

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

Bureau of Consumer Financial Protection,	)	
	)	Case No. 1:20-cv-06879
<i>Plaintiff,</i>	)	
	)	Judge John J. Tharp
v.	)	
	)	
FDATR, Inc., <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT AGAINST DEFENDANT DEAN TUCCI**

## TABLE OF CONTENTS

I.	JURISDICTION AND VENUE.....	1
II.	PROCEDURAL BACKGROUND .....	2
III.	FACTUAL BACKGROUND .....	2
	a. FDATR’s Business Practices.....	3
	b. Tucci owned and controlled FDATR.....	5
IV.	THE DEFAULT JUDGMENT AGAINST FDATR ESTABLISHED ITS LIABILITY ....	9
V.	THE BUREAU IS ENTITLED TO SUMMARY JUDGMENT AGAINST TUCCI.....	10
	a. Tucci is Liable for FDATR’s Violations of the TSR.....	10
	i. Tucci is liable as a “seller” under the TSR .....	11
	ii. Tucci assisted and facilitated FDATR’s violations of the TSR.....	11
	b. Tucci is liable for FDATR’s violations of the CFPA. ....	14
VI.	THE COURT SHOULD GRANT THE BUREAU SUMMARY JUDGMENT AND IMPOSE AN INJUNCTION, RESTITUTION, AND A CIVIL MONEY PENALTY AGAINST TUCCI .....	16
VII.	CONCLUSION .....	19

## TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>CFPB v. CashCall, Inc.</i> , 35 F.4th 734 (9th Cir. 2022).....	15
<i>CFPB v. Consumer First Legal Group, LLC</i> , 6 F.4th 694 (7th Cir. 2021).....	18
<i>CFPB v. Gordon</i> , 819 F.3d 1179 (9th Cir. 2016).....	15, 16
<i>CFPB v. Rosen</i> , No. 2:21-cv-07942, 2022 WL 1514439 (C.D. Cal. Apr. 5, 2022).....	12
<i>e360 Insight v. The Spamhaus Project</i> , 500 F.3d 594 (7th Cir. 2007).....	9
<i>FTC v. Affiliate Strategies, Inc.</i> , No. 09-4104, 2011 WL 4352411 (D. Kan. Sept. 16, 2011).....	12
<i>FTC v. Chapman</i> , 714 F.3d 1211 (10th Cir. 2013).....	12, 14
<i>FTC v. Febre</i> , 128 F.3d 530 (7th Cir. 1997).....	17
<i>FTC v. Lake</i> , 181 F.Supp.3d 692 (C.D. Cal. 2016).....	12
<i>FTC v. MacGregor</i> , 360 Fed.Appx. 891 (9th Cir. 2009).....	11
<i>FTC v. Stefanichik</i> , 559 F.3d 924 (9th Cir. 2009).....	15, 17
<i>FTC v. World Media Brokers Inc.</i> , 415 F.3d 758 (7th Cir. 2005).....	15
<i>FTC v. World Media Brokers Inc.</i> , No. 02 C 6985, 2004 WL 432475 (N.D. Ill. Mar. 2, 2004).....	11
<i>NES Rentals Holdings, Inc. v. Steine Cold Storage, Inc.</i> , 714 F.3d 449 (7th Cir. 2013).....	10
<i>Rewards Network Establishment Services, Inc. v. Lajaunie</i> , 857 Fed.Appx. 856 (7th Cir. 2021).....	9, 10
<i>Safeco Ins. Co. of America v. Burr</i> , 551 U.S. 47 (2007).....	18
<i>U.S. v. Di Mucci</i> , 879 F.2d 1488 (7th Cir.1989).....	9
<i>Urban One, Inc., v. Dean Tucci</i> , No. 1:17-cv-07892, 2018 WL 47148471 (N.D. Ill Sept. 30, 2018).....	5, 6
<i>Urban One, Inc., v. Dean Tucci</i> , No. 1:17-cv-07892, 2020 WL 1548959 (N.D. Ill Apr. 1, 2020).....	5, 6

Statutes

12 U.S.C. § 5481(5) .....	14
12 U.S.C. § 5481(6) .....	14
12 U.S.C. § 5481(14) .....	1
12 U.S.C. § 5481(15) .....	14
12 U.S.C. § 5481(25) .....	14, 15
12 U.S.C. § 5491(a) .....	1
12 U.S.C. § 5511 .....	1
12 U.S.C. § 5531 .....	1, 10
12 U.S.C. § 5536(a)(1) .....	10
12 U.S.C. § 5564(a) .....	17, 18
12 U.S.C. § 5564(f) .....	1
12 U.S.C. § 5565(a) .....	17, 18
12 U.S.C. § 5565(a)(1) .....	1
12 U.S.C. § 5565(a)(2) .....	16, 17
12 U.S.C. § 5565(c) .....	17, 18, 19
15 U.S.C. § 6102(c)(2) .....	10
15 U.S.C. § 6105(d) .....	1
28 U.S.C. § 1331 .....	1
28 U.S.C. § 1345 .....	1

Rules

Fed. R. Civ. P. 55(b) .....	2
Fed. R. Civ. P. 56(a) .....	10

Regulations

12 C.F.R. § 1083.1 .....	17, 18
16 C.F.R. Part 310 .....	1
16 C.F.R. § 310.2 .....	11
16 C.F.R. § 310.3 .....	9, 11, 12
16 C.F.R. § 310.4 .....	9, 12
60 Fed. Reg. 43,842 (Aug. 23, 1995) .....	12

