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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INTEGRATED CREDIT SOLUTIONS,
INC.; FLAGSHIP CAPITAL SERVICES
CORP.; LIGHTHOUSE CREDIT
FOUNDATION, INC.; MARY H. MELCER;
and J. STEVEN MCWHORTER,

Defendants, and

JEFFREY E. POORMAN; and DANIEL M.
MELGAR, SR.,

Relief Defendants.

Case No.

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

The Federal Trade Commission alleges:

1. This is an action under Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), and 53(b), to secure permanent injunctive relief and other equitable relief, including rescission of contracts, restitution and disgorgement of ill-gotten gains against defendants for engaging in unfair and deceptive acts and practices in or

affecting commerce in violation of Section 5(a) of the FTC Act, as amended, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

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

3. Venue is proper in the United States District Court for the Middle District of Florida pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

PLAINTIFF

4. Plaintiff, the Federal Trade Commission (“the Commission”), is an independent agency of the United States Government created and given statutory authority and responsibility by the FTC Act, as amended, 15 U.S.C. §§ 41-58. The Commission is charged with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission may initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of any provision of law it enforces and to secure such other equitable relief as may be appropriate in each case, including but not limited to, restitution for injured consumers. 15 U.S.C. § 53(b).

DEFENDANTS AND RELIEF DEFENDANTS

5. Defendant INTEGRATED CREDIT SOLUTIONS, INC. (“ICS”) is a for-profit Florida corporation with its principal place of business at 8550 Ulmerton Road, Suite F-200, Largo, Florida 33771. ICS was incorporated on April 27, 2000 as Flagship Capital Arbitration Services Corp. and changed its name to ICS on June 28, 2000. ICS, a wholly-owned subsidiary of defendant Flagship Capital Services Corp., is a customer acquisition and marketing company that has provided marketing services on behalf of defendant Lighthouse Credit Foundation, Inc. ICS transacts business in the Middle District of Florida.

6. Defendant FLAGSHIP CAPITAL SERVICES CORP. (“Flagship”) is a for-profit Delaware corporation with its principal place of business in the same office as ICS at 8550 Ulmerton Road, Suite F-200, Largo, Florida 33771. Flagship was incorporated on December 19, 2002, and succeeded to the interests of Flagship Capital Services Corp., a California corporation, on or about January 1, 2003. References to Flagship in this Complaint include both Flagship Capital Services Corp. (a Delaware corporation) and its predecessor Flagship Capital Services Corp. (a California corporation). Flagship transacts business in the Middle District of Florida.

7. Defendant LIGHTHOUSE CREDIT FOUNDATION, INC. (“Lighthouse”) is a Florida non-stock corporation that purports to be a non-profit credit counseling agency. Its principal place of business is located in the same building as ICS and Flagship at 8550 Ulmerton Road, Suite 125, Largo, Florida 33771. Its articles of incorporation, filed on July 14, 2000, represent that it is organized as a not-for-profit corporation. Although Lighthouse has obtained Section 501(c)(3) status from the Internal Revenue Service, it operates for the economic benefit of for-profit companies and/or private persons and is therefore a “corporation” within the meaning of Section 4 and 5(a) of the FTC Act, 15 U.S.C. §§ 44 and 45(a). Lighthouse transacts business in the Middle District of Florida.

8. Defendant Mary H. Melcer is the president and director of defendant Lighthouse and a shareholder and former officer of defendant Flagship. Individually or in concert with others, she directs, controls, formulates, or participates in the acts or practices alleged in this Complaint. Mary H. Melcer resides in the Middle District of Florida.

9. Defendant J. Steven McWhorter is defendant Flagship’s largest shareholder and a director. Until late 2002, he was also Flagship’s president and chief executive officer. He has also served as an officer and director of defendant ICS and lent money to that company through an intermediary. Individually or in concert with others, he directs, controls,

formulates, or participates in the acts or practices alleged in this Complaint. J. Steven McWhorter resides in the Middle District of Florida.

10. Relief defendant Jeffrey E. Poorman is the second largest shareholder of defendant Flagship. No violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), are alleged against Mr. Poorman, who is joined solely as a relief defendant. Mr. Poorman is a Flagship and ICS director. Since the formation of the corporate defendants, he has received funds and other property that were derived unlawfully from payments by consumers as a consequence of the acts and practices complained of herein. Jeffrey E. Poorman transacts or has transacted business in the Middle District of Florida.

11. Relief defendant Daniel M. Melgar, Sr. is the third largest shareholder of defendant Flagship. No violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), are alleged against Mr. Melgar, who is joined solely as a relief defendant. Mr. Melgar is a former Flagship and ICS director and has borrowed money from Flagship. Since the formation of the corporate defendants, he has received funds and other property that were derived unlawfully from payments by consumers as a consequence of the acts and practices complained of herein. Daniel M. Melgar, Sr. transacts or has transacted business in the Middle District of Florida.

