

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 04-22289-Civ-Martinez/Bandstra

FEDERAL TRADE COMMISSION,)
)
) **Plaintiff,**)
)
) **v.**)
)
) **CALL CENTER EXPRESS CORPORATION**)
) **a corporation,**)
)
) **EDGAR ALIRIO GONZALEZ and**)
) **PABLO JOSE MARTINEZ,**)
) **individually and as the sole members of**)
) **CALL CENTER EXPRESS**)
) **CORPORATION,**)
)
) **ABREU ADVERTISING, INC.,**)
) **a corporation,**)
)
) **LIENS ABREU and**)
) **RAFAEL L. ABREU**)
) **individually and as the sole members of**)
) **ABREU ADVERTISING, INC.**)
) **d/b/a LA FAMILIA GROUP,**)
)
) **PRO LINE CARD LLC,**)
) **a limited liability corporation and**)
)
) **CARLOS FELIPE MENDEZ,**)
) **individually and a members of**)
) **PRO LINE CARD LLC**)
)
) **Defendants.**)

CONSENT CASE

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**FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION, RESTITUTION,
AND OTHER EQUITABLE RELIEF AS TO DEFENDANTS CALL CENTER EXPRESS
CORPORATION, PRO LINE CARD LLC, EDGAR ALIRIO GONZALEZ, PABLO JOSE
MARTINEZ AND CARLOS FELIPE MENDEZ**

This cause came before the Court on Plaintiff Federal Trade Commission's ("FTC" or

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“Commission”) Motion for Summary Judgment (D.E. 137) filed on July 7, 2005. This motion is before the undersigned on the consent of the parties pursuant to 28 U.S.C. §636(c). By separate Order, the undersigned granted the FTC’s motion for summary judgment. Therefore, the Court hereby enters this Final Judgment in favor of the FTC and against the named defendants, jointly and severally, as more fully explained below.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. “Plaintiff” means the Federal Trade Commission.
2. “Defendants” means Corporate Defendants and Individual Defendants.
3. “Corporate Defendants” means Call Center Express Corporation (herein “Call Center Express” or “CCE”) and Pro Line Card LLC (herein “Pro Line”).
4. “Individual Defendants” means Edgar Alirio Gonzalez, Pablo Jose Martinez, and Carlos Felipe Mendez (“Defendant Gonzalez,” “Defendant Martinez,” and “Defendant Mendez,” respectively).
5. “Receiver” means Lewis B. Freeman and Partners, Inc., the Permanent Receiver appointed by the Court in this matter.
6. “Assets” means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, inventory, checks, notes, leaseholds, effects, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.
7. “Assisting others” means: (1) performing customer service functions, including,

but not limited to receiving or responding to customer complaints, receiving identifying and financial information from consumers, and communicating with consumers about extensions of credit; (2) developing or providing or arranging for the development or provision of sales scripts or any other marketing material; (3) providing names of, or arranging for the provision of names of, potential customers; or (4) performing marketing services of any kind.

8. "Advance Fee Credit Cards" means the advertisement, promotion, offering for sale, purported sale, or sale of any product or service represented to establish credit or debit accounts in exchange for a fee or similar payment by the purchaser prior to the issuance of a credit or debit account, including, but not limited to a merchandise buying club membership card that offers an extension of credit.

9. "Consumer" means a purchaser, customer, subscriber, or natural person.

10. "Credit related products" means any product, program, or service that is advertised, promoted, offered for sale, or sold to consumers as a method by which consumers may establish or obtain any extension of credit or credit device, including, but not limited to credit cards, lines of credit, or loans, merchandise buying club membership cards that offer an extension of credit, loans, or financing; or as a method to restore, repair or improve derogatory information contained in a consumer's credit reporting files; or as a method to consolidate or liquidate debt.

11. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into

reasonably usable form. A draft or non-identical copy of a document is a separate document within the meaning of the term.

