IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,	
Plaintiff,	Case No. 07 C 0529
v.	
	Judge Norgle
SELECT PERSONNEL MANAGEMENT, INC., *et al*.,	
	Magistrate Judge Cole
Defendants.	

MEMORANDUM SUPPORTING APPLICATION FOR ENTRY OF ORDER FOR PERMANENT INJUNCTION AND FINAL DEFAULT JUDGMENT

Plaintiff, the Federal Trade Commission ("Plaintiff" or "FTC"), respectfully requests that the Court enter an order for permanent injunction and final default judgment, including an order for seven million, eight hundred fifty-two thousand, seven hundred ninety-five United States Dollars ($7,852,795 USD) in equitable monetary redress, against all Defendants. As described more fully below, all nine Defendants are in default. Seven Defendants failed to plead, otherwise defend, or even appear.[1] Two initially answered the Amended Complaint through their former counsel, but one is now an unrepresented corporation and the other is an unrepresented individual whom the Court found in default for failing to obey its orders.[2] The $7,852,795 USD amount of the final judgment requested by Plaintiff is Defendants' net sales (*i.e.*, total sales minus refunds) from their unlawful activities. As stated in the attached

[1] Those Defendants are: Select Personnel Management, Inc., 1402473 Ontario Limited, 2105635 Ontario Limited, Special T Services Group Inc., United Registration Services, Inc., James Stewart ("Stewart"), and Philip J. Richards ("Richards") (collectively, "Non-Pleading Defendants").

[2] The two Defendants who answered the Complaint are: 1489841 Ontario Inc. ("148 Ontario") and Luigi Paulozza ("Paulozza") (collectively, "Pleading Defendants").

declaration of an FTC investigator, that undisputed figure is established by Defendants' own sales records, which were obtained pursuant to Canadian search warrants. (Plaintiff's Exhibit ("PX") 33, Krause ¶¶ 7, 8, Att. A).[3] Granting this application will resolve this case.

I. BACKGROUND

Operating from Canada, Defendants have defrauded thousands of consumers out of millions of dollars by falsely claiming that they can substantially reduce consumers' existing credit card interest rates and save consumers thousands of dollars in interest and finance charges. Defendants did not deliver the promised rate reductions or savings. In fact, Defendants did little more than add their own $695 fee to consumers' credit card balances, adding yet more financial strain on consumers already saddled with debt. Defendants' own records show that they defrauded over twelve thousand consumers out of more than $7,800,000 during the two years from January 2005 until this Court's temporary restraining order and preliminary injunction ended Defendants' business in 2007. (PX 33 Krause ¶¶ 7, 8).

Defendants used third-party telemarketers to telephone their United States victims. The telemarketers claimed that Defendants would reduce consumers' existing credit card interest rates down to rates between 4.75 percent and 9 percent for a $695 fee. Defendants "guaranteed" that these reduced rates would save consumers at least $2500 in interest and finance charges or Defendants would refund consumers' money. To bolster these claims and induce consumers to purchase, Defendants claimed that they could achieve these savings because of their special

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[3] The PX numbers continue the sequential numbering used by Plaintiff for all the exhibits it has filed in this case. PX 33 was submitted on January 13, 2009, in support of Plaintiff's motion for preliminary injunction. Docket Entry 62. PX 33 is resubmitted with this motion along with Krause Att. A. Krause Attachments B-KK are omitted because they are unrelated to the calculation of the FTC's claim for consumer redress that is the subject of this motion.

relationships with consumers' credit card companies. Ironically, Defendants charged their fees to the very same credit card balances that their services were supposed to reduce.

This is a case of outright fraud. Defendants did not reduce consumers' existing credit card interest rates down to rates between 4.75 percent and 9 percent. Consequently, consumers did not save at least $2500 and, without extraordinary effort, also did not receive refunds when Defendants did not deliver the promised savings. Needless to say, Defendants also did not have special relationships with consumers' credit card companies. In fact, the only "service" that Defendants provided for $695 was a series of short three-way telephone calls to consumers' credit card companies along with requests that consumers' interest rates be reduced— requests that were typically denied.

Defendants also engaged in the practice of "Caller ID spoofing" when telemarketing their interest rate reduction services. Instead of allowing their own telephone numbers to appear on consumers' Caller ID displays as the law requires, Defendants caused the telephone numbers of innocent third parties to appear. As a result, consumers mistakenly believed that these third parties placed the telemarketing calls. Both a Seattle, Washington, insurance company and a Las Vegas, Nevada, law firm were victims of Defendants' Caller ID spoofing and received thousands of telephone calls from irate consumers. One of them even had to cope with a bomb threat. Both firms spent considerable time and money dealing with angry consumers and trying to correct the problems caused by Defendants' illegal behavior.

