UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FEDERAL TRADE COMMISSION and OFFICE OF ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, STATE OF FLORIDA,

Plaintiffs,

vs. Case No. 3:10-cv-266-J-34JBT

ALCOHOLISM CURE CORPORATION, also doing business as Alcoholism Cure Foundation, and ROBERT DOUGLAS KROTZER, individually and as an officer and/or director of Alcoholism Cure Corporation,

Defendants.

ORDER ON REMEDIES

Plaintiffs Federal Trade Commission and the State of Florida brought this civil enforcement action against Defendants Alcoholism Cure Corporation, doing business as Alcoholism Cure Foundation ("ACF") and Robert Douglas Krotzer ("Krotzer"), alleging deceptive practices and false advertising, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 5 U.S.C. §§ 45, 52 ("FTC Act"), and the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 et seq. ("FDUPTA") (Doc 1; Complaint). On September 16, 2011, the Court granted Plaintiffs' motion for summary judgment with regard to the liability of Defendant Krotzer for violating the FTC Act and FDUPTA, finding that Krotzer made false and deceptive representations regarding: 1) the efficacy of ACF's

Permanent Cure Program's ability to cure alcoholism; 2) the scientific substantiation of the Permanent Cure Program; 3) the cost and cancellation policy for the Permanent Cure Program; 4) the professional qualifications of Krotzer and other ACF employees; and 5) the confidentiality and privacy of consumers' sensitive personal financial and medical information. (Doc. 159; Summary Judgment Order at 83-132). Additionally, the Court determined that Krotzer was liable for unfair practices by charging consumers without first obtaining express informed consent from those consumers. Id. at 132-139; see also id. at 139-143.

As to Defendant ACF, the Court entered an Order Granting Judgment of Default Against Defendant Alcoholism Cure Corporation. (Doc. 171; Default Judgment). In so doing, the Court determined that Plaintiffs stated a claim for which relief may be granted in Counts I through VII of the Complaint, and that by failing to respond to the Complaint, ACF had admitted the factual allegations and statutory violations set forth therein. Accordingly, the Court found ACF liable under each Count set forth in the Complaint, consistent with the Court's finding as to Defendant Krotzer's liability. Id.

Before the Court is Plaintiffs' Motion for Remedies Against Defendant Robert Douglas Krotzer (Doc. 162; Motion for Remedies as to Krotzer); Plaintiffs' [Proposed] Final Judgment and Order for Injunctive Relief Against Defendant Robert Douglas Krotzer (Doc. 162-1; Proposed Krotzer Judgment); and Plaintiff's [Proposed] Final Judgment and Order for Injunctive and Other Equitable Relief Against Defendant Alcoholism Cure Corporation (Doc. 161-1; Proposed ACF Judgment). Defendant Krotzer has submitted Defendant's Response to "Plaintiffs' Motion for Remedies Against Defendant Robert Douglas Krotzer." (Doc. 170;

Krotzer Response). The Court has reviewed thoroughly the submissions, and is familiar with the substantial evidentiary material submitted in support of and opposition to Plaintiffs' Motion for Summary Judgment.

A. Equitable Relief

Section 13(b) of the FTC Act provides: "in proper cases, the [FTC] may seek, and after proper proof, the court may issue, a permanent injunction." 15 U.S.C. § 53(b). "While the provision's express text refers only to injunctive relief, courts have consistently held that 'the unqualified grant of statutory authority to issue an injunction under [S]ection 13(b) carries with it the full range of equitable remedies, including the power to grant consumer redress and compel disgorgement of profits.'" FTC v. Bronson Partners, LLC, 654 F.3d 359, 365 (2d Cir. 2011)(quoting FTC v. Gem Merch. Corp., 87 F.3d 466, 468 (11th Cir. 1996) and citing other cases); FTC v. Transnet Wireless Corp., 506 F. Supp.2d 1247, 1271 (S.D. Fla. 2007); FTC v. Capital Choice Consumer Credit, Inc., No. 02-21050 CIV, 2004 WL 5149998, at *43 (S.D. Fla. Feb. 20, 2004), aff'd 157 F. App'x 248 (11th Cir. 2005). Similarly, FDUPTA provides that the State may bring an action seeking to "enjoin any person who has violated, is violating, or is otherwise likely to violate" the FDUPTA, and that the Court may "make appropriate orders, including but not limited to . . . grant[ing] legal, equitable, or other appropriate relief . . . ." Fla. Stat. § 501.207(1)(b) and (3).[1]

[1] The remedies discussed in this Order are equally applicable to both the Defendants' violation of the FTC Act and FDUPTA. First, FDUPTA was modeled after the FTC Act, and looks to interpretations of the FTC Act for guidance in determining "unfair or deceptive acts or practices." Fla. Stat. §§ 501.204(1) and (2). Additionally, Florida Statutes section 501.207, sets forth remedies available to the Office of Attorney General, Department of Legal Affairs, State of Florida, as the state's enforcing authority under FDUPTA. Specifically, FDUPTA provides in such a suit brought under FDUPTA by the State, the court, upon motion by the State, "may make appropriate orders . . . to reimburse consumers or governmental entities found to have been damaged; . . . to impose reasonable restrictions upon the future

(continued...)