12. "Material" as used in Paragraph II and III means likely to affect a person's choice of, or conduct regarding, goods or services.

13. "Person" means a natural person, an organization or other legal entity – including a corporation, partnership, sole proprietorship, limited liability company, association, or cooperative, or any other group or combination acting as an entity.

14. "Telemarketing," "telemarketer," and "seller" as defined in Section 310.2 of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

ORDER

I. PERMANENT BAN

IT IS HEREBY ORDERED that:

A. Defendants Call Center Express, Pro Line Card LLC, Edgar Alirio Gonzalez, Pablo Jose Martinez, and Carlos Felipe Mendez whether acting individually, directly, indirectly, or through any corporation, limited liability company, partnership, subsidiary, division or other device, are hereby permanently restrained and enjoined from engaging in, receiving remuneration of any kind whatsoever from; or holding any ownership interest, share, or stock in (except for shares of stock in a publicly traded company) or serving as an employee, independent contractor, officer, director, member, partner, trustee, or general manager of, any business entity engaged, in whole or in part, in the marketing by any means whatsoever, advertising, promoting, offering for sale, sale, or purported sale of any advance fee credit card or any other credit related product,

program or service, or assisting others in the same; and

B. Nothing in this Order shall be construed to nullify the prohibitions set forth in this Paragraph I.

II. PROHIBITION AGAINST VIOLATING THE FTC ACT

IT IS FURTHER ORDERED that in connection with any marketing, including, but not limited to telemarketing, the Internet, the Worldwide Web, or any website; and/or advertising, promotion, offering for sale, sale, or purported sale of any good or service, or assisting others in the same, Defendants and their successors, assigns, directors, officers, agents, servants, employees, attorneys, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly, indirectly or through any corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined from violating, in any manner, Section 5 of the FTC Act, 15 U.S.C. § 45, violations include, but are not limited to making or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited to:

A. Misrepresenting that after paying Defendants a fee, consumers are guaranteed or are likely to receive an unsecured major credit card, such as a Visa or MasterCard credit card; and

B. Misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of the sale.

III. PROHIBITION AGAINST VIOLATING THE TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that in connection with any marketing, including, but not

limited to telemarketing, the Internet, the Worldwide Web, or any website; and/or advertising, promotion, offering for sale, sale, or purported sale of any good or service, or assisting others in the same, Defendants and their successors, assigns, directors, officers, agents, servants, employees, attorneys and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly, indirectly or through any corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined from violating, or assisting others to violate, any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to:

A. Requesting or receiving payment of any fee or consideration in advance of obtaining 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 for a person as prohibited by § 310.4(a)(4);

B. Misrepresenting, any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sale as prohibited by § 310.3(a)(2)(iii);

C. Misrepresenting any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies as prohibited by § 310.3(a)(2)(iv); and

D. Misrepresenting a seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity as prohibited by § 310.3(a)(2)(vii).

E. Failing to disclose truthfully, in a clear and conspicuous manner, before a customer pays for goods or services offered, information in violation of § 310.3(a)(1), including, but not limited to:

1. The total cost to purchase, receive, or use, and the quantity of, any goods

or services that are the subject of a sales offer;

2. All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer; and

3. If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy.

IV. MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered jointly and severally against Defendants Call Center Express, Pro Line, Edgar Alirio Gonzalez, Pablo Jose Martinez, and Carlos Felipe Mendez in the amount of THIRTEEN MILLION, NINE HUNDRED AND SEVENTY-EIGHT THOUSAND, NINE HUNDRED AND TWENTY-THREE DOLLARS (\$13,978,923.00) with post-judgment interest at the legal rate, for equitable monetary relief, including, but not limited to consumer redress and for paying any attendant expenses of administering any redress fund;