Defendant Dean Tucci and his company, FDATR, Inc., targeted financially distressed consumers nationwide, telemarketing debt-relief and credit-repair services through promises that the company would reduce or eliminate consumers' student loan payments and improve consumers' credit scores. But these results rarely, if ever, materialized. The false promises did, however, convince thousands of consumers to pay the company up to \$600 each, which FDATR pocketed long before it was legally permitted to do so. Tucci founded and controlled every aspect of FDATR, including its advertising, telemarketing, and finances. Even after he transferred the company in 2017 to a former co-Defendant in a sham transaction designed to protect the company's assets from a creditor, Tucci remained actively involved in FDATR's operations as a "consultant" until around the time it ceased operating in 2019. Given these facts, and the default judgment entered against FDATR, which established its liability for violating the Consumer Financial Protection Act (CFPA) and Telemarketing Sales Rule (TSR), the Court should find that Defendant Tucci also violated the CFPA and TSR.

## **I. JURISDICTION AND VENUE**

This Court has subject matter jurisdiction over this action because it is brought under "Federal consumer financial law," presents a federal question, and is brought by an agency of the United States charged with regulating the offering and provision of consumer-financial products and services, including by enforcing the CFPA and TSR.<sup>1</sup> Venue is proper in this district because Tucci is or was located, resides or resided in, and does or did business in this district.<sup>2</sup>

---

<sup>1</sup> Statement of Facts ¶ 1.

<sup>2</sup> Statement of Facts ¶ 2.

## **II. PROCEDURAL BACKGROUND**

The Bureau filed this action on November 20, 2020, alleging that Tucci and FDATR (1) violated the TSR by taking illegal advance fees from consumers and (2) violated both the TSR and the CFPA by engaging in deception.<sup>3</sup> FDATR was served on November 25, 2020, and, after it failed to answer the Bureau's Complaint, the Clerk of Court entered default against it on October 6, 2021.<sup>4</sup> Tucci retained new counsel in October 2021.<sup>5</sup> During a status hearing on October 20, 2021, the Magistrate Judge asked counsel if he also represented FDATR and whether he would be moving to lift the default against FDATR. Counsel responded that he represents Tucci only, not the company.<sup>6</sup> On February 1, 2022, the Bureau sought default judgment under Rule 55(b) against FDATR, which the Court entered on February 7, 2022.<sup>7</sup>

## **III. FACTUAL BACKGROUND**

Tucci formed FDATR in 2014 to telemarket student loan debt-relief and credit-repair services to consumers. Tucci was the company's sole officer, director, and shareholder until he transferred the company to former co-Defendant Kenneth Wayne Halverson in 2017. Even after the transfer, Tucci continued to control FDATR and materially participated in the company's affairs. Tucci's knowledge of FDATR and its business practices is extensive—Tucci testified in detail about the circumstances under which FDATR was formed, its advertising and marketing methods, how incoming consumer calls were received and handled by the company's telemarketing sales agents, FDATR's consumer contracts, and the fees charged and services

---

<sup>3</sup> ECF No. 1. The suit also named Kenneth Wayne Halverson who has since died and was dismissed from the case. ECF Nos. 17, 18.

<sup>4</sup> ECF Nos. 9, 39.

<sup>5</sup> ECF No. 41.

<sup>6</sup> Decl. of Carmen L. Christopher, October 14, 2022, at ¶ 3.

<sup>7</sup> ECF No. 45, 49, 50; Fed. R. Civ. P. 55(b).

purportedly provided to customers. FDATR enrolled more than 6,000 customers who collectively paid it more than \$2 million.<sup>8</sup>

**a. FDATR's Business Practices**

FDATR solicited consumers nationwide, promising to reduce or eliminate consumers' student loan debts and improve consumers' credit scores.<sup>9</sup> Tucci testified that FDATR attracted customers through radio and television commercials that directed consumers to call a toll-free number.<sup>10</sup> FDATR also advertised its services through its website, fedslrelief.com, and through Facebook ads that linked to the website.<sup>11</sup> On both the website and in Facebook advertisements, FDATR claimed that its services would: "Reduce or Eliminate Your Payments" and "Improve Credit Scores."<sup>12</sup> On its website, FDATR additionally claimed that it would: "Cut Loan Payments in HALF;" "Remove I9 Rating;"<sup>13</sup> "Restore Financial Aid Eligibility;" and "Restore your ability to get your Diplomas & Transcripts."<sup>14</sup>

FDATR's advertisements instructed consumers to call a toll-free number, which connected them to FDATR's telemarketing call center.<sup>15</sup> FDATR's telemarketing-sales agents routinely told consumers that the company had helped thousands of customers with services that resulted in lower student loan payments or in consumers' student loans being forgiven leaving customers debt-free and owing \$0 in payments.<sup>16</sup>

---

<sup>8</sup> Statement of Facts ¶ 53.

<sup>9</sup> Statement of Facts ¶¶ 10-13, 15, 53.

<sup>10</sup> Statement of Facts ¶¶ 10, 11.

<sup>11</sup> Statement of Facts ¶¶ 12, 13.

<sup>12</sup> Statement of Facts ¶ 13.

<sup>13</sup> I9 is a negative status code used on credit reports to designate a loan as non-collectable.

<sup>14</sup> Statement of Facts ¶ 13.

<sup>15</sup> Statement of Facts ¶ 15.

<sup>16</sup> Statement of Facts ¶ 17.