B. Permanent Injunction

Permanent injunctive relief is appropriate when "'the defendant's past conduct indicates that there is a reasonable likelihood of further violations in the future.'" FTC v. RCA Credit Servs., LLC, 727 F. Supp.2d 1320, 1335 (M.D. Fla. 2010)(quoting SEC v. Caterinicchia, 613 F.2d 102, 105 (5th Cir. 1980)[2]); see also FTC v. Nat'l Urological Group, Inc., 645 F. Supp.2d 1167, 1208-09 (N.D. Ga. 2008), aff'd, 356 F. App'x 358 (11th Cir. 2009), cert. denied, 131 S.Ct. 505 (2010).

> In determining the likelihood of future violations, courts consider "the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations."

FTC v. RCA Credit Servs., 727 F. Supp.2d at 1335 (quoting SEC v. Carriba Air, Inc., 681 F.2d 1318, 1322 (11th Cir. 1982)); see also FTC v. Nat'l Urological Group, Inc., 645 F. Supp.2d at1209 (the "cognizable danger of future violations" is determined by looking to "the nature of the . . . violations, whether the defendants' current occupations position them to commit future violations, and the alleged harm to consumers if the wrongs recur"). "'[T]he fact that illegal conduct has ceased does not foreclose injunctive relief.'" FTC v. Nat'l

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[1](...continued)
activities of any defendant to impede him or her from engaging in or establishing the same type of endeavor; . . . or to grant legal, equitable, or other appropriate relief." Fla. Stat. § 501.207(3); see also Taubert v. State, Office of Att'y Gen., 79 So.3d 77, 79 (Fla. 1st DCA 2011); Black v. Dep't of Legal Affairs, 353 So.2d 655, 656 (Fla. 2d DCA 1977).

[2] In Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1207 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

Urological Group, Inc., 645 F. Supp.2d at 1209. (quoting FTC v. Citigroup Inc., 239 F. Supp.2d 1302, 1306 (N.D. Ga. 2001)); see also FTC v. USA Fin., LLC, 415 F. App'x 970, 975 (11th Cir. 2011). "Injunctive relief looks to future harm and is designed to deter the conduct rather than punish." FTC v. Bronson Partners, LLC, 674 F. Supp.2d 373, 393 (D. Conn. 2009)(citing Dombrowski v. Pfister, 380 U.S. 479 (1965)), aff'd, 654 F.3d 359 (2d Cir. 2011).

Krotzer urges that the Court "merely enjoin him to comply with the FTC Act § 5 and 12," and to not enter a broad "onerous" injunction prohibiting him from engaging in an array of business activities, or applying prohibitions or requirements to "any recognized charity, public corporation or government agency who employs him . . . ." Krotzer Response at 4. At minimum, according to Krotzer, any permanent injunction should exempt or exclude "any government funded or major corporate or charitable research corporations" from its provisions, id. at 5, because otherwise, it is "unlikely prominent scientists will want to work with Krotzer or even see the data." Id. at 10. Indeed, Krotzer contends that "many" of the "remedies" requested by Plaintiffs "would be harmful to consumers." Id. at 6.

Krotzer specifically objects to any injunction that applies to "'persons and entities in Active Concert and Participation'" with Krotzer, and opposes those portions of Plaintiffs' Proposed Krotzer Judgment that "require Krotzer to report reputable researchers to FTC annually and subject their employees to interrogation at FTC's whim." Krotzer's Response at 11. According to Krotzer,"[n]o reasonably prominent scientists nor major scientific organizations will explore any technology at risk to their careers. They cannot afford that

risk, however, small." Id. He further contends that "this litigation has been unreasonable harassment." Id. at 14. States Krotzer:

> Defendants' demonstrated helpfulness to consumers and good intentions should entirely exempt his future scientific research from any limitations [footnote omitted] on sharing his records with recognized charities, publically owned corporations and affiliates and agencies of the US government, including all monitoring provisions as they apply to those "participating or in active concert" with Krotzer who are recognized charities, publically owned corporations and affiliates and agencies of the US government.

Id. at 15-16. He continues:

> There is no conceivable way applying the injunctive remedies, fencing out or monitoring provisions to major charities, publically owned corporations and affiliates and agencies of the US government as FTC seeks to do with its all pervasive language "participation or active concert" in the Proposed Order would benefit consumers.