B. Defendants relinquish all rights, title, and interest to all frozen assets held by or on behalf of the Commission pursuant to the Stipulated Preliminary Injunction Orders entered by this Court on October 5, 2004, and October, 18, 2004, as to Call Center Express, Pro Line, Edgar Alirio Gonzalez, Pablo Jose Martinez, and Carlos Felipe Mendez;

C. Defendants shall remain jointly and severally liable to pay to the Commission consumer redress in an amount equal to the \$13,978,923.00 judgment, less any part of that judgment that is collected as part of the Receivership Estate, as specified in the Stipulated

Preliminary Injunction Orders referenced in subparagraph B. Defendants shall assist the Commission with its efforts to collect on the judgment that is not satisfied by surrender of Defendants' frozen assets, including, but not limited to providing the Commission with semiannual reports of their income and expenses – sworn to under penalty of perjury – and their tax returns. The semiannual reports shall be provided by December 31st and June 30th of each year, and the tax returns shall be provided within ten (10) days of filing such returns with the state or federal government, and to continue until such time as the judgment is satisfied in full;

D. All funds paid pursuant to this Paragraph shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to consumer redress and any attendant expenses for the administration of the aforementioned redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the Amended Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph;

E. Defendants shall also furnish to the Commission, in accordance with 31 U.S.C. § 7701, their taxpayer identification numbers (Social Security or employer identification number), which shall be use for purposes of collecting and reporting on any delinquent amount arising out of each Defendant's relationship with the government; and

F. Individual Defendants are further required to provide the Commission with clear, legible, and full-size photocopies of all valid driver's licenses they possess, which will be used

for collection, reporting, and compliance purposes, within ten (10) days of the Court's entry of this Order.

V. CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants, and their successors, assigns, directors, officers, agents, servants, employees, attorneys and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person: (1) who paid money to, (2) was solicited by, or (3) who was on a list maintained for future solicitation by Defendants Abreu Advertising, Inc., Liens Abreu, Rafael Abreu, Call Center Express, Pro Line, Edgar Alirio Gonzalez, Pablo Jose Martinez, or Carlos Felipe Mendez, or their agents.

VI. RECEIVERSHIP PROVISIONS

IT IS FURTHER ORDERED that:

- A. The Receiver, Lewis B. Freeman, shall wind down the affairs and marshal the records and assets of Call Center Express Corporation and Pro Line. Within forty-five (45) days after the entry of this Order, the Receiver shall file a final report to this Court describing the wind-down of the businesses of Call Center Express and Pro Line and the scope of the Receiver's activities.
- B. The Receiver and all personnel hired by the Receiver as previously authorized by the Court shall be entitled to reasonable compensation for the duties performed pursuant to this Order and for the cost of the actual out-of-pocket expenses incurred by them, from the assets now held by, or in possession or control of, or which may be received by, the Receivership

Defendants Call Center Express Corporation and Pro Line Card LLC. Funds received as consumer redress are excepted from this provision. Within forty-five (45) days after entry of this Order, the Receiver shall file with the Court and serve on the parties a final accounting and request for payment of such reasonable compensation as to the Defendants Call Center Express, Pro Line, Edgar Gonzalez, Pablo Martinez, and Carlos Mendez.

C. Upon the Court's approval of the Receiver's final report and request for payment, the Receiver shall transfer any remaining funds of Defendants to the FTC in partial satisfaction of the judgment and the Receivership shall terminate.

VII. LIFTING OF THE ASSET FREEZE

IT IS FURTHER ORDERED that the freeze against the assets of Call Center Express, Pro Line, Edgar Alirio Gonzalez, Pablo Jose Martinez, and Carlos Felipe Mendez, pursuant to the Preliminary Injunctions entered on October 5, 2004, and October 18, 2004, be lifted upon entry of this Final Order.

