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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17
18 Consumer Financial Protection
19 Bureau,

Plaintiff,

20 v.

21 Freedom Debt Relief, LLC and
22 Andrew Houser,

23 Defendants.
24

Case No. 3:17-cv-6484

COMPLAINT

1 The Consumer Financial Protection Bureau (“Bureau”) files this Complaint
2 against Freedom Debt Relief, LLC (“Freedom”) and Andrew Houser
3 (collectively, “Defendants”) and alleges as follows:

4 **Introduction**

5 1. The Bureau brings this action under the Telemarketing and
6 Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C.
7 §§ 6102(c), 6105(d) (2012); the Telemarketing Sales Rule (“TSR”), 16 C.F.R. pt. 310
8 (1995) (revised 2010); and §§ 1031, 1036(a), 1054, and 1055 of the Consumer
9 Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531, 5536(a), 5564, 5565
10 (2012), in connection with the marketing and sale of debt-settlement or debt-
11 relief services.

12 **Jurisdiction**

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

17 **Venue**

18 3. Venue is proper in this district because Freedom and Houser are
19 located, reside, and do business here. 12 U.S.C. § 5564(f).

20 **Intradistrict Assignment**

21 4. Under the Local Rules of Practice in Civil Proceedings before the
22 United States District Court for the Northern District of California, this action
23 arises in the county of San Mateo because a substantial part of the events or
24 omissions giving rise to the claims occurred there. *See* Civil L.R. 3-2(c). This
25 action should therefore be assigned to the San Francisco Division or the Oakland
26 Division of this Court. *See* Civil L.R. 3-2(d).

Parties

1
2 5. The Bureau is an independent agency of the United States created by
3 the CFPA. 12 U.S.C. § 5491(a). It has independent litigating authority and may
4 secure appropriate relief for violations of the CFPA, 12 U.S.C. § 5564(a)-(b), and
5 the TSR, 15 U.S.C. §§ 6102(c), 6105(d).

6 6. Freedom, a Delaware corporation, maintains its principal place of
7 business at 1875 S. Grant St., Suite 400, San Mateo, CA 94402. Freedom offers and
8 provides “financial advisory services,” including debt-settlement services, to
9 consumers owing unsecured debts to creditors. Those activities are “consumer
10 financial services or products” under the CFPA. 12 U.S.C. § 5481(5)(A),
11 (15)(A)(viii)(II). Freedom is therefore a “covered person” under the CFPA. 12
12 U.S.C. § 5481(6). Additionally, in connection with a campaign to use telephones
13 to make interstate phone calls to consumers and to use advertisements to solicit
14 calls from consumers to induce them to purchase its services, wherein Freedom
15 offers to renegotiate, settle, or in any way alter the terms of payment or other
16 terms of the debt between a person and one or more unsecured creditors or debt
17 collectors, Freedom initiates and receives telephone calls from consumers. Thus,
18 Freedom is a “telemarketer” offering a “debt relief service” under the TSR. 16
19 C.F.R. § 310.2(o), (ff).

20 7. Andrew Houser is the co-founder and co-CEO of Freedom. At all
21 times material to this Complaint, Houser has exercised substantial control over
22 and involvement in the establishment of Freedom’s business policies and
23 practices described in the Complaint. At all times material to this Complaint,
24 Houser has exercised managerial responsibility for Freedom and has materially
25 participated in the conduct of its affairs. Houser is therefore a “related person.”
26 12 U.S.C. § 5481(25)(C)(i)-(ii). Because Houser is a “related person,” he is
27 deemed a “covered person” under the CFPA. 12 U.S.C. § 5481(25)(B).
28

Factual Background

1
2 8. Freedom is a consumer-debt-settlement company. Established in
3 2002, Freedom claims that it has successfully negotiated and settled consumer
4 debts in excess of \$7 billion for over 300,000 consumers who have enrolled in its
5 debt-settlement program.