Id. at 18; see also id. at 19-20 (broad injunctive provisions "can do a lot of harm to consumers to the extent they close off a promising approach to curing alcoholism").

Without a doubt, this is a proper case for entry of a broad permanent injunction against Defendants, under § 13(b) of the FTC Act, and FDUPTA, as there is good cause to believe that Defendants, or their successors, are likely to engage in acts or practices that violate Sections 5(a) and 12 of the FTC Act and FDUPTA, and that Plaintiffs are entitled to a permanent injunction. See FTC v. SlimAmerica, Inc., 77 F. Supp.2d 1263, 1275 (S.D. Fla. 1999). Indeed, the evidence clearly demonstrates that Defendants' previous violations of the FTC Act and FDUPTA were intentional, numerous, repetitive, long-standing, egregious, widespread and deceptive, involving a harmful advertising scheme that duped vulnerable consumers to sign up for an expensive and non-scientifically supported alcohol cure

program. The advertising, websites, and promotional conversations for the Permanent Cure Program were false, misleading, and contained numerous unsubstantiated claims about the efficacy of the program and the qualifications of those who developed and administered it. Additionally, imbedded in the Program was a scheme to bilk consumers of their funds, with Defendants obtaining access to consumers' bank accounts or credit cards, and withdrawing funds at will, without express authorization.

In addition to the gravity of the past violations, the need for a permanent injunction is further supported by Krotzer's lack of recognition of the harmful nature of his actions as well as evidence in the record of Defendant Krotzer's continued activities. Indeed, Krotzer continued with deceptive Internet advertising and collection of money from consumers after the May 26, 2010 entry of the parties' Stipulated Preliminary Injunction (Doc. 12-1). See Summary Judgment Order at 50-51; Doc. 158 at 14 (Krotzer representing that he had collected $26,000 from consumers after entry of Stipulated Preliminary Injunction). FTC v. Gill, 265 F.3d 944, 957 (9th Cir. 2001)(affirming injunction on credit repair services because defendant continued challenged practices after stipulated preliminary injunction). Moreover, Krotzer continues to espouse the virtues of the Permanent Cure Program and "Molecule Multiplicity," and their "healing" abilities for "curing" alcoholism," and unabashedly states that he intends to continue with the development of his alcoholism cure program, showing no remorse for his past deceptions.[3] He claims that he is "talking with" the National Institute of

[3] Krotzer's Response is rife with his continued assertions that the Permanent Cure Program and Molecule Multiplicity cured consumers' alcoholism. Krotzer states that: he could not keep up with the requirements of the FTC Act because "[h]e was too busy helping alcoholics achieve good results . . . ," Krotzer Response at 3; the proposed remedies "are squarely aimed at penalizing Defendant for being dazzled by nearly all his members reporting success in the first six months," id. at 7; the "penalties" will (continued...)

Alcohol Abuse and Alcoholism ("NIAAA") and the National Center for Complementary and Alternative Medicine ("NCCAM"), divisions of the National Institute of Health ("NIH"), which are "enthusiastic about making several large grants to Krotzer," Krotzer's Response at 7, 9, 15 n.7, and states that he is searching for a prominent alcoholism research scientist "to take charge of the studies," but that he has lost a job offer "because of fear of FTC retaliation." Id. at 9; see also id. at 5 (describing Krotzer's "current activities of soliciting research grants from government and major institutions"). Krotzer states that since the Court's Summary Judgment Order, his work has "been directed to the only source of funding of natural medicine development requiring expensive tests as a condition of marketing patentless and profitless programs, the US government, NIH, NIAAA, and NCCAM." Id. at 18. Krotzer's efforts are targeted at eventually re-marketing his "Molecule Multiplicity" "technology" to consumers, as is evident by his argument that an injunction will hurt consumers. E.g. Krotzer Response at 6,18, 19. Moreover, Krotzer's patent application sets forth his internet method to "captur[e] and retain[ ]" consumers in a "voluntary treatment program," providing a means to "join" "immediately on- line through acceptance of credit cards as payment." Doc. 58-19 at 2 (Internet Patent Appl. at 1 (Abstract)). If Defendants or their successors were to renew their deceptive marketing and representations, the harm to consumers in search of a "cure" for alcoholism or other health-related ailments, is "certain and serious," causing both financial and possibly physical harm to consumers who forego receiving

[3](...continued)
cause consumers to "suffer from throwing the Molecule Multiplicity baby out with the bathwater," id.; "[s]everal Molecule Multiplicity ingredients also work by decreasing excitement in the brain," id. at 9; "the technological advances of this breakthrough technology the scientific community wants to explore," id. at 12; "[u]ndisputedly [sic], nearly all members confirmed they were cured . . . ," id. at 16; and "nearly all who followed their program confirmed they were cured," id. at 29.

