

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION

Consumer Financial Protection Bureau and
Office of the Attorney General, State of
Florida, Department of Legal Affairs,

Plaintiff,

v.

College Education Services LLC, Marcia
Elena Vargas, individually, and Frank Liz,
individually,

Defendants.

Civil Action No.

8:14-cv-3078-T-36EAG
COMPLAINT

Injunctive Relief Sought

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FILED

**COMPLAINT FOR PERMANENT INJUNCTION,
CIVIL MONEY PENALTIES, AND OTHER RELIEF**

Introduction

1. The Consumer Financial Protection Bureau (Bureau) and the Office of the Attorney General, State of Florida, Department of Legal Affairs (Attorney General of Florida) bring this action against College Education Services LLC (CES), Marcia Elena Vargas, and Frank Liz. The Bureau brings this action under the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536(a), 5564, 5565, and the Bureau and the Attorney General of Florida together bring this action under the Telemarketing and Consumer Fraud and Abuse Prevention Act (the Telemarketing Act), 15 U.S.C. §§ 6102(c)(2), 6105(d), based on violations of the Telemarketing Sales Rule (TSR), 16 C.F.R. pt. 310, and sections 1031(a) and 1036(a)(1) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1), in connection with

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Defendants' marketing and sale of student-loan debt-relief services. In addition, the Attorney General of Florida brings this action to enforce the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2013).

Jurisdiction and Venue

2. This Court has subject-matter jurisdiction over this action because it is "brought under Federal consumer financial law," 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

3. The Attorney General of Florida is authorized to initiate federal district court proceedings to enjoin telemarketing and debt relief activities that violate the TSR pursuant to 15 U.S.C. § 6103(a). This Court has supplemental jurisdiction over the Attorney General of Florida's state claim pursuant to 28 U.S.C. §1367 because those claims are so related to the claims asserted by the Bureau and the Attorney General of Florida under the TSR that they form part of the same case or controversy.

4. Venue is proper because Defendants reside and transact business in the Tampa Division of this District. 28 U.S.C. § 1391(b), (c); 12 U.S.C. § 5564(f); M.D. Fla. Local Rule 1.02.

Parties

5. The Bureau is an independent agency of the United States created by 12 U.S.C. § 5491(a) and charged with regulating the offering and provision of consumer-financial products and services under federal consumer-financial laws, including the

Telemarketing Act, 15 U.S.C. §§ 6102(c)(2), 6105(d), the TSR, 16 C.F.R. pt. 310, and the CFPB, 12 U.S.C. §§ 5531, 5536(a)(1). The Bureau is authorized to initiate civil actions in federal district court, by its own attorneys, to address violations of “Federal consumer financial law” and to secure such relief as may be appropriate. 12 U.S.C. §§ 5564(a)-(b), 5565.

6. The Attorney General of Florida is an enforcing authority of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), Chapter 501, Part II, Florida Statutes (2013), pursuant to Section 501.203, Florida Statutes. The Attorney General of Florida has conducted an investigation of the matters alleged herein, and the head of the enforcing authority, Attorney General of Florida Pamela Jo Bondi, has determined that this enforcement action serves the public interest. Pursuant to FDUTPA, the Attorney General of Florida is authorized to pursue this action to enjoin FDUTPA violations and to obtain legal, equitable, or other appropriate relief, including restitution, civil penalties, and relief pursuant to Sections 501.207 and 501.2075, Florida Statutes. The Attorney General of Florida is authorized to bring this action and to seek injunctive and other statutory relief to enforce the TSR under 15 U.S.C. § 6103(a).

7. CES, including its predecessor College Defaulted Student Loan LLC, was a Florida corporation headquartered in Tampa, Florida. At all times material to this Complaint, CES transacted business in this District, providing financial-advisory services to consumers and purporting to assist consumers with managing, including altering the terms of, their student-loan debt. CES initiated and received telephone

calls to and from consumers and provided services by use of one or more telephones. CES is therefore a “covered person” under the CFPA and a “telemarketer” engaged in “telemarketing” under the TSR. 12 U.S.C. § 5481(6), (15)(A)(viii); 16 C.F.R. § 310.2(cc)-(dd).