6 9. Freedom required consumers enrolled in its debt-settlement program
7 to deposit funds into dedicated accounts with an FDIC-insured bank. Freedom
8 claimed that once there were sufficient funds in those accounts to make
9 settlement offers to consumers' creditors, Freedom would negotiate with the
10 creditors to persuade them to accept less than the amounts actually owed.

11 10. Freedom instructed its customers who had been making payments to
12 their creditors to withhold any further payments and to change their billing
13 addresses with their creditors to Freedom's Arizona address, 4940 South
14 Wendler Drive, Tempe, AZ 85828.

15 11. Freedom would approve consumers for enrollment in its debt-
16 settlement program even if they were not delinquent on any debts at the time of
17 enrollment. Freedom did not independently verify hardship claims or require
18 consumers to provide supporting documentation for hardship claims as part of
19 its underwriting efforts.

20 12. When a debt enrolled in its debt-settlement program was settled or a
21 creditor ceased attempts to collect the debt (in the absence of a settlement),
22 Freedom would charge consumers fees that typically ranged between 18% and
23 25% of the enrolled debt amount.

Freedom's Enrollment of Consumers and Lack of Disclosure

24
25 13. Freedom's employees received phone calls from prospective
26 customers and initiated phone calls to prospective customers across the United
27 States to persuade them to enroll in its debt-settlement program.
28

1 14. Before consumers enrolled in Freedom's program, Freedom pulled
2 credit reports of prospective customers. Freedom used the credit reports to
3 confirm in its telephone discussions with prospective customers the identities of
4 their creditors, the amounts owed to each creditor, the underlying nature of the
5 debt owed to each creditor, and the payment status for each debt.

6 15. Freedom's underwriting department prepared a "Schedule of
7 Creditors and Debt" listing each consumer's creditors and the amounts owed to
8 those creditors. The Schedule of Creditors and Debt was submitted to
9 prospective customers for review and execution, and it became "Exhibit A" of
10 the Debt Resolution Agreement that consumers entered into with Freedom for
11 debt-settlement services.

12 16. While Freedom's Debt Resolution Agreement explained that
13 consumers could withdraw from the program and terminate the agreement, it
14 did not notify consumers that if they withdrew from the program, they would
15 receive all funds in their accounts, minus any fees that Freedom had already
16 earned.

17 **Freedom's Knowledge That Certain Creditors Would Not Negotiate**

18 17. Freedom has long known that certain creditors have policies against
19 negotiating with debt-settlement companies such as Freedom.

20 18. For example, in late 2011, KPIX-TV ("CBS 5"), a local San Francisco
21 television station, aired a story about two Freedom customers who complained
22 about Freedom's inability to settle debts they owed to Chase. Chase confirmed to
23 CBS 5 that it "does not work with debt-settlement companies." So as early as
24 2011, Freedom had notice that Chase would not negotiate as a matter of
25 corporate policy.

26 19. Freedom has actively sought to reverse creditors' policies against
27 negotiating with debt-settlement companies. For years, it has maintained a team
28 dedicated to meeting with creditors that have frequently refused to negotiate

1 with Freedom to persuade them to change their policies. On occasion, Houser
2 accompanied this “creditor development team” on its meetings. And for years,
3 Houser has been briefed every two weeks and has met frequently with the
4 “creditor development team” to learn about its efforts to persuade creditors to
5 negotiate with Freedom.

6 20. In 2015, Freedom requested an in-person meeting with American
7 Express. Freedom representatives met with American Express representatives in
8 the summer of 2015 in an effort to have American Express reverse its policy
9 against negotiating with debt-settlement companies. Freedom did not succeed,
10 and American Express’s policy remained unchanged.

11 21. In 2016, Freedom requested an in-person meeting with Chase.
12 Freedom representatives met with Chase representatives in the summer of 2016
13 in an effort to have Chase reverse its policy against negotiating with debt-
14 settlement companies. Freedom did not succeed, and Chase’s policy remained
15 unchanged.

16 22. Freedom has held multiple in-person meetings with Discover since
17 2015 – including in October 2015, April 2016, and March 2017 – in an effort to
18 have Discover reverse its policy against negotiating with debt-settlement
19 companies. Freedom’s efforts have been unsuccessful; Discover’s policy has
20 remained unchanged.

