IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

UTAH DIVISION OF CONSUMER PROTECTION, Plaintiff, vs. TROY STEVENS, an individual and doing business as REAL ESTATE WORKSHOP; CORY WADSWORTH, an individual and partner in REAL ESTATE WORKSHOP; MJ AUGIE BOVE, an individual and partner in REAL ESTATE WORKSHOP; PROSPERITY INTERNATIONAL LLC; FLIP AND BUILD WEALTH; REAL ESTATE WORKSHOP; PLI LLC, OPUS MANAGEMENT GROUP, LLC; MANTIS MANAGEMENT, INC.; SELECTIVE MARKETING COMPANY; and BO-ROC MANAGEMENT INC., Defendants.	**FINDINGS OF FACT AND CONCLUSIONS OF LAW**[1] Case No. 190907053 Honorable Kent Holmberg

On April 11, 12, 13 and 14, 2023, the Court conducted a bench trial on the claims asserted by the Plaintiff Utah Division (Plaintiff or "the Division") of Consumer Protection Division and the defenses advocated by Defendants Troy Stevens, Real Estate Workshop, Cory Wadsworth, MJ Augie Bove, Prosperity International, LLC, formerly known as Flip and Build Wealth, formerly doing business as Real Estate Workshop, PLI LLC, formerly doing business as

[1] The Court has largely adopted the plaintiff's proposed findings as contained in its proposed *Second Amended Findings of Fact and Conclusions of Law* (dkt. 541 filed January 8, 2024). The defendants also filed proposed findings in its *Defendants' Closing Statements and Proposed Findings & Conclusions* (dkt. 505 filed June 30, 2023); however, even though the title of this document contains the description "Proposed Findings and Conclusions," it is, in reality, only a closing argument and it did not contain proposed findings and conclusions in a form the Court could use. Even though the defendants did not file proposed findings of fact and conclusions of law, the Court carefully considered all of its arguments and objections.

Prosperity Learning LLC, Opus Management Group, LLC, Mantis Management, Inc., Selective Marketing Company, and Bo-Roc Management, Inc. ("Defendants").

At trial, the Division was represented by Thomas M. Melton and Robert G. Wing of Parr, Brown, Gee & Loveless, P.C. and Peishen Zhou and Kevin McLean of the Utah Attorney General's office. Defendants were represented by Theodore E. Kanell of Plant, Christensen and Kanell, and Gregory J. Christiansen of Guardian Law, LLC.

Procedural Background Following Trial

Following the last day of trial on April 14, 2023, the parties submitted closing arguments and proposed findings in writing. On June 29, 2023 the Division filed its *Corrected Proposed Findings of Fact and Conclusion of* Law; and on June 30, 2023, the defendants filed *Defendants' Closing Statements and Proposed Findings & Conclusions.* Both parties filed objections to the others' filings: on June 12, 2023, the Division filed *Response to Defendants' Closing Statements and Proposed Findings and Conclusions* and defendants filed *Defendants' Objections to Plaintiff's Findings of Facts & Conclusions of Law.*

Final oral arguments were presented to the Court on September 7, 2023. Following the closing arguments on September 7, the Court permitted the plaintiff to file amended findings and the defendants to provide marked up copies of four depositions.[2] On October 5, 2023, the plaintiff filed its proposed *Amended Findings of Fact and Conclusions of Law.* On October 16,

[2] The four depositions were Jonathan Haskett, Jenette Litviak, Zafar Mohsenzadeh, and Tarja Newman. The Division had previously submitted deposition designations to the court and the Defendants had submitted a list of relevance objections. The Defendants agreed to "mark-up" the copy of the depositions submitted by the Division to simplify the court's analysis of which designations were being objected to by the Defendants. In the four depositions submitted by the Defendants, the yellow highlighted deposition testimony represented the Division's designations without objection and the orange highlighted deposition testimony represented the Division's designations with relevance objections from the Defendants.

2023, a hearing was held to clarify the deposition designations.

On December 4, 2023, the Court issued its *Minute Entry* decision seeking additional detail in the plaintiff's proposed Amended Findings and related supplemental briefing from the parties. On January 8, 2024, the plaintiff filed its proposed *Second Amended Findings of Fact and Conclusions of Law* with related briefing in *Plaintiff's Clarification of Findings of Fact and Conclusions of Law.* On February 27, 2024, the defendants filed the *Defendants' Objection and Argument to Dismiss in Accordance with Rule 52 and 43 URCP and Response to Plaintiff's Second Amended Findings of Fact and Conclusions of Law* ("Opposition Briefing").

On April 29, 2024, the court issued its *Minute Entry* decision seeking clarification of defendants' Opposition Briefing. On May 31, 2024, in response to this Minute Entry, the defendants filed *Defendants' Supplemental Briefing Re: Motion to Dismiss.* On June 10, 2024, the plaintiff filed its *Response to Defendants' Supplemental Briefing Re: Motion to Dismiss* and on June 17, 2024, the defendants filed the *Defendants' Reply Supplement Memorandum in Support of its Motion to Dismiss.*

On July 15, 2024, plaintiff filed its *Notice of Record Evidence.* On July 19, 2024 defendants filed *Defendant's Objection to Supplemental Filing* and on July 26, 2024, the plaintiff filed its *Response to Defendants' Objection to Supplemental Filing.*

Being now fully advised, the Court rules as follows.