8. Marcia Elena Vargas was an owner, the chief financial officer, and a manager of CES. At all times material to this Complaint, Vargas managed, formulated, directed, controlled, or had the authority to control CES and materially participated in the conduct of its affairs. Vargas is therefore a “related person” under the CFPA. 12 U.S.C. § 5481(25)(C)(i)-(ii). Because Vargas is a “related person,” she is deemed a “covered person” for purposes of the CFPA. 12 U.S.C. § 5481(25)(B). Vargas resides in Tampa, Florida, and in connection with the matters alleged herein, transacted business in this District.

9. Frank Liz was an advisor to and employee of CES. At all times material to this Complaint, Liz managed, formulated, directed, controlled, or had the authority to control CES and materially participated in the conduct of its affairs. Liz is therefore a “related person” under the CFPA. 12 U.S.C. § 5481(25)(C)(i)-(ii). Because Liz is a “related person,” he is deemed a “covered person” for purposes of the CFPA. 12 U.S.C. § 5481(25)(B). Liz resides in Tampa, Florida, and in connection with the matters alleged herein, transacted business in this District.

Factual Background

10. From on or about September 2010 through February 2013, Defendants marketed and advertised debt-relief services to financially distressed student-loan borrowers whose loans were in default or garnishment.

11. CES targeted these consumers through expensive Google AdWords online marketing campaigns. When consumers conducted Google searches using phrases such as “defaulted student loan,” “student loan garnishment,” “student loan forgiveness,” and “paying student loan tough,” CES ads making the following types of claims would be displayed on their screens:

Default of Student Loan Call 877-730-5368 Money Back Guaranteed Get Out 4-8 weeks!	Student Loan Forgiveness Apply Now To Get Your Student Loan Forgiveness, Friendly Staff Waiting
Stop Wage Garnishment Guaranteed-Stop Wage Garnishment With a Minimum Monthly Payment	Student Loan Relief Cut Your Student Loan Monthly Payment Up to 50% - Save Today!

12. The ads directed consumers to one of CES’s websites, including CollegeDefaultedStudentLoan.com or HelpStudentLoanDefault.com. On those websites, CES asserted that “[w]e can help you fix your student loans” and encouraged consumers to “[l]et us find the best Solution to all of Your Federal Student Loan Troubles!”

13. CES’s websites further claimed that the company’s services would enable distressed student loan debtors to:

Join thousands of college graduates who’ve already:

Cut their monthly payments by as [sic] 50 percent!
Removed wage garnishment and monetary judgments against them!

Consolidated countless loans into just one streamlined monthly payment!
Dramatically improved their credit rating and score!

14. CES portrayed its mission as “help[ing] individual [sic] and families, regardless of circumstance, end financial crisis and solve money management problems caused by outstanding student loans.” CES promised to “establish custom-tailored programs and plans for your specific individual needs.”

15. CES’s websites listed a toll-free number and instructed consumers either to call or input their contact information into a form on the website.

16. For consumers who submitted contact information through a website, a CES telemarketer called them back within five minutes. If the telemarketers could not reach a consumer, they would call twice a day for up to 10 days to get the consumer on the phone.

17. When speaking with consumers, CES’s telemarketers introduced themselves as student loan “counselors” or “advisors.” CES telemarketers claimed they had the knowledge and expertise necessary to “custom-tailor[] programs and plans” to meet each consumer’s “individual needs” and free consumers from “financial misfortune.”

18. CES’s loan “counselors” pledged to assist consumers in “securing a new Federally-backed consolidated loan,” which they claimed would result in, among other things, lower monthly payments, freedom from default or garnishment in eight weeks or less, and improved credit scores.

19. CES instructed its loan “counselors” to emphasize the following in its initial calls with borrowers in default:

This program will have you out of default in 4-6 weeks. The benefits of getting out of default are significant to people in default (GIVE 4-5 EXAMPLES THAT ARE RELEVANT [sic] TO THE CALLER'S SITUATION).

1. Prevent or Stop Wage Garnishment
2. Prevent or Stop IRS Tax Seizures
3. Improve your Credit Score- will show that defaulted loans are now paid in full and you will have a new loan with a new lender showing in good standing. (FYI-Info is not erased)
4. Avoid suspension, Revocation or Non-Renewal of Professional Licenses
5. Prevent Litigation and Judgment Costs
6. Become Eligible for Unlimited Forbearances & Deferments
7. Stop the Harassing phone calls from Bill Collectors
8. Obtain your Diploma & Transcripts
9. Become Eligible for Financial Aid (Federal Student Loans & Pell Grants).