COMMON ENTERPRISE

12. The corporate defendants have operated as a common business enterprise while engaging in the deceptive acts and practices and other violations of law alleged below. Because the corporate defendants have operated as a common enterprise, each of them is jointly and severally liable for the deceptive acts and practices and violations of law alleged below. Defendants Mary H. Melcer and J. Steven McWhorter are also jointly and severally liable for this conduct because of their participation in, and authority to control and direct, the activities of the corporate defendants.

COMMERCE

13. At all times relevant to this Complaint, the defendants have maintained a substantial course of business in the advertising and marketing of debt management programs, including the acts and practices alleged herein, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS PRACTICES

Defendants’ Entry Into the Credit Counseling Market

14. In April 1999, Flagship Capital Services Corp. and Twenty-First Century Lending Corp., two mortgage companies that lent money to consumers, merged to become Flagship. Flagship exited the consumer lending market in the summer of 2000 and entered the “customer acquisition and marketing” business through its wholly-owned subsidiary, ICS. Flagship directly controls ICS and the companies share the same management. Other than ICS, Flagship has no business operations. Flagship currently has 34 shareholders.

15. In the summer of 2000, Flagship funded the formation of Lighthouse. Lighthouse describes itself as a non-profit credit counseling organization dedicated to assisting consumers having difficulties with their personal finances. Its clients include over-extended consumers with excessive debt who are having difficulties making their required monthly payments on time.

16. The credit counseling industry has been in existence for over 50 years. Historically, credit counseling organizations have been non-profit companies offering consumers with financial difficulties advice from credit counselors. This advice may include helping consumers develop a budget and providing advice on reducing expenses or suggesting that the consumer directly negotiate reduced payments with his creditors.

17. When appropriate for a particular consumer, a credit counseling organization may also help the consumer restructure his existing debt payments through a debt management plan (“DMP”). DMPs allow consumers to pay the credit counseling organization one

consolidated monthly payment for all their unsecured debts that are included in the plan. After it collects the monthly payment, the organization disburses payments to the creditors on the plan. Creditors often reduce interest rates and waive certain fees, including late fees, to consumers who pay through a DMP.

The Marketing Program

18. Soon after its incorporation in April 2000, ICS began soliciting consumers for Lighthouse's purported credit counseling program through its call center in Largo, Florida. ICS, directly or through its third-party contractors, daily sends out thousands and sometimes millions of unsolicited pre-recorded phone messages to United States households urging consumers to contact ICS. ICS telemarketers then answer incoming calls at ICS's call center, collect an enrollment fee for Lighthouse's program from the consumer by charging the consumer's credit card, and transfer the caller to Lighthouse.

19. Although ICS has had various clients since 2000, ICS has marketed primarily on behalf of Lighthouse and has received over 90% of its gross revenue from Lighthouse. From July 2000 to the present, ICS has solicited more than 100,000 consumers to enroll in Lighthouse's credit counseling program.

20. In a typical pre-recorded message, an ICS telemarketer states that he is calling from ICS and encourages the consumer to call back to consolidate credit card payments through "a certified non-profit nationwide program." The message also states that the consumer is approved for the program as long as the consumer has credit cards, and that the consumer can reduce some of his credit card rates to "as low as 1.5%." Other ICS prerecorded messages have stated that the consumer has been "approved to consolidate [his/her] credit cards, down to as low as 1.5%." In addition, at least one ICS inbound call script reads: "We have many creditors that will go as low as 1.5%."

21. ICS telemarketers have also stated in pre-recorded messages that Lighthouse can “lower your rates before your next billing cycle.” A typical credit card billing cycle is every thirty (30) days.

22. When a consumer responds to this message, an ICS telemarketer asks him if he contacted ICS to reduce his interest rates “through non-profit credit counseling.” After the ICS telemarketer collects information about the consumer’s existing debt and interest rates, he informs the consumer that ICS works with “non-profit organizations” that are authorized by the credit card companies to lower the consumer’s debt. He also tells the consumer that the non-profit’s “responsibilities also include on-going education.”

23. In numerous instances, ICS telemarketers have informed consumers responding to the pre-recorded message that the DMP “immediately begins paying off your creditors” or that the consumer should enroll “today, this way the lower rate will be in effect by the **next** billing cycle.” (Emphasis in original script).