For consumers that enrolled in the company's services, FDATR agents caused electronic documents, including a contract, a power of attorney form, and an invoice, to be sent to the enrolling consumer through FDATR's customer management platform.<sup>17</sup> Before sending the documents to prospective customers, FDATR charged the customer between \$1 and \$99, purportedly to ensure that it had a valid payment method on file.<sup>18</sup> For its services, FDATR separately charged customers a minimum of \$499 as a one-time payment within two to three weeks of enrollment; or \$600 paid in installments over a three-to-six-month period, with customers typically making the first payment within days or weeks of enrollment.<sup>19</sup> Tucci testified that FDATR spent at least three to six months to "get a file completed" and it always requested and received payment from customers of standard fees at or near the time of enrollment and before it achieved any results.<sup>20</sup>

FDATR's default judgment establishes that it did not deliver on its promises. The services that FDATR typically provided to customers consisted of, at most, completing and filing loan-consolidation paperwork with the Department of Education, and it typically took three to six months to do so.<sup>21</sup> But, as Tucci admitted, loan consolidations do not necessarily result in lower loan payments, do not eliminate payments, and can result in higher monthly payments.<sup>22</sup> FDATR had no basis to assert that its services would result in lower monthly payments, cut student loan payments in half, eliminate consumers' monthly student loan payments entirely, or restore consumers' access to diplomas and transcripts.<sup>23</sup> Tucci also admitted that FDATR did not

---

<sup>17</sup> Statement of Facts ¶ 40.

<sup>18</sup> Statement of Facts ¶ 40.

<sup>19</sup> Statement of Facts ¶ 41.

<sup>20</sup> Statement of Facts ¶ 42.

<sup>21</sup> Statement of Facts ¶ 43.

<sup>22</sup> Statement of Facts ¶ 44.

<sup>23</sup> Statement of Facts ¶¶ 44-48.



track whether its services achieved these promised results.<sup>24</sup> And customers complained that the Company did not deliver on any of its promises.<sup>25</sup>

The default judgement also establishes that FDATR had no basis to assert that its services would result in improved credit scores or the removal of negative credit status codes or ratings from credit reports. In fact, Tucci admitted that FDATR performed no services that would improve customers' credit scores or remove negative credit status codes or ratings from customers' credit reports.<sup>26</sup> Tucci also admitted that FDATR did not track whether its services achieved these promised results—FDATR did not check its customers' credit scores before or after the company purportedly performed its promised services and it had no way of knowing how, or to what extent, even a successful loan consolidation would impact a consumer's credit score.<sup>27</sup>

**b. Tucci owned and controlled FDATR**

Tucci owned, managed, and controlled all aspects of FDATR, including its finances, marketing, and sales practices. FDATR was part of a family of companies owned by Tucci, most of which were involved in some aspect of telemarketing.<sup>28</sup> Tucci formed FDATR in 2014 as an immediate successor to his company Teldebt Solutions Inc. (Teldebt).<sup>29</sup> Tucci testified that FDATR and Teldebt were essentially identical and he exercised coextensive control over both

---

<sup>24</sup> Statement of Facts ¶ 45.

<sup>25</sup> Ridder Decl. at ¶¶ 10-11.

<sup>26</sup> Statement of Facts ¶ 49.

<sup>27</sup> Statement of Facts ¶ 50.

<sup>28</sup> Statement of Facts ¶¶ 4, 10; *see Urban One, Inc., v. Dean Tucci*, No. 1:17-cv-07892, ECF No. 76, 2018 WL 47148471 \*2, 12-16 (Mem. Op. and Order, Prelim. Inj. (N.D. Ill., Sept. 30, 2018)); (*Urban One, Inc., v. Dean Tucci*, No. 1:17-cv-07892, ECF No. 124, 2020 WL 1548959 \*2-4 (Order Granting Summary Judgment to Urban One (N.D. Ill., April 1, 2020)).

<sup>29</sup> Statement of Facts ¶¶ 3-4.

companies.<sup>30</sup> Like FDATR, Teldebt telemarketed student loan debt-relief services.<sup>31</sup> And FDATR operated in the same office space and under the same lease as Teldebt, employed many of Teldebt’s former employees, and used Teldebt’s desks, computers, phones, and phone system.<sup>32</sup> FDATR operated under a variety of names, including Federal Student Loan Relief and Federal Tax Relief.<sup>33</sup> FDATR solicited consumers through telemarketing and obtained its consumer leads from Direct Media Power—owned by Tucci—and its successor National Media Calls, both in the business of placing radio advertisements to generate telemarketing leads for debt-relief companies.<sup>34</sup> In 2016, Tucci created another company, DMP Holdings, into which he transferred ownership of FDATR.<sup>35</sup>

In 2017, Tucci transferred ownership of FDATR to former co-Defendant Halverson to protect the company’s assets from a creditor.<sup>36</sup> Halverson paid no money to Tucci for the company, which Tucci claimed was doing \$1.5 million dollars of business a year.<sup>37</sup> After the transfer, FDATR continued to operate as it had before in the same office space, under the same lease signed by Tucci, with the same employees, and using the same phones and phone system.<sup>38</sup> And Tucci continued to actively manage the company as a “consultant” until April 2019—one month before FDATR stopped taking money from consumers according to records from the company’s customer relationship management software.<sup>39</sup> The State of Illinois involuntarily

---

<sup>30</sup> Statement of Facts ¶ 4.

<sup>31</sup> Statement of Facts ¶ 4.