needed medical care, or suffer physical harm from overdosed ingredients and undisclosed interactions of the products "prescribed" by Krotzer. See Summary Judgment Order at 27-30, 45-47. Thus, a permanent injunction enjoining Defendants, their successors and agents, and "all persons or entities in active concert or participation with" Defendants is necessary and proper under these circumstances.[4] The Final Judgment and Order for Permanent Injunctive and Other Equitable Relief ("Permanent Injunction"), to be issued, will set forth in detail the conduct enjoined. See FTC v. Bronson Partners, LLC, 674 F. Supp.2d at 393.[5]

C. "Fencing In"

The Court has the discretion to model its injunctive order "to fit the exigencies of the particular case, and the power to enjoin related unlawful acts that may be fairly anticipated from defendants' past conduct." FTC v. SlimAmerica, Inc., 77 F. Supp.2d at 1275. The facts of this case counsel that Defendants must be prohibited from engaging in a broad range of consumer-related businesses. Specifically, the Permanent Injunction to be entered

[4] Indeed, if Defendants have no intention of continuing to sell their Permanent Cure Program, "Molecule Multiplicity," or iterations thereof, an injunction preventing them from doing so causes them no harm or inconvenience.

[5] The Court's Final Judgment and Order for Permanent Injunction and Other Equitable Relief Against Defendants Alcoholism Cure Corporation and Robert Douglas Krotzer ("Permanent Injunction") does not adopt all of the provisions recommended by Plaintiffs in their Proposed Krotzer Judgment and Proposed ACF Judgment, because the Court is of the view that many of the Plaintiff's proposed prohibitions are subsumed by the Court's first provision which permanently restrains and enjoins Defendants, and those defined therein, from "Labeling, advertising, promoting, offering for sale, selling or distributing any Covered Product or Covered Service to treat or cure alcohol or drug dependence, or other human health-related problems, including, but not limited to, alcoholism, drug addiction, alcohol abuse, drug abuse, obesity/weight loss, depression, and asthma," or assisting others in doing the same. Permanent Injunction, Section I. Accordingly, no prohibition of representations "in connection with" the sale or promotion of "Covered Products or Services" or health-related claims is necessary, and any such provision may, in fact, be confusing in light of the overall prohibition against advertising, promoting or selling Covered Products and Services.

must reach future conduct and activities related to "covered products" and "covered services," defined as follows:

> 10. "Covered Product" means any dietary supplement, food, drug, device, or health-related product, including any product to treat or cure alcohol or drug dependence or other human health-related problems, including, but not limited to, alcoholism, drug addiction, alcohol abuse, drug abuse, obesity/weight loss, depression, and asthma
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> 11. "Covered Service" means any health-related service or program, including, but not limited to, the Permanent Cure Program, and any service to treat or cure alcohol or drug dependence or other human health-related problems, including but not limited to, alcoholism, drug addiction, alcohol abuse, drug abuse, obesity/weight loss, depression, and asthma.

Such broad equitable relief has been approved under the FTC Act. For instance, in FTC v. Colgate-Palmolive Co., 380 U.S. 374 (1965), the Supreme Court approved the FTC's broad cease and desist order prohibiting the defendant, which used a deceptive mock-up in the advertising of its shaving cream, from unfairly or deceptively advertising its product by presenting a false test or demonstration in the future, based upon evidence that defendant had employed the same deceptive practice in three different television commercials. The court stated:

> [W]e find no defect in the provision of the order which prohibits respondents from engaging in similar practices with respect to 'any product' they advertise. The propriety of a broad order depends upon the specific circumstances of the case, but the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist.

380 U.S. at 394-95. The Court noted that "'[T]he Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past.' Having been caught violating the [FTC] Act, respondents 'must expect some fencing in.'" Id. at 395

(quoting FTC v. Nat'l Lead Co., 352 U.S. 419, 431 (1957)); see also FTC v. RCA Credit Servs., 727 F. Supp.2d at 1335.

This "fencing-in" rationale applies equally to cases brought in court for violations of the FTC Act. Where a defendant's conduct has been determined to be deceptive and false, in violation of the FTC Act, as here, then the FTC may be entitled to a permanent injunction enjoining defendant from making false and misleading statements in connection with the sale of any goods and services. See FTC v. 1st Guar. Mortg. Corp., No. 09-cv-61840, 2011 WL 1233207, at *21 (S.D. Fla. March 30, 2011)(order enjoining defendants from making false and misleading statements in connection with the marketing of any goods, and enjoining them from profiting from customer information gained through deception). "'[I]njunctive relief may be broader than the violations alleged in the complaint as long as the relief is reasonably related to the violations of the FTC Act which occurred, and is not too indefinite.'" FTC v. Nat'l Urological Group, Inc., 645 F. Supp.2d at 1215 (citation omitted); see also FTC v. SlimAmerica, Inc., 77 F. Supp.2d at 1275 ("'Broad injunctive provisions are often necessary to prevent transgressors from violating the law in a new guise'" (citation omitted)). "'Fencing-in' provisions, so long as they bear a reasonable relation to the unlawful practices found to exist that extend beyond the specific violations at issue, can also be utilized to prevent Defendants from engaging in similar deceptive practices in the future." FTC v. RCA Credit Servs., LLC, No. 8:08-CV-2062-T-27AEP, 2010 WL 2990068, at *5 (M.D. Fla. July 29, 2010). Factors considered in determining whether a broad "fencing-in" order bears a "reasonable relationship" to a defendant's violation of the FTC Act are "(1) the deliberateness and seriousness of the violation, (2) the degree of transferability of the