24. The ICS telemarketer then compares the amount that the consumer would spend to pay off his existing debt by making only the minimum monthly payment with the amount it would take the consumer to pay off the debt through a DMP over three to five years. To perform a “Savings Analysis,” ICS telemarketers refer to a schedule of creditors that lists each creditor, the interest rate that creditor will charge credit counseling clients, and the minimum monthly payment for such clients.

25. If the consumer agrees to enroll in the credit counseling program, ICS records the last few minutes of the call in which it reads a verification script that purportedly discloses the enrollment and monthly fees associated with Lighthouse DMPs. Between July 2000 and December 2002, ICS charged consumers between \$99 and \$499 to enroll in the credit counseling program. In numerous instances, ICS charged the same amount for the enrollment fee that it determined the consumer would pay monthly to Lighthouse on his DMP, as long as the amount was between \$99 and \$499.

26. For a period of time in 2002, ICS also sold consumers “educational” materials that it called the “Money Matters Financial Toolkit” (“Toolkit”). Whether charging an enrollment fee, selling a Toolkit, or both, the cost to the consumer of enrolling ranged from \$99 to \$499. In numerous instances, these fees were the same as the consumer’s monthly DMP payment to Lighthouse.

27. Between July 2000 and December 2002, the average cost to the consumer of enrolling in a Lighthouse DMP was \$280. ICS would not transfer the consumer to Lighthouse until the consumer had paid the enrollment fee, bought the Toolkit, or both.

28. ICS stopped charging enrollment fees and selling Toolkits in January 2003 after the Commonwealth of Massachusetts filed a lawsuit against it for, *inter alia*, misrepresenting to Massachusetts consumers that the enrollment in credit counseling services was “free.” Instead, Lighthouse started charging each consumer a \$38 enrollment fee after ICS had transferred a customer.

29. From July 2000 to the present, the typical monthly fee consumers have paid for Lighthouse’s credit counseling services has ranged from \$35-38. ICS informs consumers that the monthly payment to Lighthouse includes a “tax-deductible administrative fee.” If a consumer asks what the monthly payment is for, ICS telemarketers tell the consumer that the “good news” is that Lighthouse is a “true 501(c)(3) non-profit organization which may allow you to deduct that \$38 on your taxes. But please, consult a tax professional.”

30. Only after the consumer agrees to enroll and provides sufficient information for the ICS telemarketer to debit the consumer’s bank account does ICS transfer the consumer to Lighthouse. ICS does no further work on behalf of the consumer.

31. Since the inception of the relationship between ICS and Lighthouse, ICS’s compensation has been based on the number of consumers it enrolls in Lighthouse DMPs. ICS employs high-pressure sales tactics to enroll consumers in DMPs and pays its employees based on the number of enrollments they obtain. Neither ICS nor Lighthouse

spends significant time analyzing consumers' particular financial situations to determine whether a DMP was in their best interest, or whether another option, such as negotiating a workout plan with creditors or filing for bankruptcy, was more appropriate.

Establishment and Administration of the DMPs

32. After ICS transfers the consumer's call to Lighthouse, a Lighthouse representative welcomes the new "client," congratulates the consumer for "taking the first steps toward becoming debt free," and welcomes the consumer into "our credit-counseling program."

33. At the same time, the Lighthouse representative accesses the consumer's debt information that ICS had collected. ICS's and Lighthouse's computers are networked so that the consumer's information is available to Lighthouse at the push of a button once the consumer has been transferred by a telemarketer.

34. After welcoming the consumer, the Lighthouse representative reminds him that Lighthouse is a "non-profit credit counseling organization" and then verifies whether the information about the consumer's debt provided by ICS is correct. The Lighthouse representative tells the consumer the amount of the "new estimated payment" the consumer will be obligated to make to Lighthouse each month under the DMP, establishes a new due date for those payments, and informs him that Lighthouse will contact the consumer's creditors to find out the "exact" amount needed by the creditors.

35. If the consumer asks any questions about how to manage his finances, the Lighthouse representative informs the consumer that he should call back later and ask for the credit counseling department. Until October 2002, Lighthouse did not have a credit counseling department. Although Lighthouse began establishing a "credit counseling" department in October 2002 or at a later time, its few counselors received only one day of training and worked with a small fraction of Lighthouse's clients.

36. Lighthouse representatives are trained to keep their initial calls with consumers short and not to answer any of the consumer's questions about financial planning. They are

also required to meet a daily quota of consumers enrolled in DMPs. This quota has ranged between eight and twenty enrollments daily. Lighthouse representatives who did not meet the quota on a regular basis were terminated.

37. After ending the call with the client, the Lighthouse representative transfers the consumer's information to the "Proposal Follow Up Department." Only after the Follow Up Department sends the client's proposed monthly payment amount to the creditor, the creditor accepts the proposal, and the client makes one or more payments to Lighthouse do the lower interest rates and fee concessions go into effect. This process typically takes three to four billing cycles.

