

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. \_\_\_\_\_ -Civ-(\_\_\_\_\_)

04-22289

CIV-MARTINEZ

/KLEIN

FILED by \_\_\_\_\_ D.C.  
INTAKE  
SEP 14 2004  
CLARENCE MADDOX  
CLERK U.S. DIST. CT  
S.E. OF FLA. - MIAMI

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CALL CENTER EXPRESS CORPORATION,  
a corporation,

EDGAR ALIRIO GONZALEZ and  
PABLO JOSE MARTINEZ,  
individually and as officers of  
CALL CENTER EXPRESS  
CORPORATION

ABREU ADVERTISING, INC.,  
a corporation  
d/b/a LA FAMILIA GROUP

LIENS ABREU and  
RAFAEL L. ABREU,  
individually and as officers of  
ABREU ADVERTISING, INC.

PRO LINE CARD LLC,  
a limited liability corporation,

JULIO CESAR SANDOVAL and  
CARLOS FELIPE MENDEZ,  
individually and as the sole members of  
PRO LINE CARD LLC,

Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its complaint

alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to secure preliminary and permanent injunctions, rescission of contracts and restitution, disgorgement and other equitable relief against Defendants for engaging in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and for engaging in deceptive telemarketing acts or practices in violation of the FTC's Rule entitled, "Telemarketing Sales Rule" ("the TSR" or "the Rule"), 16 C.F.R. Part 310, as amended, in connection with the advertising, telemarketing and sale of advance fee credit cards.

#### JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c) and 6105(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.

3. Venue in the Southern District of Florida is proper under 15 U.S.C. § 53(b), and 28 U.S.C. § 1391(b)-(d).

#### PLAINTIFF

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The FTC enforces the FTC Act, which, *inter alia*, prohibits unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. § 45(a). The FTC also enforces the TSR, which prohibits deceptive or abusive telemarketing acts or practices. 16 C.F.R. Part 310.

5. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such equitable relief, including restitution, redress and disgorgement, as may be appropriate in each case. 15 U.S.C. §§ 53(b), 57b and 6105(b).

### DEFENDANTS

6. Since at least June 2003, Defendants have advertised, marketed, and sold primarily to Spanish-speaking consumers, advance fee credit cards throughout the United States.

7. Defendant Call Center Express Corporation (hereafter "CCE") is a Florida corporation, whose primary place of business is 7925 N.W. 12<sup>th</sup> Street, Suite 407, Miami, Florida 33126, an office that CCE has shared with Defendant Pro Line LLC since June 9, 2004. At all times relevant to this complaint, CCE, utilizing various locations, has telemarketed and provided other services for the purpose of advertising, offering for sale and selling advance fee credit cards. CCE transacts or has transacted business in the Southern District of Florida and throughout the United States, and in the interest of justice, should be a defendant in this action pursuant to the provisions of 15 U.S.C. § 53(b).

8. Defendant Edgar Alirio Gonzalez (hereafter "Gonzalez") is the President and co-owner of CCE. Since at least June 2003, acting alone or in concert with others, Gonzalez has formulated, directed, controlled, participated in, assisted, or facilitated the acts and practices of CCE, including the acts and practices set forth in this complaint. Gonzalez transacts or has transacted business within the Southern District of Florida, and should in the interest of justice be a defendant in this action pursuant to the provisions of 15 U.S.C. § 53(b).

9. Defendant Pablo Jose Martinez (hereafter "Martinez") is the Vice President and co-owner of CCE. Since at least June 2003, acting alone or in concert with others, Martinez has formulated, directed, controlled, participated in, assisted, or facilitated the acts and practices of CCE, including the acts and practices set forth in this complaint. Martinez transacts or has transacted business within the Southern District of Florida, and should in the interest of justice be a defendant in this action pursuant to the provisions of 15 U.S.C. § 53(b).