violation to other products, and (3) any history of prior violations." Kraft, Inc. v. FTC, 970 F.2d 311, 326 (7th Cir. 1992).

Broad fencing in provisions are appropriate in this case to remedy Defendants' violations of the FTC Act and FDUPTA, and to prevent them from engaging in similar deceptive practices in the future. The broad provisions are reasonably related to the Defendants' unlawful conduct and promised or possible conduct in the future. Krotzer's proposed patent contemplates applying his internet methodology to "the treatment of human problem conditions such as alcoholism, obesity/weight loss, depression, or the like." Internet Patent Appl. at 1 (Abstract). Additionally, Krotzer created a PayPal account in 2008 for an entity called "Cure Your Asthma Now," (Doc. 123-1 at 1109), and offered on the ACF Website a "new" "Weight-Loss Program," - "Sign up for this option with or without another program" - prescribing the same ingredients as the alcoholism program. (Doc. 58-4 at 27). Moreover, Defendants repeatedly, and over a period of at least four years, made numerous unsubstantiated efficacy claims that the Permanent Cure Program could actually treat and "cure" alcoholism," and misrepresented that the Program was validated by prestigious medical studies, including a $35 million study reported in the American Journal of Psychiatry, as reported in the Wall Street Journal. See Summary Judgment Order at 26. Theirs was not an isolated misrepresentation, but rather a long-term pattern of deception. Given the transferable nature of Defendants' marketing scheme to other health-related "products" or "services," and the likelihood that Defendant Krotzer's future use of internet marketing will lead to great harm to consumers in any of these health-related areas, an injunction reaching those covered products and services listed is necessary and appropriate.

Cf. FTC v. 1st Guar. Mort. Corp., 2011 WL 1233207, at *12 ("[c]ourts have banned defendants who have demonstrated a propensity to use telemarketing to deceive consumers in other FTC cases").[6]

D. Compliance Monitoring Provisions

Reporting and Monitoring provisions are appropriate in this case to ensure compliance with the Permanent Injunction. See FTC v. RCA Credit Servs., 727 F. Supp.2d at 1335; FTC v. Capital Choice Consumer Credit, Inc., No. 02-21050 CIV, 2004 WL 5141452, at *4 (S.D. Fla. May 5, 2004), aff'd, 157 F. App'x 248 (11th Cir. 2005); FTC v. SlimAmerica, Inc., 77 F. Supp.2d at 1276. Plaintiffs allege the Defendants did not fully comply with the preliminary injunction, and Krotzer continues to attempt to develop his alcoholism program. Moreover, the compliance monitoring provisions rightfully must extend to "all persons or entities in active concert or participation" with Defendants. Krotzer is actively recruiting partners to lend scientific legitimacy to his "Molecule Multiplicity" theory. See Krotzer Response at 7-8,9, 15 and (Doc. 170-5 (Ex. E)). Additionally, he has marketed himself and the product on variously named websites. See Summary Judgment Order at

[6] Commercial expression is protected by the first amendment only if it concerns lawful activity and is not misleading. Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557, 566 (1980). However, "[e]ven truthful commercial speech can be regulated if the government's interest in regulation is substantial and if the regulation directly advances that interest and is not more extensive than necessary." Litton Indus., Inc. v. FTC, 676 F.2d 364, 373 (9th Cir. 1982)(citing Central Hudson, 447 U.S. at 566). Thus, any remedy "'reasonably necessary to the prevention of future violations does not impinge upon constitutionally protected commercial speech.'" Id. (quoting United States v. Reader's Digest Ass'n, 662 F.2d 955, 965 (3d Cir. 1981)). The Court determines that the FTC's proposed injunctive provisions, and those adopted by the Court in its Permanent Injunction filed concurrently herewith, do not raise any constitutional concerns because they prohibit only the dissemination of deceptive and misleading advertisements and representations regarding covered services or products. The injunctive provisions do not prohibit Defendants from making any claims that are truthful, non-misleading and adequately substantiated.

50-51. Broad compliance monitoring provisions are necessary to ensure Defendants' compliance with the Court's Permanent Injunction, to be entered herewith.