38. The Lighthouse representative does not discuss other financial alternatives with the consumer, such as the consumer managing his own finances by learning to budget, negotiating directly with his creditors to reduce his monthly payments, or filing for bankruptcy.

**Business Practices Relating to
Defendant Lighthouse's Claims to be a Non-Profit Credit Counseling Agency**

39. Defendant Lighthouse's articles of incorporation state that the corporation is organized exclusively for religious, charitable, scientific, literary, and educational purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code. In the course of securing Section 501(c)(3) status from the IRS, Lighthouse misrepresented its intended mission as providing consumers with credit counseling. Further, it falsely stated that it would pay no fees for customer referrals or lease space from any entity or individual connected or related to it.

40. Lighthouse engages in business for profit through its close relationship with ICS and Flagship. Some of Flagship's shareholders, including defendants Mary H. Melcer and J. Steven McWhorter, created Lighthouse and ICS to convert DMP fees into Flagship profits. Lighthouse and ICS were created within months of each other and the companies shared an

office and telephone system until Lighthouse moved to a different office in the same building.

41. Lighthouse has generated profits for Flagship by paying ICS significant fees for its marketing and DMP enrollment services pursuant to a constantly-changing series of contracts, some of which were oral. The ICS-Lighthouse contracts demonstrate that Lighthouse has operated as an instrumentality of ICS and Flagship. These contracts have been adjusted carefully over time to maximize the flow of money to ICS and Flagship.

42. ICS's revenue from Lighthouse also has directly benefitted Lighthouse's founder and president, Mary H. Melcer, in her capacity as a Flagship shareholder, and the relief defendants, as shareholders.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

44. Misrepresentations or omissions of material fact likely to mislead consumers acting reasonably under the circumstances constitute deceptive acts or practices prohibited by Section 5 of the FTC Act.

COUNT ONE *MISREPRESENTATION THAT LIGHTHOUSE OFFERS CREDIT COUNSELING SERVICES*

45. In the course of marketing debt management plans, defendants have represented, expressly or by implication, that Lighthouse will provide consumers with credit counseling services, including "on-going education."

46. In truth and in fact, Lighthouse has not provided consumers with credit counseling services or on-going education.

47. Therefore, defendants' representations are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO
MISREPRESENTATION THAT LIGHTHOUSE CAN LOWER INTEREST RATES
BEFORE THE NEXT BILLING CYCLE

48. In the course of marketing debt management plans, defendants have represented, expressly or by implication, that they can lower consumers' interest rates before the next billing cycle.

49. In truth and in fact, defendants cannot lower consumers' interest rates before the next billing cycle. Instead, it typically takes three to four billing cycles before a consumer pays lower interest rates through his DMP.

50. Therefore, defendants' representations are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT THREE
MISREPRESENTATION THAT THE MONTHLY FEE IS TAX-DEDUCTIBLE

51. In the course of marketing debt management plans, defendants have represented, expressly or by implication, that the monthly fee that consumers pay for a Lighthouse DMP is tax-deductible.

52. In truth and in fact, the monthly DMP fee is not tax-deductible.

53. Therefore, defendants' representations are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FOUR
MISREPRESENTATION THAT CONSUMERS CAN REDUCE THEIR INTEREST
RATES TO A CONSOLIDATED RATE AS LOW AS 1.5%

54. In the course of marketing debt management plans, defendants have represented, expressly or by implication, that they could lower consumers' consolidated interest rate to as low as 1.5%.

55. In truth and in fact, defendants did not lower consumers' consolidated interest rate to as low as 1.5%.

56. Therefore, defendants' representations are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FIVE
MISREPRESENTATION THAT LIGHTHOUSE IS A NON-PROFIT ENTITY

57. In the course of marketing debt management programs, defendants have represented, expressly or by implication, that Lighthouse is a non-profit entity.

58. In truth and in fact, Lighthouse is not a non-profit entity.

59. Therefore, defendants' representations are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

60. Consumers throughout the United States have suffered as a result of defendants' unlawful acts or practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

61. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including but not limited to, rescission of contracts and restitution and the disgorgement of ill-gotten gains to prevent and remedy injury caused by defendants' law violations.

PRAYER FOR RELIEF


Wherefore, plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that this Court:

1. Enter judgment against defendants and in favor of plaintiff for each violation charged in the Complaint;
2. Permanently enjoin defendants from violating the FTC Act;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from violations of law described above including, but not limited to, rescission of contracts, restitution, and disgorgement of ill-gotten gains; 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.

Respectfully submitted,

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