II. PROCEDURAL BACKGROUND

On January 29, 2007, the FTC filed its Complaint against Select Personnel Management, Inc., and James Stewart. That same day, this Court considered exhibits submitted by the FTC and issued a temporary restraining order halting Defendants' operations. Soon after, Canadian

law enforcement authorities executed criminal search warrants and arrested not only Stewart, but also Paulozza and Richards. All three Defendants gave statements to the police and were released on condition that they later appear in court and refrain from contact with one another.

Select Personnel Management, Inc., and Stewart failed to respond to the Complaint, or even to appear. The Court issued a preliminary injunction, without opposition, and has since found them in default. The Court found that the Commission was likely to prevail on the merits and, after weighing the equities and considering the Commission's likelihood of success, issued the preliminary injunction, including an asset freeze and other relief.

On August 18, 2008, after Plaintiff was able to obtain additional evidence from domestic and Canadian sources, the FTC filed its First Amended Complaint adding five corporations and two individuals, Paulozza and Richards, as Defendants. None of the Defendants served an answer or responsive pleading or otherwise defended the Complaint. On October 31, 2008, the Court entered default against all the Defendants added by the Amended Complaint.

On November 5, 2008, an attorney appearance and an answer were filed on behalf of Defendants 148 Ontario and Paulozza. On November 14, 2008, the Court granted a motion by 148 Ontario and Paulozza to vacate the default, effectively permitting their attorney's appearance and their answer to stand. All other Defendants remained in default.

On January 13, 2009, Plaintiff filed a motion, with supporting exhibits, to extend the previously granted preliminary injunction to the Defendants named in the Amended Complaint, including Defendants 148 Ontario and Paulozza. Along with the motion, Plaintiff submitted additional evidence obtained after this case was filed, including declarations from United States telemarketers used by Defendants, excerpts from transcripts of video-recorded statements of Defendants' former employees, records from the province of Ontario, and Defendants' own

documents and records seized by Canadian authorities during the execution of search warrants. Defendants 148 Ontario and Paulozza did not file an opposition, acquiesce, or defend against the preliminary injunction. Instead, their attorney filed a motion to withdraw, which was granted on February 19, 2009. On March 6, 2009, the Court entered the preliminary injunction.

The preliminary injunction imposes certain affirmative obligations on Defendants, such as an obligation to provide Plaintiff with completed financial statements and a consent to release financial records held by financial institutions. Defendants 148 Ontario and Paulozza failed to comply with these provisions of the preliminary injunction. Plaintiff has received no contact from these Defendants or from any representative since their attorney withdrew. No substitute counsel has appeared either for Defendant 148 Ontario or Paulozza.

On April 10, 2009, the Court ordered Paulozza to appear personally at a status hearing on May 1, 2009, or risk sanctions, including default. Paulozza failed to appear as ordered, and his default was entered on May 1, 2009. Defendant 148 Ontario has no attorney of record in this case.

III. A DEFAULT JUDGMENT SHOULD BE ENTERED AGAINST ALL DEFENDANTS

A default judgment should be entered against all Defendants pursuant to Fed. R. Civ. P. 55. Once a party's default has been entered pursuant to Fed. R. Civ. P. 55(a), the Court has the discretion to enter a default judgment pursuant to Fed. R. Civ. P. 55(b)(2). *FTC v. 120194 Canada, Ltd.*, 2007 U.S. Dist. LEXIS 12657, at *25 (N.D. Ill. 2007) (Gottschall, J.).

All Defendants are in default. Default was entered against Defendants Select Personnel Management, Inc., and Stewart on May 21, 2007. (Dkt. No. 32). Default was entered against the other five Non-Pleading Defendants on October 31, 2008. (Dkt. No. 54). Default was

entered against the two Pleading Defendants on October 31, 2008. The default was later vacated after an attorney filed an answer and an appearance. Pleading Defendants' attorney withdrew on February 19, 2009, however, after the FTC sought a preliminary injunction against 148 Ontario and Paulozza, and no substitute attorney has appeared. Defendant 148 Ontario has been without counsel ever since and therefore cannot appear or defend. On May 1, 2009, default was entered against Paulozza after he failed to appear at a hearing as ordered.