E. Equitable Monetary Relief

Plaintiffs seek full consumer redress in the amount of $732,480 from Defendants, jointly and severally,[7] which sum Plaintiffs assert represents sales figures minus refunds to

[7] "Defendants who have violated Section 5 of the FTC [A]ct can be held jointly and severally liable for the total amount of the consumer injury." FTC v. Transnet Wireless Corp., 506 F. Supp.2d at 1271. Where "each defendant repeatedly participated in the wrongful acts and each defendant's acts materially contributed to the losses suffered, all defendants [may be] held jointly and severally liable." FTC v. Gem Merch. Corp., 87 F.3d at 468. "'Because of joint and several liability, a defendant may be called upon to redress the harm to consumers in an amount far exceeding the value of assets currently held by that defendant and that are traceable to the illegal enterprise. Indeed, a defendant who is jointly and severally liable may be required to redress the entire consumer injury." FTC v. Home Assure, LLC, No. 8:09-cv-547-T-23TBM, 2009 WL 1043956, at *3 n. 14 (M.D. Fla. April 16, 2009)(citation omitted).

Defendant ACF is liable for monetary relief under Section 13(b) upon the showing that "'the corporation engaged in misrepresentations or omissions of a kind usually relied on by reasonably prudent persons and that consumer injury resulted.'" FTC v. Nat'l Urological Group, Inc., 645 F. Supp.2d at 1211 (citation omitted). ACF, having admitted all of the allegations in the Complaint, and having defaulted as to liability, is liable for the monetary relief ordered in the Court's Permanent Injunction.

Defendant Krotzer may be held individually liable for ACF's violations, and thus, obligated to make consumer redress because the evidence establishes that he (1) participated directly in the deceptive acts and practices and false statements, or (2) had authority to control them and had some knowledge of the practices. FTC v. Gem Mech. Corp., 87 F.3d at 470; see also FTC v. USA Fin., LLC, 415 F. App'x at 974; FTC v. RCA Credit Servs., 727 F. Supp.2d at 1339; FTC v. 1st Guar. Mortg. Corp., 2011 WL 1233207, at *14-15; FTC v. SlimAmerica, Inc., 77 F. Supp.2d at 1276 . "Authority to control the company can be shown by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer." FTC v. Capital Choice Consumer Credit, Inc., 2004 WL 5149998, at *46. "The knowledge requirement may be met by showing that the individual had 'actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth.'" Id. (quoting FTC v. SlimAmerica, 77 F. Supp.2d at 1276). Here, Krotzer, 100 percent owner of ACF, undisputably participated in the deceptive conduct, creating the deceptive ACF Permanent Cure website which lured consumers to him, and then directly making misrepresentations and false statements to consumers regarding the efficacy and terms of the Program. Moreover, as sole officer and owner of ACF, he unquestionably had the authority to control the corporation's business affairs. For the reasons set forth in the Court's Summary Judgment Order, Krotzer knew that the representations regarding the Permanent Cure Program's ability to cure alcoholism were deceptive, or at minimum displayed a reckless indifference to their truth or falsity. Summary Judgment Order at 143-44; see also FTC v. RCA Credit Servs., 727 F. Supp.2d at 1339-40. Because Krotzer is liable for the acts of ACF, and for his own individual conduct, joint and several liability is appropriate here. See FTC v. Nat'l Urological Group, Inc., 645 F. Supp.2d at 1214.

consumers. Motion for Remedies as to Krotzer at 13-15. Krotzer contends "it is fundamentally unreasonable and unjust [sic] apply to him monetary remedies" because unlike other FTC cases, he has not "profited" from his conduct, having "contribut[ed] his entire fortune to inventing and proving" the Permanent Cure Program. Krotzer Response at 15. Krotzer maintains that because he has "bankrupted himself crusading on behalf of alcohol abusers," he should not be liable for more than "token monetary penalties." Id. at 5. Krotzer argues that "[a]ny award of monetary remedies would be moot and would only serve as punishment. Krotzer has no assets from which to pay or recompense anyone." Id. at 19. He argues that his situation is different from other FTC Act cases, such as those involving "pill-sellers," in which monetary remedies were ordered, citing his "good intentions." He further distinguishes this case because, according to Krotzer, he did not profit, he does not have the ability to pay, consumers had good results, and this is a "first impression" case because his program involved customized "daily monitoring" which eliminated negative interactions, and self-documentation of successful results as opposed to traditional scientific evidence. Id. at 20-29. Lastly, Krotzer suggests that if monetary relief is ordered, the amount of relief should be limited "to those customers who received nothing of value." Id. at 25.

