consumers received a refund at closing, as no closings ever took place.[45] Gonzalez testified, moreover, that once consumers paid Defendants' fee, "nothing would ever happen [so] [those consumers] would keep calling and calling and calling."[46]

Finally, the uncontroverted evidence also establishes that Defendants routinely represented to consumers that the purported sales of their timeshares would be reviewed and approved by the FTC. In addition to Velazquez's admissions, consumer victims have testified to the claim being made.[47] Telemarketing scripts found at Defendants' business premises also explicitly refer to the FTC's involvement. One such script reads, for example:

> Let me walk you through the process and explain what measures are taken to protect you as a seller, and our buyer as well. First and foremost every transaction we do is regulated through the Federal Trade Commission. Both parties are required to go through a recorded verification with the Federal Trade Commission in order for there to be a resale.[48]

Of course, the FTC is not involved in reviewing or approving timeshare resales. Nor does the FTC conduct "recorded verifications." Defendants' representation was an outright lie.

Undoubtedly, Defendants' deceptive representations were material. Consumers paid Defendants' fees believing that Defendants had buyers ready to purchase those consumers'

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[45] PX 3, Baily ¶¶ 8-9; PX 6, Barnes ¶¶ 13-14, 17; PX 7, Barstow ¶¶ 19, 22; PX 8, Bell ¶¶ 11, 13; PX 10, Clinton ¶ 10; PX 12, Harvey ¶ 16; PX 25, RFA No. 144; PX 26, Gonzalez Dep. 90:6-10.

[46] PX 26, Gonzalez Dep. 33:9-11.

[47] PX 5, T. Baldwin ¶¶ 3, 13, 17, 20 & Att. F at p. (5:5-10, 7:1-5) and p. 4 (9:4-18); PX 6, Barnes ¶ 5; PX 7, Barstow ¶ 4; PX 12, Harvey ¶ 9; PX 15 Kalina ¶ 3; PX 25, RFA Nos. 20-21; see also PX 26, Gonzalez Dep. 53:23 to 54:14.

[48] PX 19, McKenney ¶ 11 & Att. G, pp. 11-12.

timeshares, that the fees would be refunded at closing, and that federal officials would monitor the transactions. These false promises made the difference between Defendants making millions, as they did, or nothing at all.

Claims such as these that convey information likely to affect consumers' choice or use of a product or service, or that goes to its core characteristics, are material. Cyberspace.com, 453 F.3d at 1201. It is hard to imagine claims more central to the core characteristics of Defendants' services than the representation that buyers were standing by, fees were covered, and the government would be on hand to protect consumers. The undisputed facts clearly show that Defendants' false representations were likely to and did mislead consumers acting reasonably and that those representations were material to consumers' decisions to pay Defendants' fees. Accordingly, summary judgment should enter on Count I.

C. Count II – Defendants Violated the Telemarketing Sales Rule

For the same reasons, Defendants also violated the TSR. The FTC promulgated the TSR pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, to prohibit abusive and deceptive telemarketing acts or practices. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102, 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 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). Defendants carried out their scheme by initiating unsolicited outbound telemarketing calls to consumers for the purpose of selling their timeshare resale

participated in or had authority to control the corporation's deceptive practices, and he had or should have had knowledge or awareness of the practices. See FTC v. Gem Merch. Corp., 87 F.3d 466, 470 (11th Cir. 1996); FTC v. Amy Travel Serv., Inc., 875 F.2d 564, 573-74 (7th Cir. 1989). See also FTC v. Bay Area Bus. Council, Inc., 423 F.3d 627, 636 (7th Cir. 2005). Authority to control may be established by demonstrating that an individual assumed the duties of a corporate officer. See FTC v. World Media Brokers, 415 F.3d 758, 764 (7th Cir. 2005) (citing Amy Travel, 875 F.2d at 573).

The knowledge requirement may be fulfilled "with evidence that the individuals had 'actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth.'" Bay Area Bus., 423 F.3d at 636 (quoting Amy Travel, 875 F.2d at 574); World Media Brokers, 415 F.3d at 764 (same); FTC v. Atlantex Assoc., 1987 U.S. Dist. LEXIS 10911, 25 (S.D. Fla. 1987), aff'd, 872 F.2d 966 (11th Cir. 1989). Moreover, the degree of an individual's participation in business affairs "is probative of knowledge." Amy Travel

and knowledge, the undisputed evidence shows Velazquez's extensive role in setting up and managing these companies, and his control over their finances.[50] As to Velazquez's knowledge of what was going on, Gonzalez testified that Velazquez was "fully aware" of what his employees were telling consumers, and told them, "I don't care what you tell them as long as they can go through the verification and . . . sign the contract for the advertisement."[51] As a result of this involvement and control, Velazquez knew, or at least should have known, about the deceptive acts and practices that brought in over $6.2 million in ill-gotten gains and paid for his house, luxury cars, and privileged lifestyle.[52] The FTC is therefore entitled to summary judgment on Velazquez's individual liability for his companies' violations of the FTC Act and TSR.