In deciding whether to enter a default judgment, the Court may consider a number of factors including:

> the amount of money potentially involved, whether material issues of fact or issues of substantial public importance are at issue, whether the default is largely technical, whether plaintiff has been substantially prejudiced by the delay involved, and whether the grounds for default are clearly established or are in doubt.

Unum Life Ins. Co. of America v. Nichols, 2008 U.S. Dist. LEXIS 8766, at *4 (N.D. Ill. 2008) (citing 10A Wright *et al.,* Fed. Prac. & Pro. Civ.3d § 2685 (3d ed. 2007); *Am. Nat'l Bank & Trust Co. v. Alps Elec. Co.*, No. 99 C 6990, 2002 U.S. Dist. LEXIS 5413, at *4 (N.D. Ill. 2002)); *120194 Canada, Ltd.*, 2007 U.S. Dist. Lexis 12657, at *29 - 30 (listing additional factors). The Court should enter a default judgment in this case after considering these factors.

The amount of money involved is substantial. Defendants' own records, seized by Canadian authorities pursuant to criminal search warrants, show that Defendants had net sales of $7,852,795 USD attributable to the unlawful conduct alleged in the Amended Complaint. This figure is supported by the declaration of an FTC investigator summarizing Defendants' computer sales records. (PX 33, Krause ¶¶ 7, 8, Att. A).

This case presents issues of substantial public importance. The relief sought by the FTC, including redress for past injury to United States consumers and an injunction that protects the public from future fraudulent conduct by Defendants, is in the public interest.

The default is not largely technical. The Original Complaint was filed January 29, 2007, and the Amended Complaint was filed on August 18, 2008. All Defendants have had ample opportunity to plead or otherwise defend. None of the Non-Pleading Defendants have even appeared. In addition, none of the Non-Pleading Defendants have complied with certain affirmative obligations imposed on them by the preliminary injunction, such as the obligation to serve Plaintiff with financial statements and consents to release financial records.

The defaults against the Pleading Defendants are also not largely technical. After their attorney withdrew, no substitute attorney appeared, and Defendant 148 Ontario has remained unrepresented by counsel ever since. A corporation may not litigate in federal court unless it is represented by a licensed attorney. *U.S. v. Hagerman*, 579 F.3d 579, 581 (7th Cir. 2008) (citing *Rowland v. California Men's Colony*, 506 U.S. 194, 202, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993); *Scandia Down Corp. v. Euroquilt, Inc.,* 772 F.2d 1423, 1427 (7th Cir. 1985)).

Paulozza's default is also not largely technical. Paulozza filed an attorney appearance and answer after the Court found him in default. The Court granted his motion to vacate the default and permitted his attorney appearance and answer to stand. After Plaintiff filed a motion for preliminary injunction, however, Paulozza's attorney withdrew. No substitute attorney has appeared. No response or defense was raised against Plaintiff's motion, and the Court granted Plaintiff's uncontested motion and entered the preliminary injunction on March 6, 2009. Paulozza has not contacted Plaintiff or the Court or complied with certain affirmative obligations imposed upon him by the injunction, such as serving financial statements and a consent to

release financial records. Finally, on April 10, 2009, the Court ordered Paulozza to appear personally at a May 1 hearing, or risk sanctions, including default. He failed to appear and did not contact the Court or Plaintiff. Accordingly, the Court found Paulozza in default and his default was entered on May 1, 2009.

Delaying entry of final default judgment would prejudice Plaintiff's resolution of this action. The Non-Pleading Defendants have not appeared or done anything to indicate that they will participate in or defend this litigation. Defendant 148 Ontario is not represented by counsel and cannot appear before the Court. Paulozza's attorney withdrew on February 19, 2009, and Paulozza's default was entered on May 1, 2009, when he failed to appear at the hearing as ordered. Delaying entry of final judgment would serve no purpose because Paulozza is not participating in this litigation.

Finally, the grounds for default are clearly established. Defendants Select Personnel Management, Inc., and Stewart were properly served with the Complaint and summons and the Amended Complaint. The remaining Defendants were properly served with the Amended Complaint and summons.[4] None of the Non-Pleading Defendants have appeared. None have served an answer or other responsive pleading.

The grounds for default against the Pleading Defendants are also clearly established. Defendant 148 Ontario is not represented by licensed counsel and cannot appear or defend this litigation. *Hagerman*, 579 F.3d 579, 581. Paulozza is in default for failing to appear as ordered by the Court. The Court has clear authority to hold him in default for failing to obey its orders.