21 **Freedom’s False Claims That All Creditors Would Negotiate**

22 23. Despite knowing that certain creditors would not negotiate with it,
23 Freedom told consumers that it could negotiate all of their debts.

24 24. In company scripts, Freedom instructed employees in pre-enrollment
25 telephone calls to mention its “professional Negotiations Division of 200
26 negotiators” and to tell consumers that Freedom would “negotiate directly with
27 [their] creditors to settle [their] debt for less than” what was owed. In marketing
28 materials, Freedom touted its “negotiating power.” Freedom did not tell

1 consumers that there might be certain creditors with which it would be unable to
2 “negotiate directly.”

3 25. Since 2014, Section 2 of Freedom’s Debt Resolution Agreement
4 consistently represented to consumers that Freedom would be “negotiating
5 settlements.” Section 2 further represented that “each Creditor listed on Exhibit
6 A will work with us to negotiate a settlement of your Debts.” Exhibit A of the
7 Debt Resolution Agreement, the “Schedule of Creditors and Debt,” listed all
8 debts a consumer enrolled in Freedom’s program and the creditors associated
9 with those debts.

10 26. Freedom made this representation even when the creditors listed on
11 the Schedule of Creditors and Debt included Chase, American Express, Discover,
12 Macy’s, Synchrony Bank, or other creditors either known to Freedom to have
13 policies against working with debt-settlement companies or with track records of
14 repeatedly refusing to negotiate with Freedom.

15 27. Since at least 2013, when creditors refused to negotiate with Freedom,
16 Freedom would tell some consumers to negotiate with their creditors directly
17 and would give these consumers instructions on how to negotiate a settlement
18 on their own. When consumers acting on their own were able to negotiate a
19 settlement with their creditors, Freedom still charged consumers its fee, usually
20 in the thousands of dollars per enrolled debt—even when Freedom had not
21 directly negotiated with the creditors (or, in some cases, even communicated
22 with the creditors).

23 **Freedom’s Instruction to Consumers to Deceive Creditors**

24 28. As part of the instructions given to consumers for negotiating
25 settlements on their own, Freedom told consumers to expressly mislead their
26 creditors when asked directly about their enrollment in a debt-settlement
27 program. Freedom’s instructions to consumers stated: “If they ask you if you are
28 enrolled into our program, let them know that as it pertains to this account, you

1 are looking to resolve it on your own.” Freedom directed consumers to make this
2 representation to a creditor when the consumers were in fact enrolled in
3 Freedom’s program to settle that creditor account.

4 29. Freedom instructed consumers to represent to creditors that the
5 source of settlement funds was from family, friends, tax refunds, or the sale of a
6 vehicle. But this was not true; in fact, the funds came either from Freedom’s
7 affiliated loan program or the funds consumers deposited in the dedicated
8 account set up upon their enrollment in Freedom’s debt-settlement program.

9 30. Freedom did not disclose to consumers during the enrollment
10 process that Freedom might instruct them to mislead their creditors in the event
11 those creditors refused to negotiate with Freedom.

12 **Freedom’s Deception of Consumers about Chargeable Events**

13 31. Since 2014, Section 2 of Freedom’s Debt Resolution Agreement stated,
14 “We will not charge any fee for our services until we successfully resolve a debt
15 for you and you have made a payment toward the settlement of that debt.” This
16 is consistent with Freedom’s pre-enrollment telephone scripts, where Freedom
17 instructed its employees to tell consumers that **“NO FEES ARE ACCEPTED
18 UNTIL WE SETTLE A DEBT and then only for the debt that was settled!”**

19 32. Contrary to this assertion, Freedom charged consumers its fee even
20 when Freedom had not successfully settled consumers’ debts.

21 33. For example, Freedom charged its fee when it had not directly
22 negotiated with the creditors – or even communicated with the creditors –
23 because the consumers had negotiated a binding settlement on their own.