<sup>32</sup> Statement of Facts ¶ 5.

<sup>33</sup> Statement of Facts ¶ 6.

<sup>34</sup> Statement of Facts ¶¶ 10-11.

<sup>35</sup> Statement of Facts ¶ 7.

<sup>36</sup> Statement of Facts ¶ 29.

<sup>37</sup> Statement of Facts ¶¶ 30-33.

<sup>38</sup> Statement of Facts ¶ 34.

<sup>39</sup> Statement of Facts ¶¶ 38-39.

dissolved FDATR in 2020 because it failed to file an annual report and pay its annual franchise tax.<sup>40</sup>

In addition to being an owner and officer of FDATR, Tucci was responsible for FDATR's business practices.<sup>41</sup> Tucci signed the lease for the office space in which FDATR operated and is the registrant listed for the company's website.<sup>42</sup> Tucci was responsible for FDATR's marketing method of soliciting consumers through radio advertisements that directed consumers to call FDATR's toll-free number.<sup>43</sup> Tucci drafted the company's advertisements and telemarketing sales scripts.<sup>44</sup> During the Bureau's investigational hearing, Tucci stated that he had multiple FDATR scripts in his possession, which he then produced to the Bureau through counsel.<sup>45</sup> He hired employees for FDATR, including the company's telemarketing sales agents and managers, and made firing decisions.<sup>46</sup> He drafted training materials and trained FDATR's telemarketing sales agents, including by conducting mock sales calls.<sup>47</sup> As a purported consultant, Tucci retained his responsibilities for advertising, marketing, and training.<sup>48</sup> And, after his other companies failed in 2017, Tucci moved to an office in the same suite as FDATR.<sup>49</sup>

Tucci's executive assistant, Desiree Keller, who worked for Tucci from 2010 until 2017 and served as his executive and personal assistant from 2012 until 2017, confirmed that Tucci was intimately involved in FDATR's activities. Tucci's office was next door to FDATR's

---

<sup>40</sup> Ex. 1 at 19 (Illinois Sec'y of State Documents).

<sup>41</sup> Statement of Facts ¶ 8.

<sup>42</sup> Statement of Facts ¶¶ 5-14.

<sup>43</sup> Statement of Facts ¶¶ 10-11.

<sup>44</sup> Statement of Facts ¶¶ 14, 16.

<sup>45</sup> Statement of Facts ¶¶ 16-17.

<sup>46</sup> Statement of Facts ¶ 9.

<sup>47</sup> Statement of Facts ¶ 18.

<sup>48</sup> Statement of Facts ¶ 37.

<sup>49</sup> Statement of Facts ¶ 35.

telemarketing operations until 2017 and he regularly spent time on the sales floor.<sup>50</sup> Tucci actively monitored FDATR's telemarketers through cameras he installed at FDATR with video feeds that he could view at his office desk.<sup>51</sup> FDATR had a VoIP (Voice over Internet Protocol) phone system that allowed Tucci to listen to phone calls and, in fact, he did listen to FDATR sales calls.<sup>52</sup> Tucci sent and received emails related to FDATR and he had the ability to view all emails sent to or from an FDATR email address.<sup>53</sup> Tucci was blind cc'd on every FDATR manager email account and routinely reviewed the emails.<sup>54</sup> Tucci monitored FDATR's chargebacks—a complaint a consumer makes with a bank to contest credit card charges—via a website link, discussed those chargebacks with FDATR's managers, and disputed the chargebacks in an effort to keep customers' payments.<sup>55</sup>

Until at least 2017 Tucci also controlled FDATR's bank accounts and was the signatory on those accounts.<sup>56</sup> Tucci decided how FDATR spent its money and he regularly moved money between bank accounts held by FDATR and his other companies.<sup>57</sup> Tucci used company bank accounts as his piggy bank, depending on which accounts had the most funds available.<sup>58</sup> Tucci routinely used company funds to pay his personal rent, his car payments, support payments to his ex-wife, and even paid for cosmetic surgery for his girlfriend.<sup>59</sup>

---

<sup>50</sup> Statement of Facts ¶ 19.

<sup>51</sup> Statement of Facts ¶ 20.

<sup>52</sup> Statement of Facts ¶ 21.

<sup>53</sup> Statement of Facts ¶ 22.

<sup>54</sup> Statement of Facts ¶ 23.

<sup>55</sup> Statement of Facts ¶ 24.

<sup>56</sup> Statement of Facts ¶ 25.

<sup>57</sup> Statement of Facts ¶ 26.

<sup>58</sup> Statement of Facts ¶ 27.

<sup>59</sup> Statement of Facts ¶ 28.

#### **IV. THE DEFAULT JUDGMENT AGAINST FDATR ESTABLISHED ITS LIABILITY**

The Bureau previously obtained default judgment against FDATR. A default judgment establishes, as a matter of law, that the defendant is liable to the plaintiff on each cause of action alleged in the complaint.<sup>60</sup> Here, the Bureau alleged that FDATR violated the TSR by collecting fees from consumers before it was legally allowed to do so (Counts I & II). FDATR also violated the TSR and the CFPA by engaging in deception (Counts III & IV). With the default judgment in place, FDATR's liability is established as follows:

- Count I: FDATR is liable for violations of the TSR, 16 C.F.R. § 310.4(a)(5)(i), because it requested and received payment of a fee or consideration for a debt-relief service before it 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 the customer made at least one payment pursuant to that agreement. And FDATR's fee or consideration was not proportional to or a percentage of the amount saved as a result of its services.
- Count II: FDATR is liable for violations of the TSR, 16 C.F.R. § 310.4(a)(2), because FDATR routinely requested and received payment of a fee or consideration for its credit-repair services before (a) the timeframe in which they represented that all of their goods or services would be provided to the consumer expired, and (b) they provided the consumer with documentation in the form of a consumer report from a consumer-reporting agency demonstrating that the promised results were achieved, such report having been issued more than six months after the results were achieved.
- Count III: FDATR is liable for violations of the TSR, 16 C.F.R. § 310.3(a)(2)(iii) and (x), because it engaged in deceptive telemarketing acts or practices.
- Count IV: FDATR is liable for violations of the CFPA, 12 U.S.C. § 5536(a)(1)(A), because it is a "covered person" under the CFPA and it committed an act or omission that violated a "Federal consumer financial law," namely the TSR, 15 U.S.C. § 6102(c)(2).

---

<sup>60</sup> *U.S. v. Di Mucci*, 879 F.2d 1488, 1497 (7th Cir.1989); *e360 Insight v. The Spamhaus Project*, 500 F.3d 594, 603 (7th Cir. 2007); *Rewards Network Establishment Servs., Inc. v. Lajaunie*, 857 Fed.Appx. 856, 857-858 (7th Cir. 2021).

- Count V: FDATR is liable for violations of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1), because it engaged in deceptive acts or practices.

**V. THE BUREAU IS ENTITLED TO SUMMARY JUDGMENT AGAINST TUCCI**

The only thing that remains to be decided in this case is Tucci's liability.<sup>61</sup> And this decision is ripe for summary judgment. To succeed on a motion for summary judgment, the movant must show "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."<sup>62</sup> In deciding a motion for summary judgment, courts "review the evidence in the record in the light most favorable to the non-moving party and draw all reasonable inferences in its favor."<sup>63</sup>

The Court has already established the company's liability with the default judgment. Both the TSR and the CFPA contain provisions through which individuals may be held liable for a company's violations. Here, the material facts—many of which come from Tucci's own testimony—meet the standards for the imposition of individual liability under the TSR and the CFPA. Hence, Tucci is, as a matter of law, liable for FDATR's violations and the Bureau is entitled to judgment against him.

**a. Tucci is Liable for FDATR's Violations of the TSR**

An individual may be liable for violations of the TSR<sup>64</sup> (1) as a "seller"<sup>65</sup> or (2) for

---

<sup>61</sup> See *Rewards Network Establishment Servs., Inc. v. Lajaunie*, 857 Fed.Appx. 856, 857-858 (7th Cir. 2021).

<sup>62</sup> Fed. R. Civ. P. 56(a).

<sup>63</sup> *NES Rentals Holdings, Inc. v. Steine Cold Storage, Inc.*, 714 F.3d 449, 452 (7th Cir. 2013).

<sup>64</sup> See *FTC v. World Media Brokers Inc.*, 2004 WL 432475, at \*9 (N.D. Ill. Mar. 2, 2004), *aff'd*, 415 F.3d 758 (7th Cir. 2005) (finding individuals liable for violations of the TSR).

<sup>65</sup> 16 C.F.R. § 310.2(dd) ("Seller means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.").

“assisting and facilitating” violations of the rule.<sup>66</sup> It is already established that FDATR is a telemarketer and is liable for violations of the TSR.

**i. Tucci is liable as a “seller” under the TSR**

Under the TSR a “seller” is “any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.”<sup>67</sup> The meaning of “person” in the TSR includes individuals, and an individual, particularly one that owns a company involved in telemarketing, is a “seller” under the TSR.<sup>68</sup> Tucci is a “seller” because he arranged for FDATR to provide its debt-relief and credit-repair services through telemarketing. Tucci founded, owned, and managed FDATR.<sup>69</sup> He developed the company’s telemarketing program, drafted the telemarketing sales scripts, and trained the telemarketing agents.<sup>70</sup> He directed the company in both placing radio advertisements to attract consumers to FDATR, and routing calls from consumers in response to those advertisements to FDATR’s telemarketers.<sup>71</sup> As a seller, Tucci is liable for FDATR’s TSR violations, which this Court already established.

**ii. Tucci assisted and facilitated FDATR’s violations of the TSR**

Tucci is also liable under the TSR for assisting and facilitating FDATR’s violations.<sup>72</sup>

---

<sup>66</sup> 16 C.F.R. § 310.3(b) (“Assisting and facilitating. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of this Rule.”).

<sup>67</sup> 16 C.F.R. § 310.2(dd).

<sup>68</sup> 16 C.F.R. § 310.2(y); *see FTC v. MacGregor*, 360 Fed.Appx. 891 at 894 (9th Cir. 2009) (finding that an individual was a “seller” under the TSR when he and his company contracted with third party telemarketing call centers).

<sup>69</sup> Statement of Facts ¶¶ 3-5, 8-11, 14, 16-18, 20-25, 34-38.

<sup>70</sup> Statement of Facts ¶¶ 10-11, 16-18.

<sup>71</sup> Statement of Facts ¶¶ 10-11.