Section 13(b) permits courts to order equitable monetary relief in the form of either restitution (consumer redress) or disgorgement. FTC v. Gem Merch Corp., 87 F.3d at 469; FTC v. 1st Guar. Mortg. Corp., 2011 WL 1233207, at *21; FTC v. Direct Mktg. Concepts, Inc., 648 F. Supp.2d 202, 213 (D. Mass. 2009), aff'd, 624 F.3d 1 (1st Cir. 2010). "Restitution" to consumers is to "compensate them for the harm caused by defendants'

misrepresentations," FTC v. 1st Guar. Mortg. Corp., 2011 WL 1233207, at *21, and "measured by the amount of money paid by the consumers, less any refunds made." FTC v. Direct Mktg. Concepts, 648 F. Supp.2d at 213-14; see also FTC v. Peoples Credit First, LLC, No. 8:03-CV-2353-T, 2005 WL 3468588, at *7 n.18 (M.D. Fla. Dec. 18, 2005), aff'd, 244 F. App'x 942 (11th Cir. 2007). "Disgorgement" is designed to "'deprive the wrongdoer of his ill-gotten gain,'" FTC v. Gem Merch. Corp., 87 F.3d at 470 (citation omitted); FTC v. 1st Guar. Mortg. Corp., 2011 WL 1233207, at *21, and is "ordinarily measured by the amount of 'profits causally connected to the violation.'" FTC v. Direct Mktg. Concepts, 648 F. Supp.2d at 214. However, where "profits" are not calculable from defendants' records, "'it is well within the discretion of the court to rule that the measure of disgorgement will be the more readily measurable amount of losses incurred by the defendants' customers in the unlawful transactions.'" Id. Thus, in this case, any distinction between the two forms of equitable relief is largely irrelevant because under either measure, the calculation is the same. See id. at 217. Based upon the evidence in this case, the Court will proceed with fashioning an equitable monetary remedy based upon the theory of disgorgement, designed to deprive Krotzer and ACF of their ill-gotten gains. See FTC v. Bronson Partners, 654 F.3d at 372; FTC v. Gem Merch. Corp., 87 F.3d at 470; FTC v. Direct Mktg. Concepts, 648 F. Supp.2d at 217-18; FTC v. Capital Choice Consumer Credit, Inc., 2004 WL 5149998, at *44.

Courts apply a "two-step burden shifting framework for calculating monetary relief under Section 13(b)." Bronson Partners, 654 F.3d at 368; FTC v. Direct Mktg. Concepts, 648 F. Supp.2d at 214; see also FTC v. 1st Guar. Mortg. Corp., 2011 WL 1233207, at *22. "'This framework requires the FTC to first show that its calculations reasonably

approximated the amount of the defendant's unjust gains, after which the burden shifts to the defendants to show that those figures were inaccurate.'" Bronson Partners, 654 F.3d at 368 (quoting FTC v. Verity Int'l, Ltd., 443 F.3d 48, 67 (2d Cir. 2006)); see also FTC v. RCA Credit Servs., 727 F. Supp.2d at 1336-37. The initial approximation depends on information available to the FTC. The calculation may properly be based upon estimates when that is the only information reasonably available. FTC v. RCA Credit Servs., 727 F. Supp.2d at 1337; see also FTC v. Bronson Partners, LLC, 674 F. Supp.2d at 381 (information available to the FTC "is sparse because the defendants failed to keep standard types of records, including customer lists, orders, and returns"). "Damages for consumer injury are calculated by determining the gross sales." FTC v. 1st Guar. Mortg. Corp., 2011 WL 1233207, at *23 (citing McGregor, 206 F.3d at 1386-87); see also FTC v. SlimAmerica, Inc., 77 F. Supp.2d at 1276 ("[t]he appropriate measure for redress is the aggregate amount paid by consumers less refunds made by defendants"). "[F]unds returned to consumers or never received by a defendant are not unjust gains." Bronson Partners, 654 F.3d at 369. Under this framework, however, Defendants are not entitled to deduct their expenses or operating costs. Bronson Partners, 654 F.3d at 375.

The evidence in the record proffered by Plaintiffs establishes that Defendants netted $732,480 in "unjust gains" from consumers. This is based upon PayPal records which reflect Defendants collected $291,084 from customers; and financial records produced by Krotzer showing an additional $425,396 in credit card payments between 2005 and 2008. (Doc. 126 ¶¶ 4, 5 (Henry Decl.). In addition, Krotzer admits he collected another $26,000 from customers since April 2010. (Doc. 158 at 14). The evidence further establishes that

Krotzer issued approximately $10,000 in refunds. (Doc. 123-1 at 1053 (Krotzer Interrogatory Answer 19)). Thus, the total income from consumers, minus refunds, equals $732,480. Krotzer does not dispute this calculation. (See Doc. 136 at 24 (Krotzer Response to Motion for Summary Judgment stating that the average revenue per "member" was $1,500, and that he enrolled between 475 and 650 customers, for a total revenue of $712,500 to $975,000); Doc. 53 at 3 (Krotzer Amended Answer admitting that he collected "$700,000 gross revenue over 5 years")); see generally Bronson Partners, 654 F.3d at 369 ("[t]he district court arrived at its baseline calculation of [defendant's] unjust gains using sales figures and pricing information that neither party disputed"). Thus, an equitable money judgment of $732,480 is a reasonable estimate of net consumer loss and Defendants' unjust gain.