V. RELIEF REQUESTED

To remedy the above violations, the Commission seeks injunctive, monetary, and ancillary relief against Velazquez. Section 13(b) of the FTC Act provides that "in proper cases, the Commission may seek, and after proper proof, the court may issue a permanent injunction." 15 U.S.C. § 53(b). See also Gem Merch., 87 F.3d at 468-470; FTC v. U.S. Oil & Gas Corp., 748 F.2d 1431, 1433 (11th Cir. 1984). A "proper case" under Section 13(b) includes any matter involving a violation of a law enforced by the FTC. See, e.g., U.S. Oil,

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[50] See supra nn.33-37.

[51] PX 26, Gonzalez Dep. 29:23 to 30:25, 43:3-13.

[52] PX 25, RFA Nos. 15, 71-74, 112-13, 116-17, 122, 125-32; PX 26, Gonzalez Dep. 29:23 to 30:25, 43:3-13, 69:11 to 73:14, 89:21 to 90:10, 115:7 to 120:16. See also DE 116, Declaration of Jeffrey C. Rizzo, filed April 27, 2012, ¶¶ 5-26 & Exhibits A-P.

748 F.2d at 1433-34; *Transnet*, 506 F. Supp. 2d at 1271. Because Section 13(b) gives a court authority to grant a permanent injunction, the statute also necessarily provides authority "to grant any ancillary relief necessary to accomplish complete justice," including rescission of contracts and restitution. *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982); *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *Amy Travel*, 875 F.2d at 571-72. In addition, Section 19(b) of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as it finds necessary to redress injury to consumers resulting from violations of the TSR. Such relief may include, but should not be limited to, "rescission or reformation of contracts, the refund of money [and] return of property. . . ." 15 U.S.C. § 57b. A proposed Final Judgment and Order for Permanent Injunction and Monetary Relief Against Leandro Velazquez ("Final Order") is submitted herewith.

A. The Court Should Grant Broad Injunctive Relief, Including a Ban

Paragraphs I and II of the proposed Final Order would permanently ban Velazquez from telemarketing, and from advertising, marketing, or selling any timeshare resale service. Such bans are appropriate where, as here, the defendant has engaged in particularly egregious conduct and demonstrated a likelihood that he will continue to engage in such conduct in the future.

The egregiousness of the Corporate Defendants' telemarketing scheme, and Velazquez's active participation in and knowledge of that scheme, demonstrates that Velazquez cannot be trusted to engage lawfully in telemarketing or the timeshare resale business. Defendants provided no services whatsoever in exchange for millions of dollars

paid out by consumers. Because of Velazquez's extensive control of this entirely fraudulent operation, it is necessary and appropriate that he be banned from resuming these activities and posing an ongoing threat to vulnerable consumers. To ensure the effectiveness of injunctive relief where defendants demonstrate blatant disregard of the law, courts in this and other districts have permanently banned defendants from engaging in the type of conduct that gave rise to the Commission's complaint, including cases involving the same type of conduct involved here. See, e.g., FTC v. John Beck Amazing Profits, LLC, No. CV-09-4719-JHN (Cwx) [DE 643] (C.D. Cal. Aug. 21, 2012) (permanent injunction bans defendants from infomercial marketing and telemarketing); FTC v. Timeshare Mega Media and Mktg. Group, Inc., No. 0:10-cv-62000-WJZ [DE 115] (S.D. Fla. 2010) (default judgment including permanent bans on telemarketing and timeshare resale services); FTC v. Vacation Prop. Servs., Inc., No. 8:11-cv-00595-JDW-MAP [DE 96, 136, 150] (M.D. Fla. 2011) (stipulated final orders containing bans on telemarketing and timeshare resale services); FTC v. Global Mktg. Group, 594 F. Supp. 2d 1281, 1290 (M.D. Fla. 2008) (permanent ban on telemarketing).[53]

Paragraph III of the proposed Final Order would enjoin Velazquez from making any false or misleading statements in connection with the sale of any goods or services. In

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[53] See also FTC v. Group One Networks, Inc., No. 8:09-cv-00352-RAL-MAP [DE 147] (M.D. Fla. 2010) (permanent bans on telemarketing and on requesting or receiving advance fees for loans or credit); FTC v. Home Assure, LLC, No. 8:09-cv-00547-SDM-TBM [DE 273] (M.D. Fla. 2010) (permanent ban on marketing or selling loan modification and foreclosure relief services); FTC v. Action Research Group, Inc., No. 6:07-cv-00227-ACC-UAM [DE 30] (M.D. Fla. 2007) (permanent ban on sale of customer phone records); FTC v. Tashman, No. 0:98-cv-07058-KLR [DE 210] (S.D. Fla. 2006) (permanent ban on marketing or selling franchises and business ventures).