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[4] Pursuant to Fed. R. Civ. P. 5(a)(2), neither Select Personnel Management, Inc., nor Stewart were entitled to service of the Amended Complaint, because the Amended Complaint does not state a new claim for relief. Nevertheless, Plaintiff served the Amended Complaint on Select Personnel Management, Inc., on September 30, 2008. (Dkt. No. 53).

Flowers v. U.S. Postal Serv., 2009 U.S. Dist. LEXIS 20565, at * 6 (N.D. Ill. 2009) (Kennelly, J.) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-30, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962)). The grounds for default are clearly established because Defendant 148 Ontario cannot defend, and Paulozza has shown that he is not going to participate in this litigation, let alone defend it.

Paulozza was properly served with Plaintiff's application for entry of order for permanent injunction and final default judgment and provided the three days notice required by Fed. R. Civ. P. 55(b)(2). The unrepresented corporation, 148 Ontario, cannot appear before the Court. The Non-Pleading Defendants are not entitled to notice because they have never appeared. Fed. Civ. P. 5(a)(2); 55(b)(2); *Zuelzke Tool & Engineering Co., Inc., v. Anderson Die Castings, Inc.,* 925 F.2d 226, 231 (7th Cir. 1991). Therefore, final default judgment should be entered against all Defendants.

IV. THE DEFAULT JUDGMENT SHOULD BE ENTERED AGAINST DEFENDANTS JOINTLY AND SEVERALLY FOR SEVEN MILLION, EIGHT HUNDRED FIFTY-TWO THOUSAND, SEVEN HUNDRED NINETY-FIVE UNITED STATES DOLLARS ($7,852,795 USD) IN CONSUMER REDRESS

The final default judgment should include an order for payment of $7,852,795 USD in consumer redress, the amount of Defendants' net sales (*i.e.*, total sales minus refunds) from their unlawful activities. The appropriate amount of monetary relief in FTC cases seeking consumer redress is the full amount of the consumer injury caused by Defendants' unlawful business practices, *i.e.*, Defendants' total net sales from those practices. *FTC v. Febre*, 128 F.3d 530, 535 (7th Cir. 1997); *FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 606-607 (9th Cir. 1993); *120194 Canada, Ltd*, 2007 U.S. Dist. LEXIS 12657, at *23. The $7,852,795 USD consumer injury figure is clearly shown in the declaration of an FTC investigator and is derived from Defendants'

own sales records, which were seized by Canadian authorities pursuant to search warrants. (PX 33 Krause ¶¶ 7, 8, Att. A).

When a court determines that a Defendant is in default, the allegations in the Complaint are taken as true. *Unum*, 2008 U.S. Dist. LEXIS 8766, at *4 (citing *O'Brien v. O.J. O'Brien & Assocs.,* 998 F.2d 1394, 1404 (7th Cir. 1993); *Black v. Lane*, 22 F.3d 1395, 1399 (7th Cir. 1994)). Although the factual allegations relating to liability are taken as true, allegations as to damages ordinarily are not. *Unum*, 2008 U.S. Dist. LEXIS 8766, at *5. Instead, "[t]he court may conduct hearings or make referrals. . . when, to enter or effectuate judgment, it needs to: . . . (B) determine the amount of damages . . . ." Fed. R. Civ. P. 55(b)(2). "[N]o such inquiry is necessary if 'the amount claimed is liquidated or capable of ascertainment from definite figures contained in the documentary evidence or in detailed affidavits.'" *Unum*, 2008 U.S. Dist. LEXIS 8766, at *6 (citing *Dundee Cement Co. v. Howard Pipe & Concrete Prods. Inc.,* 722 F.2d 1319, at 1323 (7th Cir. 1983); *Pope v. United States*, 323 U.S. 1, 12, (1944)).

Here, no elaborate inquiry is necessary because an FTC investigator's declaration, relying upon Defendants' own sales records obtained through Canadian search warrants, shows that Defendants' total net sales from their deceptive practices was $7,852,795 USD, the amount of consumer redress that Plaintiff seeks. (PX 33 Krause ¶¶ 7,8). Defendants should be held jointly and severally liable for that amount of consumer redress. *E.g.*, *FTC v. Bay Area Business Council, Inc.*, 2004 U.S. Dist. LEXIS 6192, at *41-*42 (N.D. Ill. 2004), *aff'd*, 423 F.3d 627 (7th Cir. 2005). Therefore, the final default judgment should include an order holding Defendants jointly and severally liable for payment of $7,852,795 USD in consumer redress.