10. Defendant Abreu Advertising, Inc. (hereafter "Abreu Advertising") is a Florida corporation conducting business at 4299 S.W. 73<sup>rd</sup> Ave Miami, FL 33155-4521. Since at least July 2003, Abreu Advertising, doing business as La Familia Group in concert with CCE, has marketed and sold advance fee credit cards, including, but not limited to, the La Familia Gold Card and the Advantage Platinum Card. Abreu Advertising transacts or has transacted business in the Southern District of Florida and throughout the United States, and should in the interest of justice be a defendant in this action pursuant to the provisions of 15 U.S.C. § 53(b).

11. Defendant Liens Abreu is the Vice President and co-owner of Abreu Advertising. Since at least July 2003, acting alone or in concert with others, Liens Abreu has formulated, directed, controlled, participated in, assisted, or facilitated the acts and practices of Abreu Advertising, including the acts and practices set forth in this complaint. Liens Abreu transacts or has transacted business within the Southern District of Florida, and should in the interest of justice be a defendant in this action pursuant to the provisions of 15 U.S.C. § 53(b).

12. Defendant Rafael L. Abreu is the President and co-owner of Abreu Advertising. Since at least July 2003, acting alone or in concert with others, Rafael L. Abreu has formulated, directed, controlled, participated in, assisted, or facilitated the acts and practices of Abreu

Advertising, including the acts and practices set forth in this complaint. Rafael L. Abreu transacts or has transacted business within the Southern District of Florida, and should in the interest of justice be a defendant in this action pursuant to the provisions of 15 U.S.C. § 53(b).

13. Defendant Pro Line Card LLC (hereafter "Pro Line") is a Florida limited liability corporation conducting business at 7925 N.W. 12<sup>th</sup> Street, Suite 407, Miami, Florida 33126, an office that Pro Line has shared with CCE. Since at least February 2004, Pro Line has in concert with CCE, marketed and sold advance fee credit cards, including but not limited to the Pro Line Card. Defendant Pro Line transacts or has transacted business in the Southern District of Florida and throughout the United States, and should in the interest of justice be a defendant in this action pursuant to the provisions of 15 U.S.C. § 53(b).

14. Defendant Julio Cesar Sandoval is a manager and co-member of Pro Line. Since at least February 2004, acting alone or in concert with others, Sandoval has formulated, directed, controlled, participated in, assisted, or facilitated the acts and practices of Pro Line, including the acts and practices set forth in this Complaint. Defendant Sandoval transacts or has transacted business within the Southern District of Florida, and should in the interest of justice be a defendant in this action pursuant to the provisions of 15 U.S.C. § 53(b).

15. Defendant Carlos Felipe Mendez is a manager and co-member of Pro Line. Since at least February 2004, acting alone or in concert with others, Mendez has formulated, directed, controlled, participated in, assisted, or facilitated the acts and practices of Pro Line, including the acts and practices set forth in this Complaint. Defendant Mendez transacts or has transacted business within the Southern District of Florida, and should in the interest of justice be a defendant in this action pursuant to the provisions of 15 U.S.C. § 53(b).

## COMMERCE

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

## DEFENDANTS' BUSINESS PRACTICES

17. At all times material to this complaint, Defendants have advertised, telemarketed, promoted and sold advance fee credit cards to consumers throughout the United States, specifically targeting recent Hispanic immigrants and Hispanic consumers who have bad credit or no credit histories. Defendants, either directly or through third parties, use television advertisements in Spanish to promote their advance fee credit cards. Defendants' advertisements guarantee that no consumer will be refused and refer consumers to their toll-free telephone numbers to obtain the cards.

18. Defendants Call Center Express, Abreu Advertising and Pro Line market advance fee credit cards under the names Destiny MasterCard, Advantage Platinum, La Familia Gold Card, and Gold Pro Line Card, names that explicitly or implicitly represent that the cards issued by defendants are unsecured major credit cards issued by MasterCard or Visa, or like those issued by MasterCard and Visa.