addition, the Final Order would enjoin him from using customer information obtained in connection with the deceptive practices of the Corporate Defendants to prevent him from profiting from information they obtained through deception.[54] See Litton Indus. v. FTC, 676 F.2d 364, 370 (9th Cir. 1982) (fencing-in provisions serve to close all roads to the prohibited goal, so that orders may not be bypassed with impunity). The proposed Final Order also contains reporting and monitoring provisions that are standard in FTC fraud cases and that aid the FTC in monitoring defendants' compliance with court orders.[55] See, e.g., SlimAmerica, 77 F. Supp. 2d at 1276; FTC v. US Sales Corp., 785 F. Supp. 737, 753-54 (N.D. Ill. 1992).

B. The Court Should Enter a Monetary Judgment of $6,293,931.11 Against Defendant Leandro Velazquez

In addition to broad injunctive relief, Velazquez should be held liable for the full amount of consumer injury caused by Defendants' scheme. The Court has the equitable authority under the FTC Act, 15 U.S.C. §§ 41 et seq., to order monetary relief. MacGregor v. Chierico, 206 F.3d 1378, 1388-89 (11th Cir. 2000); Gem Merch., 87 F.3d at 469-70. The Eleventh Circuit has determined that the appropriate measure of monetary relief is the total loss suffered at the hands of the Defendants. MacGregor, 206 F.3d at 1388-89; see Global Mktg. Grp., 594 F.Supp. 2d at 1299; Atlantex Assoc., 1987 U.S. Dist. LEXIS 10911, 36

[54] See also FTC v. John Beck Amazing Profits, LLC, Case No. CV-09-4719-JHN (Cwx) [DE 641 at p. 13] (C.D. Cal. Aug. 21, 2012) (defendants banned from telemarketing and the production or dissemination of infomercials had no legitimate reason for maintaining customer records).

[55] See also FTC v. Home Assure, LLC, No. 8:09-cv-00547-SDM-TBM [DE 273] (M.D. Fla. 2010) (stipulated final order); FTC v. Cyberspy Software, LLC, No. 6:08-cv-01872-GAP-GJK [DE 108] (M.D. Fla. 2010) (stipulated final order); FTC v. Integrity Fin. Enter., LLC, No. 8:08-cv-00914-JDW-TGW [DE 37] (M.D. Fla. 2008) (default judgment); FTC v. Action Research Group, Inc., No. 6:07-cv-00227-ACC-UAM [DE 30] (M.D. Fla. 2007) (default judgment).

(restitution is "measured by amounts previously paid less any amount returned to consumers"). As noted above, violations of the TSR are violations of Section 5 of the FTC Act. See 15 U.S.C. § 6102(c); 15 U.S.C. § 57a(d)(3). The Court may order restitution to consumers in the amount of consumers' losses to compensate them for the harm caused by defendants' misrepresentations. MacGregor, 206 F.3d at 1387-89; SlimAmerica, 77 F. Supp. 2d at 1276; FTC v. Freecom Communs., Inc., 401 F.3d 1192, 1206-07 (10th Cir. 2005).

Restitution would compensate consumers for the money they paid for the timeshare resale services they never received. The FTC's conservative calculation of the injury to consumers from Defendants' massive timeshare resale scheme is $6,293,931.11.[56] This figure is undisputed. Velazquez admitted that Defendants defrauded consumers out of at least $6.2 million, and in discovery, he failed to produce any documents or respond to interrogatories seeking information on the amount of consumer injury.[57] Once the FTC shows that its calculations of restitution reasonably approximates the total of consumers' net losses, the burden shifts to Defendants to show that the FTC's figures are inaccurate. Febre, 128 F.3d at 535; FTC v. Direct Mktg. Concepts, Inc., 648 F. Supp. 2d 202, 214 (D. Mass. 2009). Moreover, to the extent there is any uncertainty regarding the amount of consumer losses, the "'risk of uncertainty should fall on the wrongdoer whose illegal conduct created the uncertainty.'" Febre, 128 F.3d at 535 (quoting SEC v. First City Fin. Corp., Ltd., 890 F.2d 1215, 1232 (D.C. Cir. 1989)). In the instant case, there is no dispute that a monetary

[56] See PX 24, McKenney ¶¶ 8-24.

[57] PX 25, RFA Nos. 15, 90.

judgment of $6,293,931.11 should be entered.

VI. CONCLUSION

The evidence submitted by the FTC indisputably demonstrates that Velazquez, through the Corporate Defendants, engaged in deceptive acts and practices in violation of the FTC Act and the TSR. The undisputed evidence also demonstrates that Velazquez controlled, or had the authority to control, the acts and practices of the Corporate Defendants; that he actively participated and knew, or should have known, about the deceptive practices; and that these practices cost U.S. consumers millions of dollars. In light of the incontrovertible evidence r