20. Regardless of the borrower's student-loan issues or particular circumstances, CES telemarketers assured the borrower that “from looking at your loans and situation, you do qualify for our program and services.”

21. CES's telemarketers exploited consumers' financial distress, pressuring consumers into paying significant advance fees by repeatedly promising that CES could resolve all their student-loan woes.

22. CES charged consumers between \$195 and \$2,500 based on the amount of student-loan debt at issue, with the average fee being about \$500. CES required all or a substantial portion of its fee to be paid before it would perform any debt-relief services on the consumer's behalf.

23. CES collected millions in advance fees from consumers seeking student-loan debt-relief services.

24. After receiving payment details, the telemarketers would thank the consumers for “trusting CES with providing a solution to your Student Loan situation” and again promised that “the result [was] . . . 100% guaranteed.”

CES Failed to Provide the Guaranteed Services

25. Despite its promise of “guaranteed” results, CES could not and did not resolve all of the student-loan issues faced by the consumers who paid for its services.

26. CES often failed to (1) provide any services to borrowers, (2) deliver the “guaranteed” lower monthly payments, relief from default or garnishment, loan forgiveness, or improved credit scores, or (3) obtain relief in less than six or eight weeks as promised. Indeed, CES exacerbated the student-loan difficulties of some of the financially distressed consumers it promised to help.

27. CES did not perform the promised individualized assessments of consumers’ student-loan situations to determine the best debt-relief options. To the extent CES provided any debt-relief services, they consisted nearly exclusively of applying for student-loan consolidation and subsequent repayment plans.

28. As purported experts, CES knew or should have known that loan consolidation was not an option for every student-loan borrower, and even when available, could not resolve all the student-loan issues CES’s customers faced or provide the relief CES “guaranteed” in every instance.

29. CES did not explain to consumers the requirements for loan consolidation or the relative benefits and risks of different consolidation options.

Specifically, CES did not advise consumers that: (1) certain federal and private loans could not be consolidated; (2) certain consolidation-repayment plans could result in higher monthly payments or other negative consequences; (3) consolidation might lead to other unfavorable results, such as the loss of grace periods; (4) loans in default often could not be consolidated until after the successful completion of months-long trial-repayment plans; and (5) other debt-relief strategies or options might better meet the customer's needs.

30. In fact, in a number of cases, CES did not even assess whether the consumer had loans that were eligible for consolidation before taking advance fees.

31. Further, for some consumers who qualified for loan consolidation, CES selected monthly repayment plans that increased their monthly payments – the exact opposite of what those borrowers expected and desired when they engaged CES's debt-relief services.

32. CES also misled consumers about its ability to obtain loan forgiveness. CES could not "guarantee" loan forgiveness; all it could do was, at most, assist certain consumers in establishing eligibility for such relief.

33. Further, CES had no basis to assert that its services would lead to improved credit scores. CES did not check consumers' credit scores before or after the company performed debt-relief services on their behalf, and had no way of knowing how, or to what extent, even a successful loan consolidation would impact a consumer's credit score.

34. Thus, through false promises and “guarantees,” CES raked in millions in advance fees from consumers while leaving many of them in the same or a worse student-loan predicament than before.

**(VIOLATIONS OF THE TELEMARKETING SALES RULE
(Asserted by the Bureau and the Attorney General of Florida)**

35. In 1994, Congress passed the Telemarketing Act and directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices. 15 U.S.C. §§ 6101-08. In 1995, the FTC adopted the TSR, 16 C.F.R. pt. 310, which became effective on December 31, 1995. On August 10, 2010, the FTC promulgated amendments to the TSR to include provisions specifically directed at debt-relief services.

36. Through the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress amended the Telemarketing Act to give the CFPB the authority to enforce the TSR. 15 U.S.C. 6102(c)(2). The Attorney General of Florida is authorized to enjoin telemarketing and enforce compliance of the TSR pursuant to 15 U.S.C. §6103(a).

37. As defined by the TSR, Defendants are “seller[s]” or “telemarketer[s]” engaged in “telemarketing” and the provision of “debt relief service[s].” 16 C.F.R. §§ 310.2 (m), (aa), (cc), and (dd).