19. Defendants place advertisements in Spanish on Spanish-language television networks and broadcast these advertisements on stations throughout the continental United States and Puerto Rico. These advertisements induce consumers to call Defendants' toll-free numbers by promising that everyone will be approved for unsecured major credit cards with guaranteed credit limits of \$2000 up to \$7500. Defendants' advertisements tell consumers that they do not

need a social security number or bank account, and even if they have bad credit, no credit, or bankruptcies they will still be approved for the cards. Additionally, Defendants' television advertisements promise consumers immediate approval without a review of their credit histories. Defendants' advertisements also tell consumers that the advertised card can be used to establish or repair their credit.

20. Defendants' television advertisements include the following:

**Advantage Platinum Card:** Ya esta aqui el nuevo programa financiero Advantage Card Platinum. Conozca nuevo innovador programa de servicio en credito al inmigrante. Advantage Card Platinum es la manera mas facil de adquirir todo lo que pueda imaginar. Ademas, nadie sera rechazado. Todo el mundo sera aprobado. . . . Advantage Card Platinum es una institucion al servicio del inmigrante y le da la oportunidad de comenzar o construir su credito, sin rechazo, sin social security y sin cuenta de banco. No pierda esta oportunidad de tener una ventana al credito minima de dos mil quinientos (\$2,500) hasta siete mil quinientos (\$7,500) dolares.  
English translation: The new financial program Advantage Card Platinum is already here. Learn about the new, innovative program providing credit services to immigrants. Advantage Card Platinum is the easiest way of getting everything you can imagine. In addition, no one will be declined. Everyone will be approved. . . . Advantage Card Platinum is an institution that is there to serve immigrants and gives you the opportunity of beginning or building your credit, without being declined, having social security (a social security number) or a bank account. Don't miss this window of opportunity for getting a minimum line of credit of two thousand five hundred (\$2,500) to seven thousand five hundred (\$7,500) dollars.

**La Familia Gold Card:** Si, esta es la super tarjeta que le ofrece una linea de credito al instante minima por dos mil dolares (\$2,000). . . . Tambien, se le aumentara su linea de credito hasta siete mil quinientos dolares (\$7,500). Esta es su gran oportunidad. Con La Familia Gold Card, no habras rechazos. Si no tiene credito, bajos ingresos, mal credito o bancarrota, La Familia Gold Card lo aprobara. No pierda la oportunidad de comenzar o arreglar su credito.  
English translation: Yes, this is the super card that offers you an instant line of credit of a minimum of two thousand dollars (\$2,000). . . . Also, your line of credit will be raised up to seven thousand five hundred dollars (\$7,500). This is your big opportunity. With the Family Gold Card, there won't be any rejections. If you don't have credit, have low income, bad credit or bankruptcy, The Family Gold Card will approve you. Don't miss this opportunity to begin and repair your credit.

**Pro Line Gold Card:** (advertisement is scripted as a news broadcast) Hola.

Bienvenidos al noticiero hispano. Hoy hablaremos el problema principal de la comunidad hispana en los Estados Unidos – el credito. . . . ¿Cansado de aplicar y aplicar para pedir una tarjeta de credito y nunca se la aprueban? Ya llego la tarjeta dorada Pro Line Card. El nuevo concepto en tarjetas de credito. Todas personas que llamen en este momento al telefono que esta en pantalla seran aprobadas hoy mismo y automaticamente tendran una linea de credito de dos mil dolares (\$2.000) y usted podra comprar miles de productos con la tarjeta dorado Pro Line Card. No necesita tener un numero de social, ni tampoco historial de credito. Nadie sera rechazado.

English translation: Welcome to Hispanic News. Today, we'll discuss the main problem facing the Hispanic community in the United States – credit. . . . Are you tired of repeatedly applying for credit cards and never getting approved? The gold card from Pro Line has arrived. The new concept in credit cards. Everyone who calls the phone number on your screen now will be approved today and will automatically receive a two thousand dollar (\$2,000) credit line, and you can buy thousands of products with the gold card Pro Line Card. You don't need a social security number or credit history. No one will be rejected.