24 34. Similarly, Freedom charged its fee when a creditor, in the absence of
25 a binding settlement, stopped collecting from a consumer, sometimes following a
26 charge-off. But these consumers could still be subject to collection efforts, and
27 their credit reports could continue to reflect an unpaid or delinquent debt in the
28 trade line for that creditor.

1 35. Freedom did not disclose to consumers that it would charge
2 consumers its fee in such scenarios.

3 **Houser's Substantial Involvement in Freedom's Practices**

4 36. Houser has the authority and responsibility to approve Freedom's
5 policies and practices.

6 37. Houser has the authority and responsibility to approve the content
7 of the Debt Resolution Agreements.

8 38. Houser's name and signature appear on all Debt Resolution
9 Agreements with consumers.

10 39. Houser knew that the statement included in all Debt Resolution
11 Agreements that creditors would work with Freedom to negotiate settlements
12 was not always true with respect to certain creditors. Houser knew that certain
13 creditors had policies against negotiating with debt-settlement companies.

14 Houser knew that Freedom was often unable to negotiate with creditors who
15 had such policies.

16 40. Houser knew that the statement included in all Debt Resolution
17 Agreements that consumers would only be charged if Freedom negotiated a
18 settlement and consumers made payments toward those settlements was not
19 true. Houser knew that Freedom would charge consumers in other undisclosed
20 scenarios.

21 41. Houser approved Freedom's practice of coaching consumers when
22 creditors would not negotiate with Freedom and approved charging consumers
23 if they later settled their debts with creditors.

24 **Count I**

25 *Defendants' Violations of the CFPA*

26 *(Deceiving Consumers Regarding Creditors' Willingness to Negotiate with Freedom)*

27 42. The Bureau re-alleges and incorporates by reference paragraphs 1-41.
28

1 43. In connection with marketing its services, Freedom touted its
2 “negotiating power” and has represented to consumers that its negotiators
3 would “negotiate directly” with their creditors. In many instances, there was a
4 significant chance that Freedom would be unable to negotiate directly with
5 certain creditors having policies against negotiating with debt-settlement
6 companies. Freedom has known of these creditors’ policies and of the significant
7 chance that it would be unable to negotiate directly with those creditors, and
8 Freedom has not notified consumers of these facts.

9 44. Freedom has represented to consumers in its customized Debt
10 Resolution Agreements that it believed all creditors, including creditors with
11 which Freedom was often unable to negotiate, would work with Freedom to
12 negotiate a settlement of debts.

13 45. Freedom’s statements have created the false net impression that
14 Freedom itself would be able to negotiate directly with all creditors, including
15 those that had policies against negotiating with debt-settlement companies.

16 46. Freedom’s statements were false or misleading, were material to
17 consumers’ decisions to enroll in Freedom’s debt-settlement program, and
18 constituted deceptive acts and practices, in violation of §§ 1031(a) and
19 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

20 47. Houser has had significant responsibility for establishing Freedom’s
21 policies and practices, and he has had substantial control over Freedom’s
22 operations, including the content of its Debt Resolution Agreements.

23 48. Houser directly contributed to the development, review, and
24 approval of materials containing the aforementioned deceptive statements.

25 49. Houser’s name and signature appeared on materials containing the
26 aforementioned deceptive statements.
27
28

1 50. Houser has committed or engaged in deceptive acts or practices in
2 connection with the offering of a consumer-financial product or service. 12 U.S.C.
3 §§ 5531(a), 5536(a)(1)(B).

4 51. Houser knowingly or recklessly has provided substantial assistance
5 to Freedom, a covered person engaged in deceptive acts and practices, in
6 violation of the CFPA, 12 U.S.C. § 5536(a)(3).

7 **Count II**

8 *Defendants' Violations of the CFPA*
9 *(Deceiving Consumers Regarding Charges)*

10 52. The Bureau re-alleges and incorporates by reference paragraphs 1-41.