VIII. RETENTION OF RECORDS BY REDRESS ADMINISTRATOR

IT IS FURTHER ORDERED that the redress administrator shall destroy all records relating to this matter six (6) years after the transfer of any remaining funds to the FTC Treasury account or the closing of the account from which such funds were disbursed, whichever is earlier, provided that no records shall be destroyed unless and until a representative of the Commission has received and approved the administrator's final accounting report. Records shall be destroyed in accordance with disposal methods and procedures to be specified by the Commission. The Commission may, in its sole discretion, require that such records, in whole or in part, be transferred, in lieu of destruction, to the Commission.

IX. ENFORCEMENT OF CONTRACTS

IT IS FURTHER ORDERED that Defendants are hereby permanently restrained and enjoined from demanding payment on, or enforcing or threatening to enforce, any contract or agreement, in conjunction with the sale of advance fee credit cards or any other credit related product entered into by any Defendant prior to the effective date of this Order.

X. COMPLIANCE REPORTING BY DEFENDANTS

IT IS FURTHER ORDERED that in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order,**
 - 1. Each Individual Defendant shall notify the Commission of the following:**
 - a. Any changes in the Individual Defendants' residence, mailing addresses, and telephone numbers within ten (10) days of the date of such change;**
 - b. Any changes in the Individual Defendants' employment status (including self-employment), and ownership interest of the Individual Defendants in any business entity within ten (10) days of the date of such change. Such notice shall include the name and address of each business that the Individual Defendants are affiliated with, employed by, create or form, or perform services for; a statement of the nature of the business; and a statement of the Individual Defendants' duties and responsibilities in connection with the business or employment; and**
 - c. Any changes in the Individual Defendants' name or use of any aliases or fictitious names; and**

2. Defendants shall notify the Commission of any changes in corporate structure or any business entity that each Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For each Individual Defendant:
 - a. The then-current residence address, mailing addresses, and telephone numbers of the Individual Defendant;
 - b. The then-current employment and business addresses and telephone numbers of the Individual Defendant, a description of the business activities of each such employer or business, and the title and responsibilities of the Individual Defendant, for each such employer or

business; and

c. Any other changes required to be reported under subparagraph A of this Paragraph.

2. For all Defendants:

a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph XIII; and

b. Any other changes required to be reported under subparagraph A of this Paragraph.

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Regional Director
Federal Trade Commission
Southeast Region
225 Peachtree Street, N.E., Ste. 1500
Atlanta, Georgia 30303
Re: *FTC v. Call Center Express Corporation, et al.*
Civil Action No. 04-22289-Civ-Martinez/Bandstra

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendants.

XI. AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or

direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. Posing as consumers and suppliers to: Defendants' employees, or any other entity managed or controlled in whole or in part by the Defendants, without the necessity of identification or prior notice; and

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

XII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, in connection with any business where any Defendant is a majority owner, or directly or indirectly manages or controls a business, the Defendants and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise,

are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to copies of acknowledgments of receipt of this Order required by Paragraph XIII, and all reports submitted to the FTC pursuant to Paragraph X.

XIII. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- A. Corporate Defendant must deliver a copy of this Order to all of its principals, officers, directors, and managers. Corporate Defendant also must deliver copies of this Order to all of its employees, agents, and representatives. For current personnel, delivery shall be within

(5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. For any business that any Individual Defendant controls, directly or indirectly, or in which any Individual Defendant has a majority ownership interest, such Individual Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Such Individual Defendant must also deliver copies of this Order to all employees, agents, and representatives of that business. For current personnel, delivery shall be within (5) days of service of this Order upon Defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities.

C. For any business where any Individual Defendant is not a controlling person of a business, but otherwise engages in conduct related to the subject matter of this Order, such Individual Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. Corporate and Individual Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Part.

XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XV. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

SO ORDERED, this 26th day of September, 2005.



TED E. BANDSTRA
United States Magistrate Judge

FEDERAL TRADE COMMISSION v. CALL CENTER EXPRESS ET AL.
SERVICE LIST
Case No. 04-22289-Civ-Martinez\Bandstra

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