**Destiny's Stored Value MasterCard:** Sin complicaciones, sin cuenta de banco. Solo con tu nombre y direccion en los Estados Unidos, tu puedes ser unos de los miles y miles que hoy estan disfrutando la vida con la tarjeta Stored Value MasterCard. . . . La tarjeta Stored Value MasterCard cuenta con miles de lugares para depositar y una red de cajeras de ATM para retirar dinero en Estados Unidos o en cualquier parte del mundo. . . . En cualquier parte del mundo. MasterCard. No te pierdas esta oportunidad de ser parte del mundo Stored Value MasterCard.

English translation: Without difficulty, without a bank account. With just your name and address in the United States, you can become one of the thousands of people who are enjoying life today with Stored Value MasterCard. . . . The Stored Value MasterCard has thousands of places for making deposits and an ATM network for withdrawing funds in the United States and in any part of the world. . . . In any part of the world. MasterCard. Don't miss the chance to be part of the Stored Value MasterCard world.

21. When consumers call Defendants' advertised toll-free numbers most are immediately connected to one of defendants' telemarketers. Consumers are asked if they are calling to get the credit cards. Defendants then ask consumers for their names and addresses, and sometimes their social security numbers. In numerous instances, when consumers specifically asked the telemarketers if the cards can be used at department stores and to purchase items such as airline tickets, Defendants answered affirmatively, and reiterated the advertised message that



Defendants' cards can be used to make purchases at a wide variety of merchants and retail outlets. In some instances, Defendants have even told consumers that after an initial period they will be able to use the cards at automatic teller machines ("ATMs") to withdraw money from their approved lines of credit.

22. Shortly after consumers provide the requested information, Defendants tell them that they are approved for a credit limit of at least \$2000. Consumers are also told that their credit card will be delivered, within seven to ten days, by either a Federal Express ("FedEx") or United Parcel Service ("UPS") carrier. After telling consumers that they have been approved, Defendants then inform them that before they can receive their credit cards, they must first give the carrier a money order or cashier's check for an amount between \$149 to \$299.

23. Believing that they have been approved for unsecured major credit cards, consumers purchase money orders and give them to the FedEx or UPS carriers in exchange for the packages delivered from Defendants.

24. In numerous instances, upon opening the packages, instead of an unsecured major credit card, consumers receive pieces of plastic made to resemble a credit card, a catalog, an activation form, and a \$100 discount coupon, or an application to apply for a secured credit card. In other instances, consumers receive a letter requesting additional information or nothing at all.

25. Defendants' Advantage Platinum Card, La Familia Gold Card and Pro Line Card packages received by consumers also contain written 30-day refund guarantees that promise consumers a refund if they return the complete package within thirty (30) days of receipt.

26. In numerous instances, consumers have called Defendants and complained that the cards they received are not unsecured major credit cards, like a MasterCard or Visa, that were

promised in Defendants' advertisements. Consumers also complained that when they called to order the cards, Defendants' telemarketers reiterated that the cards could be used at a wide variety of merchant and retail locations. At no time prior to paying the fee were consumers told that the cards were catalog cards that could only be used to purchase items from Defendants' catalogs or internet websites.

27. When consumers have attempted to call Defendants' toll-free numbers trying to get refunds, often consumers are not able to speak to anyone because the phone lines are constantly busy, or disconnected. Some consumers who have gotten through are told by Defendants that they are entitled to a refund if they return the membership package within thirty (30) days of receipt, however, after doing as instructed, these consumers still do not receive refunds.

28. In other instances, when consumers request refunds, Defendants tell consumers that the fee paid is non-refundable and they do not issue refunds. Defendants then try to convince consumers to keep the catalog cards by representing that if consumers use the cards and make timely repayments this will help consumers repair or build a good credit history. In some instances, Defendants even tell consumers that they will receive a "real" credit card, usually in about three months, if they make catalog purchases and pay off the balance in a timely manner.

29. In numerous instances, consumers receive a catalog card, they do not receive an unsecured major credit card or any other authorized MasterCard or Visa device nor do the numerous consumers who have returned the packages in a timely fashion, receive refunds.