**Count I
Abusive Telemarketing Acts or Practices Related to Advance Fees
in Connection with Debt-Relief Services**

38. The Bureau and the Attorney General of Florida reallege and incorporate by reference paragraphs 1-34.

39. It is an abusive telemarketing act or practice and a violation of the TSR for any seller or telemarketer to request or receive payment of any fee or consideration for any debt-relief service until and unless:

- a. The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt-management plan, or other such valid contractual agreement executed by the customer;
- b. The customer has made at least one payment pursuant to that settlement agreement, debt-management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and
- c. To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either (1) bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount; or (2) is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. 16 C.F.R. § 310.4(a)(5)(i).

40. In numerous instances, in connection with telemarketing student-loan debt-relief services, Defendants requested and received payment of a fee or consideration for a debt-relief service before (a) they renegotiated, settled, reduced,

or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt-management plan, or other such valid contractual agreement executed by the customer; and (b) the customer made at least one payment pursuant to that agreement.

41. Therefore, Defendants' acts and practices as alleged in paragraph 40 constitute abusive telemarketing acts or practices in violation of the TSR, 16 C.F.R. § 310.4(a)(5)(i).

Count II
Deceptive Telemarketing Acts or Practices

42. The Bureau and the Attorney General of Florida reallege and incorporate by reference paragraphs 1-34.

43. It is a deceptive telemarketing act or practice for any seller or telemarketer of debt-relief services to misrepresent, directly or by implication, in the sale of the services, any material aspect of any debt-relief service, 16 C.F.R. § 310.3(a)(2)(x), or to fail to disclose truthfully the amount of time necessary to achieve the represented results, 16 C.F.R. § 310.3(a)(1)(viii)(A).

44. In numerous instances, in the course of telemarketing debt-relief services, Defendants misrepresented, directly or indirectly, material aspects of the debt-relief services they sold, including:

- a. that their services would result in lower monthly student-loan payments;
- b. that consumers who used Defendants' services would improve their credit scores; and
- c. that Defendants would achieve results in less than eight weeks.

45. In numerous instances, in the course of telemarketing debt-relief services, before consumers consented to pay for services, Defendants failed to disclose truthfully the amount of time necessary to achieve the represented results.

46. In truth and in fact, Defendants did not always reduce consumers' monthly student-loan payments; had no basis to claim consumers' credit scores would improve; and did not achieve results in the time promised.

47. Therefore, Defendants' acts and practices as alleged in paragraphs 44 to 46 constitute deceptive telemarketing acts or practices in violation of the TSR, 16 C.F.R. § 310.3(a)(1)(viii)(A) and (a)(2)(x).

**VIOLATIONS OF THE CONSUMER FINANCIAL PROTECTION ACT
(Asserted by the Bureau)**

48. The CFPA prohibits any covered person from engaging in any deceptive or abusive act or practice. 12 U.S.C. §§ 5531, 5536(a)(1)(B).

49. As stated above, Defendants are covered persons under the CFPA, 12 U.S.C. 5481(6), 15(A)(viii), and therefore are liable for acts and practices that violate the Act. 12 U.S.C. 5536(a).

Count III
Deception

50. The Bureau realleges and incorporates by reference paragraphs 1-34.

51. In numerous instances, in connection with the offering or providing of student-loan debt-relief services, Defendants represented, directly or indirectly, expressly or by implication, that:

- a. their services would result in lower monthly student-loan payments;
- b. that consumers who used their services would improve their credit scores; and
- c. that Defendants would achieve results in less than eight weeks.

52. The material representations set forth in paragraph 51 were false and misleading and unsubstantiated.

53. Therefore, the making of the representations set forth in paragraph 51 constitute deceptive acts or practices in violation of the CFPA, 12 U.S.C. § 5536(a)(1)(B).

Count IV
Abusiveness

54. The Bureau realleges and incorporates by reference paragraphs 1-34.

55. An act or practice is abusive under the CFPA if it “takes unreasonable advantage of . . . the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.” 12 U.S.C. § 5531(d)(2)(C).

56. In numerous instances, in connection with the offering or providing of student-loan debt-relief services, CES targeted financially distressed consumers by using sophisticated and expensive Internet-marketing campaigns aimed at attracting consumers whose student loans were in default or garnishment or whose monthly payments were otherwise unaffordable.

57. CES’s telemarketers held themselves out as loan counselors and advisors with the expertise to establish custom-tailored programs to address each student-loan debtor’s specific needs. CES created the illusion of expertise and individualized advice to induce consumers to reasonably rely on the company to act in their interests in seeking and selecting student loan debt-relief plans.