V. THE COURT SHOULD ENTER AN ORDER FOR PERMANENT INJUNCTION

Plaintiff also seeks injunctive relief to prevent Defendants from engaging in the practices alleged in the Complaint and to aid in monitoring Defendants' compliance with the requested injunction. This Court has the authority to exercise the full breadth of its equitable authority under Section 13(b) of the FTC Act and to enter the requested permanent injunction. *FTC v. Amy Travel Service*, 875 F.2d 564, 571-72 (7th Cir. 1989). The permanent injunctive relief sought bears a reasonable relation to the defendants' unlawful practices, yet is framed broadly enough to prevent them from engaging in similarly illegal practices in the future. *See FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 395 (1965). "'The Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past.'" *Id*. (quoting *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952)). "Having been caught violating the Act, respondents 'must expect some fencing in.'" *Id.* (quoting *FTC v. Nat'l Lead Co.*, 352 U.S. 419, 431 (1957)). "Moreover, courts have ordered broad bans on otherwise legitimate behavior based on the past conduct of defendants as a means of preventing potential future law violations." *FTC v. Five-Star Auto Club, Inc.*, 97 F.Supp.2d 502, 536 (S.D.N.Y. 2000) (citing *FTC v. Micom*, 1997 U.S. Dist. LEXIS 3404, at *6 (S.D.N.Y. 1997); *FTC v. Wetherill*, 1993 WL 264557, at *6 (C.D. Cal. 1993)).

Strong injunctive relief is particularly appropriate in this case because of Paulozza's long history of deceptive telemarketing against United States victims and the millions of dollars in consumer injury caused by Defendants. Paulozza is subject to a district court order in a prior FTC case brought against him and others for deceptively telemarketing programs that he falsely claimed would protect consumers from harm caused by lost or stolen credit cards. *FTC and State of Oklahoma v. Universal Marketing Services, Inc.*, Case No. Civ-00-1084 L (W.D. Okl.

2000) (stipulated order for permanent injunction). Therefore, the proposed permanent injunction bans Paulozza and his confederates from telemarketing, or assisting others engaged in telemarketing. *Five-Star Auto Club, Inc.*, 97 F.Supp.2d 502, 536; *Wetherill*, 1993 WL 264557, at *6 (ban on telemarketing).

The proposed permanent injunction also prohibits Defendants from violating Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, and the "Telemarketing Sales Rule," 16 C.F.R. Part 310. Specifically, the proposed permanent injunction prohibits Defendants from misrepresenting: (a) an affiliation with consumers' credit card companies; (b) that consumers who pay a fee and receive services are likely to experience a reduction in their existing credit card interest rates, such as a reduction in rates to between 4.75 percent and 9 percent; (c) that consumers who pay a fee and receive services will save at least $2500, or some other amount, in credit card interest charges; and (d) that consumers who pay a fee to purchase services will be provided a refund of the cost of those services if the consumers do not save the represented amount in credit card interest charges.

The permanent injunction should also include various monitoring and "fencing-in" provisions that are remedial in nature and designed to prevent injury to the public and to deter future illegal conduct. Accordingly, the proposed preliminary injunction contains provisions similar to those granted by default and summary judgment in other FTC cases. *FTC v. Datacom Marketing,* Case No. 06-2754 (Holderman, J.) (default judgment entered on May 6, 2008); *FTC v. Oks*, Case No. 05-5389 (N.D. Ill. 2008) (Guzman, J.) (summary judgment and default judgment; order issued March 24, 2008); *FTC v. Pacific First Benefit, LLC*, 472 F. Supp. 2d 981

(N.D. Ill. 2007) (Norgle, J.); *FTC v. 120194 Canada, Ltd.*, 2007 U.S. Dist. LEXIS 12657 (N.D. Ill. 2007) (Gottschall, J.).

VI. CONCLUSION

For the foregoing reasons, the FTC respectfully asks that, pursuant to Fed. R. Civ. P. 55(b)(2), the Court enter an order for permanent injunction and final default judgment against all the Defendants, including an order for $7,852,795 USD in equitable monetary redress. A proposed Order for Permanent Injunction and Final Default Judgment is submitted with this motion.

Respectfully submitted,

Dated: May 11, 2009

s/ John C. Hallerud
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