**VIOLATIONS OF SECTION 5 OF THE FTC ACT**

30. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.
31. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

**COUNT ONE**

32. In numerous instances, in connection with the marketing of advance fee credit cards, Defendants have represented, expressly or by implication, that after paying Defendants a fee, consumers are guaranteed to receive an unsecured major credit card, such as a VISA or MasterCard credit card.
33. In truth and in fact, in numerous instances, after paying Defendants a fee, consumers do not receive an unsecured major credit card, such as a VISA or MasterCard credit card.
34. Therefore, the representation set forth in Paragraph 32 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**VIOLATIONS OF THE TELEMARKETING SALES RULE**

35. The Commission promulgated the TSR pursuant to Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a). On August 16, 1995, the FTC adopted the TSR, 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose and the final amended TSR. 68 Fed.Reg. 4580, 4669. Except for specific provisions not alleged in this action, the amended TSR

became effective March 31, 2003.

36. On or after December 31, 1995, except for certain specified types of transactions, the TSR exempted from the scope of the TSR telephone calls initiated by a consumer in response to an advertisement through any media, other than direct mail solicitations. 16 C.F.R. § 310.6(3). On or after March 31, 2003, the amended TSR modified Section 310.6(3) (now renumbered as Section 310.6(b)(5)) to also exclude from this exemption, telephone calls initiated by a consumer in response to an advertisement relating to, among other things, advance-fee loans or other extensions of credit. 16 C.F.R. § 310.6(b)(5).

37. The TSR prohibits telemarketers and sellers from misrepresenting directly or by implication, in the sale of goods or services any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

38. The TSR also prohibits telemarketers and sellers from misrepresenting any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv).

39. The TSR also prohibits telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of obtaining or arranging a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit. 16 C.F.R. § 310.4(a)(4).

40. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and  
Section

18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the TSR constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

41. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the TSR. 16 C.F.R. §§ 310.2(z), (bb) and (cc).

### COUNT TWO

42. In numerous instances, in connection with the telemarketing of advance fee credit cards, Defendants have represented, directly or by implication, that after paying Defendants a fee, consumers are guaranteed to receive an unsecured major credit card, such as a VISA or MasterCard credit card.

43. In truth and in fact, after paying defendants a fee, consumers do not receive an unsecured major credit card such as a Visa or MasterCard credit card.

44. Defendants have thereby violated Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

### COUNT THREE

45. In numerous instances, in connection with the telemarketing of advance fee credit cards, Defendants have requested or received payment of a fee or consideration in advance of consumers obtaining a credit card when Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of an unsecured credit card, such as a VISA or MasterCard credit card, for such consumers.

46. Defendants have thereby violated Section 310.4(a)(4) of the TSR, 16 C.F.R. § 310.4(a)(4).

**COUNT FOUR**

47. In numerous instances, in connection with the telemarketing of advance fee credit cards, Defendants have represented, directly or by implication, that Defendants will refund the fee paid if a consumer seeks a refund within 30 days of receipt of Defendants' package.

48. In truth and in fact, Defendants do not refund the fee paid to consumers who seek refunds within 30 days of the date of receipt of Defendants' package.

49. Defendants have thereby violated Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

**CONSUMER INJURY**

50. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of Defendants' unlawful acts or practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment and harm the public interest.

**THIS COURT'S POWER TO GRANT RELIEF**

51. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the Commission.

52. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to

redress injury to consumers or other persons resulting from Defendants' violations of the TSR, including the rescission and reformation of contracts and the refund of monies.

53. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by Defendants' law violations.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the Federal Trade Commission, requests that this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and pursuant to its own equitable powers:

1. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
2. Permanently enjoin Defendants from violating the FTC ACT and the TSR, as alleged herein;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award Plaintiff the costs of bringing this action, as well as such other and additional

relief as the Court may determine to be just and proper.

DATED: September 14, 2004

Respectfully submitted,

WILLIAME E. KOVACIC  
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