58. CES did not undertake the promised individualized assessment of each consumer’s student-loan situation. Instead, to the extent CES provided services, it primarily sought to consolidate its customers’ student loans.

59. CES took unreasonable advantage of the reasonable reliance of consumers by enrolling and taking fees from consumers whose loans were ineligible for consolidation or who did not otherwise qualify for the relief the company promised.

60. For example, CES took advance fees to consolidate private loans that were not eligible for consolidation with federal loans. CES also took upfront fees to

enroll some consumers in income-based repayment plans or loan forgiveness programs for which they were not eligible. In addition, CES placed some consumers in repayment plans that increased their monthly student-loan payments, leaving those consumers in a more financially precarious position than before.

61. Therefore, the acts and practices set forth in paragraphs 56 to 60 constitute abusive acts or practices in violation of the CFPA, 12 U.S.C. § 5536(a)(1)(B).

**VIOLATIONS OF FLORIDA DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT
(Asserted by the Attorney General of Florida)**

62. Section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, states that “unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

**Count V
Deceptive and Unfair Acts and Practices**

63. The Attorney General of Florida realleges and incorporates by reference paragraphs 1-34.

64. CES, at all times material hereto, engaged in a “trade or commerce” pursuant to Section 501.208, Florida Statutes, by engaging in the advertising, soliciting, and telemarketing of student loan debt relief services.

65. At all times material hereto, Defendants have engaged in deceptive and unfair acts and practices in offering or providing student loan-debt relief services including but not limited to that Defendants have represented, directly or indirectly, expressly or by implication that Defendants’ student loan debt relief services would

result in lower monthly student loan payments for consumers; that Defendants would achieve the represented results in less than eight weeks; ad that such results were guaranteed.

66. Defendants representations identified in paragraph 65 were false and misleading and unsubstantiated, and constitute deceptive acts or practices in violation of Section 501.204, Florida Statutes.

67. Defendants Vargas and Liz have directly participated in the acts and practices alleged as unlawful herein, have directed or controlled, or have had the authority to direct or control, the practices engaged in by CES and and had actual or constructive knowledge of the acts and practices alleged herein or exercised a reckless indifference to the conduct of CES as alleged herein.

68. Defendants willfully engaged in the acts and practices alleged herein when they knew or should have known that such acts and practices are deceptive or unfair or otherwise prohibited by law.

69. Defendants have committed and are committing acts or practices in trade or commerce which shock the conscience, have engaged in or are engaging in representations, acts, practices, or omissions in trade or commerce which are material and which are likely to mislead consumers acting reasonably under the circumstances; and have engaged in or are engaging in acts or practices that are likely to cause substantial injury to consumers which are not reasonably avoidable by consumers themselves or outweighed by countervailing benefits to consumers or competition.

70. Unless Defendants are permanently enjoined from engaging further in the acts and practices alleged herein, the continued activities of Defendants will result in irreparable injury to the public for which there is no adequate remedy at law.

PRAYER FOR RELIEF

Wherefore, the Bureau and the Attorney General of Florida request that the Court:

1. permanently enjoin Defendants to prevent future violations of the CFPA, TSR, FDUTPA, or any provision of “Federal consumer financial law,” as defined by 12 U.S.C. § 5481(14);
2. grant additional injunctive relief as the Court may deem just and proper;
3. award restitution against Defendants in the amount of all unlawfully collected fees;
4. order disgorgement of ill-gotten revenues against Defendants;
5. award civil money penalties against Defendants; and
6. award costs and fees against Defendants and additional relief as the Court may determine to be just and proper.

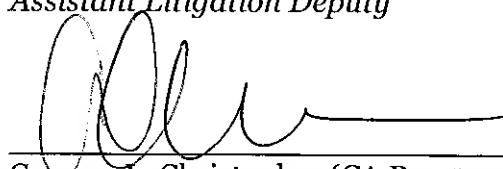
Dated: December 11, 2014

Respectfully submitted,

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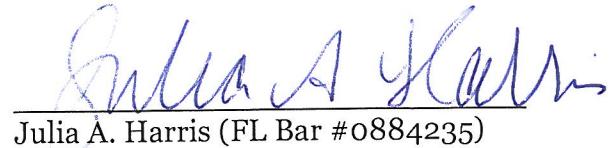
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