<sup>72</sup> 16 C.F.R. 310.3(b) (“Assisting and facilitating. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer

Under the TSR, it is a violation for “a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of [the] Rule.”<sup>73</sup> The preamble to the TSR gives an example of conduct, when coupled with the requisite knowledge or conscious avoidance, that establishes “substantial assistance,” including “providing any script . . . or direct marketing piece used in telemarketing,” or “providing an appraisal or valuation of a good or service . . . [that] has no reasonable basis in fact or cannot be substantiated.”<sup>74</sup>

“The substantial assistance provision in the TSR has three elements: (1) there must be an underlying violation of the TSR; (2) the person must provide substantial assistance or support to the seller or telemarketer violating the TSR; and (3) the person must know or consciously avoid knowing that the seller or telemarketer is violating the TSR.”<sup>75</sup> The default judgment establishes that FDATR violated §310.3 by engaging in deception and § 310.4 by taking advance fees for debt-relief and credit-repair services. The only remaining questions are (a) whether Tucci provided substantial assistance or support to FDATR and (b) whether Tucci knew or consciously avoided knowing of FDATR’s misrepresentations. The facts show that he did both.

Tucci’s own admissions show that he substantially assisted or supported FDATR. He formed the company, provided it’s office space, and used a company he owned to provide sales

---

when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of this Rule.”).

<sup>73</sup> 16 C.F.R. 310.3(b); *see also* *FTC v. Chapman*, 714 F.3d 1211, 1216 (10th Cir. 2013); *CFPB v. Rosen*, No. 2:21-cv-07492, 2022 WL 1514439 \*4 (C.D. Cal. Apr. 5, 2022) (“[t]he threshold for what constitutes substantial assistance is low,” and requires showing only more than “mere causal or incidental” assistance to the telemarketer (internal citations omitted)).

<sup>74</sup> 60 Fed. Reg. 43,842, 43,852 (Aug. 23, 1995); *see also* *FTC v. Affiliate Strategies, Inc.*, No. 09-4104, 2011 WL 4352411, at \*11 (D. Kan. Sept. 16, 2011).

<sup>75</sup> *FTC v. Lake*, 181 F.Supp.3d 692, 699-701 (C.D. Cal. 2016).



leads to FDATR.<sup>76</sup> Tucci testified that he drafted FDATR's telemarketing and advertising scripts and he produced student loan debt-relief scripts to the Bureau that were in his control.<sup>77</sup>

Given Tucci's involvement with FDATR's program, marketing, and advertising materials, he knew or should have known that the representations made about the success of the program were false or had no reasonable basis and could not be substantiated.<sup>78</sup> When asked about the company's representations to consumers, Tucci either failed to articulate a basis for the company's representations or essentially admitted the claims were unsubstantiated or false.<sup>79</sup> Although the company promised that it could eliminate student loan payments, Tucci did not know of a single customer for whom FDATR eliminated student loan payments.<sup>80</sup> Likewise, he did not know whether any customers had their student loan payments cut in half.<sup>81</sup> He also did not know whether FDATR's services actually resulted in any customers getting their diplomas and transcripts as the company claimed.<sup>82</sup> And Tucci admitted that the company provided no services related to credit scores and negative credit items despite the claims that FDATR would improve consumers' credit scores and remove I-9 ratings.<sup>83</sup>

Tucci also knew that FDATR took fees from consumers before it achieved the promised results or met the requirements of the TSR.<sup>84</sup> In fact, it was by Tucci's design that FDATR took fees from customers almost immediately after enrolling in the company's service.<sup>85</sup> Even as a purported consultant, Tucci violated the TSR by providing substantial assistance to FDATR

---

<sup>76</sup> Statement of Facts ¶¶ 3-5, 10-11, 34.

<sup>77</sup> Statement of Facts ¶¶ 16-17.

<sup>78</sup> Statement of Facts ¶¶ 16-24, 43-50.

<sup>79</sup> Statement of Facts ¶¶ 44-50.

<sup>80</sup> Statement of Facts ¶ 46.

<sup>81</sup> Statement of Facts ¶ 47.

<sup>82</sup> Statement of Facts ¶ 48.

<sup>83</sup> Statement of Facts ¶ 49.

<sup>84</sup> Statement of Facts ¶¶ 40-42.

<sup>85</sup> Statement of Facts ¶ 40.

because he knew or consciously avoided knowing that FDATR’s practices violated the TSR—this is particularly true given that the State of Illinois sued him for the same conduct, yet FDATR continued with the same practices.<sup>86</sup>

**b. Tucci is liable for FDATR’s violations of the CFPA.**

Tucci is liable under the CFPA as a “related person” and a “covered person.”<sup>87</sup> Covered persons are subject to and may be held liable for violations of the CFPA. FDATR is a “covered person” because it engaged in offering or providing consumer-financial products or services, which includes “financial advisory services” that assist consumers with “debt management.”<sup>88</sup> A “related person” is deemed a “covered person” under the CFPA and means (1) “any director, officer, or employee charged with managerial responsibility for, or controlling shareholder of ...[a] covered person” or (2) any shareholder [or] consultant who materially participates in the conduct of the affairs of [a] covered person.”<sup>89</sup>

Tucci is a “related person” because he was a “director, officer, or employee charged with managerial responsibility for” FDATR and a “shareholder [or] consultant. . . who materially participate[d] in the conduct of the affairs of” FDATR.<sup>90</sup> Tucci was indisputably an officer of FDATR—he formed the company and listed himself as the sole officer, director, and shareholder of the company.<sup>91</sup> Tucci also had managerial responsibility for FDATR and materially participated in the company’s affairs—he was the company’s decision maker, handled the company’s day-to-day operations, and was responsible for FDATR’s marketing and sales

---

<sup>86</sup> Statement of Facts ¶¶ 51-52; *see e.g. Chapman*, 714 F.3d at 1217 (inquiries by state attorneys general into the co-defendants’ marketing practices put Chapman on notice of problematic practices).