11 53. Freedom has represented to consumers that it would not charge any
12 fee for its services until it settled a debt and consumers have made a settlement
13 payment to the creditor. In fact, Freedom has charged consumers its fee in cases
14 where it did not settle the consumer's debt and the consumer did not make a
15 settlement payment.

16 54. Freedom's statements concerning the circumstances when consumers
17 would be charged fees were false or misleading, were material to consumers'
18 decisions to enroll in Freedom's debt-settlement program, and constituted
19 deceptive acts and practices, in violation of §§ 1031(a) and 1036(a)(1)(B) of the
20 CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

21 55. Houser has had significant responsibility for establishing Freedom's
22 policies and practices, and he has had substantial control over Freedom's
23 operations, including the content of its Debt Resolution Agreements.

24 56. Houser directly contributed to the development, review, and
25 approval of materials containing the aforementioned deceptive statements.

26 57. Houser's name and signature appeared on materials containing the
27 aforementioned deceptive statements.
28

1 58. Housser has committed or engaged in deceptive acts or practices in
2 connection with the offering of a consumer-financial product or service. 12 U.S.C.
3 §§ 5531(a), 5536(a)(1)(B).

4 59. Housser has knowingly or recklessly provided substantial assistance
5 to Freedom, a covered person engaged in deceptive acts and practices, in
6 violation of the CFPA, 12 U.S.C. § 5536(a)(3).

7 **Count III**

8 *Defendants' Violations of the CFPA*

9 *(Abusively Requiring Consumers to Negotiate on their Own)*

10 60. The Bureau re-alleges and incorporates by reference paragraphs 1-41.

11 61. When Freedom has been unable to negotiate with creditors, Freedom
12 has told some consumers to negotiate with their creditors directly and has given
13 them instructions on how to negotiate settlements on their own.

14 62. Freedom's instructions to these consumers included directions to
15 mislead their creditors by concealing the fact of their enrollment in Freedom's
16 debt-settlement program and misrepresenting the source of the funds available
17 for settlement.

18 63. Freedom did not disclose to consumers before they enrolled in its
19 program that they might be required to negotiate with creditors on their own,
20 including by deceiving their creditors, in order to settle their debts. Freedom also
21 did not disclose to consumers before they enrolled in its program that Freedom
22 charged consumers its fee, usually in the thousands of dollars per enrolled debt,
23 even when consumers themselves – not Freedom – negotiated the debt
24 settlements.

25 64. Freedom repeatedly has represented to consumers that Freedom
26 would be able to negotiate with their creditors – including the specific creditors
27 referenced in consumers' customized Debt Resolution Agreements – and did not
28 ensure that consumers understood that certain creditors might not negotiate with

1 Freedom. Accordingly, many of these consumers did not understand that a
2 material condition of Freedom's debt-settlement program would be having to
3 negotiate with creditors themselves.

4 65. Freedom took unreasonable advantage of consumers' lack of
5 understanding by, with full knowledge of its own misrepresentations and failure
6 to correct them, enrolling consumers in its debt-settlement program who
7 reasonably might have chosen not to enroll if they understood that they might
8 have to negotiate with creditors themselves.

9 66. Freedom's practice of enrolling consumers in its debt-settlement
10 program under these circumstances took unreasonable advantage of the
11 consumers' lack of understanding of the material risks, costs, or conditions of
12 enrolling in Freedom's debt-settlement program, and it is abusive in violation of
13 §§ 1031(d)(2)(A) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(d)(2)(A),
14 5536(a)(1)(B).

15 67. Houser has had significant responsibility for establishing Freedom's
16 policies and practices, and he has had substantial control over Freedom's
17 operations, including the content of its Debt Resolution Agreements and the
18 guidance offered to consumers regarding negotiating with their creditors.

19 68. Houser directly contributed to the development, review, and
20 approval of Freedom's Debt Resolution Agreements and the guidance they offer
21 to consumers.

22 69. Houser's name and signature appeared on the Debt Resolution
23 Agreements.

24 70. Houser has committed or engaged in abusive acts or practices in
25 connection with the offering of a consumer-financial product or service. 12 U.S.C.
26 §§ 5531(a), 5536(a)(1)(B).