Krotzer has proffered no evidence to refute the Plaintiffs' evidence of total payments made by consumers less the refunds, in the net amount of $732,480. Nor does his argument that holding him jointly and severally liable for the full amount of redress is "unjust" because he had "good intentions" and he does not have the funds available to pay excuse him from a judgment for the full amount. Nothing in the FTC Act (or FDUPTA) requires a court to limit the monetary remedy of disgorgement based upon a violator's present ability to pay. See SEC v. Warren, 534 F.3d 1368, 1370 (11th Cir. 2008); see also FTC v. Direct Mktg. Concepts, 648 F. Supp.2d at 218 (consideration of ability to pay irrelevant to determining the amount of disgorgement under the FTC Act against defendants involved in deceptive advertising regarding dietary supplements' health benefits, given defendants' proclivity for siphoning off funds and creative record keeping). Krotzer's inability to pay does not mitigate or reduce the amount of equitable monetary relief that should be ordered in this

case. Here, payments made by consumers went directly into Defendant Krotzer's pockets. Krotzer's "internet methodology," designed to "capture the client during a short window of opportunity" essential to a "viable commercial enterprise," which Krotzer attempted to patent, cost Krotzer nearly nothing to implement. He promoted his program and ensnared consumers via his website, and implemented the deceptive scheme through e-mail. Indeed, he actively discouraged telephone calls, warning consumers they he would "restrict their phone time," thereby keeping staffing expenses to a minimum. (See Doc. 58-4 at 26; ACF Website). Defendants were selling the "service" of recommending a panoply of "natural" ingredients, which the consumers were then required to purchase themselves, even after paying Defendants for the list of ingredients. That Krotzer used his ill-gotten gains to live on is not to be borne by his victims; he remains fully liable, jointly and severally, to recompense them for their losses, and to disgorge all ill-gotten gains.

Plaintiffs have produced a reasonable approximation of Defendants' ill-gotten gains, and Defendants have not countered that estimate with any evidence to the contrary. Although not required to do so, see Bronson Partners, 654 F.3d at 373, Plaintiffs agree, and will be ordered to first compensate the victims of Defendants' deceptive and false statements. In the event any of the funds to be disgorged remain, Plaintiffs propose, and the Court will order, that the remaining funds be distributed to the FTC and the State of Florida for designated uses. See FTC v. Gem Merch. Corp., 87 F.3d at 470 ("because it is not always possible to distribute the money to the victims of defendant's wrongdoing, a court may order the funds paid to the United States Treasury"). Thus, after restitution is made to wronged consumers, the Court determines that even considering Defendants' purported

inability to pay, the equities weigh in favor of the propriety of ordering Defendants to disgorge the ill-gotten gains. See FTC v. Direct Mktg. Concepts, 648 F. Supp.2d at 218.[8]

The relief to be awarded is in addition to, and not in lieu of, other remedies as may be provided by law.

For the foregoing reasons, it is hereby

ORDERED:

1. Plaintiffs' Motion for Remedies Against Defendant Robert Douglas Krotzer (Doc. 162) is **GRANTED IN PART**, and **DENIED IN PART**, as reflected in the Final Judgment and Order for Permanent Injunctive and Other Equitable Relief Against Defendants Alcoholism Cure Corporation and Robert Douglas Krotzer, to be filed herewith.

2. The Defendants, Alcoholism Cure Corporation, also doing business as Alcoholism Cure Foundation, and Robert Douglas Krotzer, jointly and severally, are ordered to pay $732,480.00 in restitution and disgorgement to Plaintiffs, as set forth in the final judgment in this case. See Final Judgment and Order for Permanent Injunctive and Other Equitable Relief Against Defendants Alcoholism Cure Corporation and Robert Douglas Krotzer, to be filed herewith.

[8] The Court may also enjoin Defendants from collecting from outstanding money "owed" by consumers based upon existing "contracts." Relief available on suits brought by the FTC under the FTC Act includes "rescission or reformation of contracts, [and] the refund of money or the return of property. . . . ." 15 U.S.C. § 57b(b).

3. A permanent injunction will issue in accordance with the findings in this Order. That final judgment will set forth the conduct to be enjoined.

DONE AND ORDERED in Jacksonville, Florida, this 3rd day of July, 2012.

Marcia Morales Howard

MARCIA MORALES HOWARD
United States District Judge

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Copies to:
Counsel of Record
Unrepresented Party