<sup>87</sup> 12 U.S.C. § 5481(6), (25)(B)-(C)(i) and (ii).

<sup>88</sup> *See* 12 U.S.C. §§ 5481(5), (6), (15)(A)(viii)(II).

<sup>89</sup> 12 U.S.C. § 5481(25)(b), (C)(i) and (ii).

<sup>90</sup> *Id.*

<sup>91</sup> Statement of Facts ¶ 3.

practices. Tucci monitored and reviewed the company's chargebacks, controlled its bank accounts, and made hiring decisions. Tucci remained a "related person" after he transferred ownership of FDATR to Halverson in 2017 because he worked as a consultant for FDATR and materially participated in its conduct and affairs. As a purported consultant, Tucci had an office at FDATR and he remained involved in the company's marketing, advertising, and telemarketing sales agent training.<sup>92</sup>

Tucci, being a "covered person" under the CFPA, is liable for deception because he participated in and had the ability to control FDATR's deceptive acts. An individual is liable for a corporation's violations of the CFPA if "(1) he participated directly in the deceptive acts or had the authority to control them and (2) he had knowledge of the misrepresentations, was recklessly indifferent to the truth or falsity of the misrepresentation, or was aware of a high probability of fraud along with an intentional avoidance of the truth."<sup>93</sup> There is no dispute that Tucci meets both prongs. First, Tucci participated in the deceptive acts by drafting advertising and telemarketing-sales scripts—and he was certainly aware of the scripts considering that he produced them to the Bureau.<sup>94</sup> He also had the authority to control the deceptive acts as FDATR's sole owner and shareholder and later as a consultant involved in advertising and marketing as well as sales agent training.<sup>95</sup> Second, he had knowledge of the misrepresentations—he drafted the radio and sales scripts, trained sales agents, and controlled the company's website. At the very least he was recklessly indifferent to truth or falsity

---

<sup>92</sup> Statement of Facts ¶¶ 35-37.

<sup>93</sup> *CFPB v. Gordon*, 819 F.3d 1179, 1193 (9<sup>th</sup> Cir. 2016) (quoting *FTC v. Stefanich*, 559 F.3d 924, 931 (9<sup>th</sup> Cir. 2009)); see also *CFPB v. CashCall, Inc.*, 35 F.4th 734, 749 (9<sup>th</sup> Cir. 2022); See *FTC v. World Media Brokers Inc.*, 415 F.3d 758, 764 (7<sup>th</sup> Cir. 2005) (other circuits have relied on FTC case-law, like this case, as precedent for assessing individual liability).

<sup>94</sup> Statement of Facts ¶¶ 16-17.

<sup>95</sup> See, e.g., *Gordon*, 819 F.3d at 1193 (principal held liable where he had control over the marketing materials and knowledge of their contents).

considering that he admitted that many of the promises FDATR made to consumers were false or unsubstantiated.<sup>96</sup> And he either knew of the falsity or chose to ignore it when FDATR made those misrepresentations to consumers.

**VI. THE COURT SHOULD GRANT THE BUREAU SUMMARY JUDGMENT AND IMPOSE AN INJUNCTION, RESTITUTION, AND A CIVIL MONEY PENALTY AGAINST TUCCI**

The CFPA authorizes the Court to impose injunctive relief, restitution, and civil money penalties against Tucci.<sup>97</sup> The Default Judgment and Order Against FDATR, Inc., included these three forms of relief and the Bureau seeks a substantially similar order against Tucci.<sup>98</sup>

An injunction to prevent Tucci from engaging in the same conduct again is appropriate here.<sup>99</sup> This is particularly true considering that even after the State of Illinois sued Tucci and FDATR in 2017 for the same illegal conduct at issue in this action, Tucci and his company continued to deceive consumers, violate the TSR, and collect unlawful fees.

Equitable restitution to make harmed consumers whole is also appropriate.<sup>100</sup> Because neither Tucci nor FDATR cooperated during the Bureau's investigation, the Bureau obtained customer payment information from the provider of the customer relationship management (CRM) tool used by FDATR.<sup>101</sup> The CRM contains data memorializing the amount of money each customer paid to FDATR and is the best source of evidence for consumer harm. The total known amount of outstanding consumer harm resulting from Tucci and his company's illegal conduct is \$2,117,133.28—the amount of money paid by consumers minus refunds.<sup>102</sup> In a case

---

<sup>96</sup> Statement of Facts ¶¶ 44-50.

<sup>97</sup> 12 U.S.C. § 5565(a)(2)(C),(G),(H).

<sup>98</sup> ECF No. 50.

<sup>99</sup> 12 U.S.C. § 5565(a)(2)(G).

<sup>100</sup> 12 U.S.C. § 5565(a)(2)(C).

<sup>101</sup> Statement of Facts ¶ 54.