1 71. Houser has knowingly or recklessly provided substantial assistance
2 to Freedom, a covered person engaged in abusive acts and practices, in violation
3 of the CFPA, 12 U.S.C. § 5536(a)(3).

4 **Count IV**

5 *Defendants' Violations of the TSR and the CFPA*

6 *(Failure to Clearly and Conspicuously Disclose Consumers' Rights to Funds)*

7 72. The Bureau re-alleges and incorporates by reference paragraphs 1-41.

8 73. It is a violation of the TSR for any seller or telemarketer in connection
9 with the sale of any debt-relief service requiring customers to place funds in an
10 account at an insured financial institution to fail to disclose truthfully, in a clear
11 and conspicuous manner before customers consent to pay for those services, that
12 customers own the funds held in the accounts, that customers may withdraw
13 from the debt-relief service at any time without penalty, and that, if customers
14 withdraw, they must receive all funds in the accounts other than funds earned by
15 the debt-relief service. 16 C.F.R. § 310.3(a)(1)(viii)(D).

16 74. Freedom has requested or required its customers to place funds in an
17 account at an insured financial institution.

18 75. Freedom did not clearly and conspicuously disclose that if a
19 customer withdrew, the customer must receive all funds in the account, other
20 than funds earned by Freedom.

21 76. The Bureau is authorized to enforce the Telemarketing Act with
22 respect to the offering or provision of a consumer financial product or service
23 subject to the CFPA. 15 U.S.C. § 6105(d).

24 77. Freedom's failure to disclose in a clear and conspicuous manner that
25 consumers would receive all funds in the account was a deceptive act or practice
26 in telemarketing, in violation of the TSR. 16 C.F.R. § 310.3(a)(1)(viii)(D).

1 78. In addition, Freedom's violation of the TSR is treated as a violation of
2 a rule under § 1031 of the CFPA. 15 U.S.C. § 6102(c). Freedom therefore has also
3 violated the CFPA. 12 U.S.C. § 5536(a)(1)(A).

4 79. Houser directly contributed to the development, review, and
5 approval of Freedom's Debt Resolution Agreements, and Houser's name and
6 signature appeared on the Debt Resolution Agreements.

7 80. Houser knew or consciously avoided knowing that Freedom failed
8 to clearly and conspicuously disclose that consumers must receive all funds in
9 the account other than fees earned by Freedom upon withdrawal, in violation of
10 the TSR.

11 81. Houser's conduct has violated the TSR's ban on assisting and
12 facilitating others' violations of that rule. 16 C.F.R. § 310.3(b).

13 82. Houser's violation of the TSR is treated as a violation of a rule under
14 § 1031 of the CFPA. 15 U.S.C. § 6102(c). Houser has therefore violated
15 § 1036(a)(1)(A) of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

16 83. Houser has knowingly or recklessly provided substantial assistance
17 to Freedom's violation of the TSR. Houser has therefore violated § 1036(a)(3) of
18 the CFPA. 12 U.S.C. § 5536(a)(3).

19 **Demand for Relief**

20 The Bureau requests that the Court:

- 21 a. permanently enjoin Defendants from committing future violations of
22 the Telemarketing Act, 15 U.S.C. §§ 6102(c), 6105(d); the TSR, 16
23 C.F.R. pt. 310; and §§ 1031, 1036(a) of the CFPA, 12 U.S.C. §§ 5531,
24 5536(a), and any other provision of "Federal consumer financial law,"
25 as defined by 12 U.S.C. § 5481(14);
- 26 b. grant additional injunctive relief as the Court may deem just and
27 proper;
- 28

- 1 c. order Defendants to pay redress to consumers harmed by its
2 unlawful conduct;
3 d. order Defendants to disgorge all ill-gotten gains;
4 e. impose on Defendants civil money penalties;
5 f. award costs against Defendants; and
6 g. award additional relief as the Court may determine to be just and
7 proper.
8

9 Dated: November 8, 2017

Respectfully Submitted,

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