<sup>102</sup> Statement of Facts ¶ 55.

like this, where distressed consumers were deceived into paying large up-front fees for promised financial relief that never materialized, consumers are entitled to full redress for a collective restitution amount of \$2,117,133.28.<sup>103</sup>

The CFPA requires the Court to impose a civil money penalty on any person that violates Federal consumer financial law.<sup>104</sup> The CFPA provides for three statutory penalty tiers, escalating based on the degree of scienter behind the conduct: (1) Tier 1 penalties are for ordinary violations; (2) Tier 2 penalties are for reckless violations; and (3) Tier 3 penalties are for knowing violations.<sup>105</sup> For violations that occurred before November 2, 2015, civil penalty amounts are \$5,000 for Tier 1, \$25,000 for Tier 2, and \$1,000,000 for Tier 3 violations.<sup>106</sup> For violations that occurred on or after November 2, 2015, the civil penalty amounts are adjusted for inflation each year. The current penalty amounts are \$6,323 for Tier 1, \$31,616 for Tier 2, and \$1,264,622 for Tier 3 violations.<sup>107</sup>

Tucci's conduct warrants a civil money penalty of at least \$41,123,897. Most of Tucci's violations were ordinary if not reckless, supporting at least Tier 1 penalties. After FDATR was served with the State of Illinois's lawsuit against it on October 16, 2017, which put it on notice of its illegal conduct, Tucci's violations were at least reckless, supporting Tier 2 penalties. A defendant's conduct is reckless when it involves "an unjustifiably high risk of harm that is either

---

<sup>103</sup> The appropriate measure of restitution is the amount of money required for full consumer redress—the total amount consumers paid, less money already refunded to consumers. *See, e.g., FTC v. Febre*, 128 F.3d 530, 535-537 (7th Cir. 1997); *FTC v. Stefanichik*, 559 F.3d 924, 931-932 (9th Cir. 2009).

<sup>104</sup> 12 U.S.C. § 5565(c)(1) ("Any person that violates, through any act or omission, any provision of Federal consumer financial law *shall* forfeit and pay a civil penalty pursuant to this subsection." (emphasis added)).

<sup>105</sup> 12 U.S.C. § 5565(c).

<sup>106</sup> 12 U.S.C. §§ 5564(a), 5565(a) & (c).

<sup>107</sup> 12 U.S.C. §§ 5564(a), 5565(a) & (c); 12 C.F.R. § 1083.1.

known or so obvious that it should be known.”<sup>108</sup> It is unquestionable that engaging in deception and taking fees in violation of the law after being sued by a government agency for exactly that conduct constitutes an obvious high risk of harm. To calculate the civil money penalty, the Bureau multiplied the number of unique customers by the appropriate tier amount, which results in a penalty amount of \$41,123,897.<sup>109</sup>

The CFPB lists mitigating factors that the Bureau must consider when determining the amount of the penalty: (1) the size of financial resources and good faith of the person charged; (2) the gravity of the violation or failure to pay; (3) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided; (4) the history of previous violations; and (5) such other matters as justice may require.<sup>110</sup> None of these factors warrant reducing the penalty. First, Tucci did not act in good faith—his cooperation during the Bureau’s investigation was minimal. Because he did not provide financial information to the Bureau, it is impossible for the Bureau to know the size of his resources or the disposition of the money taken from consumers. Second, the gravity of the violations supports a significant penalty. For years, Tucci victimized thousands of financially distressed consumers with a

---

<sup>108</sup> *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47, 68 (2007); *CFPB v. Consumer First Legal Grp., LLC*, 6 F.4th 694, 711 (7th Cir. 2021) (applying the *Safeco* standard for reckless to the calculation of civil money penalties in a Bureau action).

<sup>109</sup> To calculate the civil money penalty, the Bureau multiplied the number of unique customers by the appropriate Tier amount resulting in three categories of calculations. First, between September 16, 2014, and November 1, 2015, FDATR enrolled at least 2,228 unique customers in its services and the Tier 1 penalty amount for that period is \$5,000 per violation—multiplying 2,228 by \$5,000 results in a penalty amount of \$11,140,000. Second, between November 2, 2015, and October 16, 2017 (the date by which both Tucci and FDATR had been served with the State of Illinois’ Complaint), FDATR enrolled at least 3,587 unique customers in its services and the Tier 1 penalty amount for that period is \$6,323 per violation—multiplying 3,587 by \$6,323 results in a penalty amount of \$22,680,601. Third, between October 17, 2017, and January 22, 2019, FDATR enrolled at least 231 unique customers in its services and the Tier 2 penalty amount for that period is \$31,616 per violation—multiplying 231 by \$31,616 results in a penalty amount of \$7,303,296. Adding together the penalty amounts for these three categories provides the total penalty amount of \$41,123,897. See Ridder Decl. at ¶ 17 (number of customers during period).

<sup>110</sup> 12 U.S.C. § 5565(c)(3).

business model designed to mislead consumers with false promises then charge fees in a manner that patently violated the TSR. Third, consumers experienced substantial losses in the form of illegal advance-fees—typically at least \$499 per customer. Fourth, Tucci was on notice that his and FDATR’s conduct was illegal long before the Bureau opened its investigation. In fact, the illegal conduct at issue here persisted for more than a year and a half after Tucci was sued by the State of Illinois over the same conduct. Finally, no other matters counsel in favor of mitigation.

## VII. CONCLUSION

The Bureau asks the Court to grant the Bureau summary judgment against Defendant Tucci.

Dated: October 14, 2022

Respectfully submitted,

/s/ Carmen Christopher  
Carmen L. Christopher (CA Bar No. 231508)  
Telephone: (202) 754-0329  
carmen.christopher@cfpb.gov  
Kristina D. Betts (AZ Bar No. 024859)  
Telephone: (202) 834-2723  
kristina.betts@cfpb.gov  
Bureau of Consumer Financial Protection  
1700 G Street, NW  
Washington DC, 20552

*Attorneys for Plaintiff*  
*Bureau of Consumer Financial Protection*