I. FINDINGS OF FACT[3]

[3] Unless stated otherwise, all findings of fact are made by a preponderance of the evidence. Further, the section headings specifying findings of fact and conclusions of law are for general organization; some findings of fact may be contained under the heading for conclusions of law and visa-versa.

1. This matter is before the Court on the Division's Complaint seeking injunctive relief, recission of contracts, restitution, the refund of monies paid, disgorgement, civil penalties, fines, and other equitable relief for alleged facts and practices that violated the Utah Consumer Sales Practices Act ("CSPA") at Utah Code § 13-11-1 et. seq.; the Business Opportunity Disclosure Act ("BODA) at Utah Code § 13-15-1 et. seq., and the Telephone Fraud Prevention Act ("TFPA"), Utah Code § 13-26-1 et. seq.

2. This Court has subject matter jurisdiction pursuant to Utah Code §13-2-1(2) (authorizing the Division to administer and enforce the CSPA, the Business Opportunity Disclosures Act ("BODA"), and the Telephone Fraud Prevention Act ("TFPA")); Utah Code §13-11-17 (authorizing the Division to bring a judicial action to enforce the provisions of the CSPA); Utah Code §13-11-7(1)(a) (authorizing the enforcing authority to enforce the CSPA); Utah Code §13-15-3 (authorizing the enforcing authority to bring a judicial action to enforce the provisions of BODA); Rule 65A of the Utah Rules of Civil Procedure (injunctions); and as provided by Utah Code §78A-5-102(1). Venue is proper in this district pursuant to Utah Code §78B-3-307.

The Parties

3. The Utah Division of Consumer Protection ("Division") is a Division of the Utah Department of Commerce. Both the Division and the Utah Department of Commerce are bodies politic of the State of Utah, created and organized under the laws of the State of Utah. The Division is charged by statute with administering and enforcing the CSPA under Utah Code §13-11-1 *et seq.*, the TFPA, Utah Code §13-26-1 *et seq.*, and BODA, Utah Code §13-15-1 *et seq.*[4]

4. Defendant Real Estate Workshop ("REW") is a Utah DBA. Defendants Troy Stevens, Augie Bove, and Cory Wadsworth operated REW as a de-facto partnership. Defendant Prosperity International, LLC, a Utah limited liability company, formerly did business as Flip and Build Wealth and REW. Both DBAs have expired. Defendant Opus Management Group, LLC, an expired Utah limited liability company, is the sole member of Prosperity International. Defendant Troy Stevens is the sole member of Opus Management. Defendant PLI, LLC is an expired Utah limited liability company, whose sole member was Opus Management. Defendant Mantis Management, Inc., a Utah corporation, is Troy Stevens' ("Stevens") corporate alter ego. Selective Marketing Company, Inc., a Utah corporation, is Cory Wadsworth's ("Wadsworth") corporate alter ego. Bo-Roc Management, Inc., an Alaska corporation with a principal place of business in Utah, is Augie Bove's corporate alter ego. Stevens, Wadsworth, and Bove are collectively referred to as the "Individual Defendants." The defendants are collectively referred to as "Defendants" or as "REW."

Previously Decided Issues

Some issues have been decided in prior orders. These include:

5. On May 27, 2022, the Court issued an *Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment, Denying Defendants' Motion to Enforce Settlement Agreement, Denying Defendants' Alternative Motion for Summary Judgment as to Relief Under the CSPA, and Granting in Part and Denying in Part Defendants' Motion to Amend.* (docket 338; "MPSJ Order.") As part of the MPSJ Order, the Court set out a number of undisputed facts.

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[4] Admitted in Answer, ¶¶13-20, 24, 26, 28; *Findings of Fact, Order Granting in Part, and Denying in Part Plaintiff's Motion for Summary Judgment* ("MPSJ Order"), p.4.

Those undisputed facts are adopted as part of the Findings of Fact included here. Some of them are repeated here for context, others are not, but all the undisputed facts set out in the MPSJ Order are incorporated here. The Court has found additional facts based on the testimony and documents introduced at trial.

6. The Division has the authority to regulate transactions between a Utah company and out-of-state consumers.[5]

7. Defendants' binding judicial admissions provide conclusive evidence that Defendants violated the TFPA.[6]

8. Defendants offered and sold an assisted marketing plan, as they sold products, equipment, and services for an initial required consideration of more than $500 and represented to consumers that the plan would enable them to earn more than they paid.[7] The Defendants' conduct violated BODA.

9. The Court lacks subject matter jurisdiction to impose fines under BODA. That authority lies with the Director of the Division.[8]

10. Under the CSPA, the Division is authorized to "bring an action [ ] to recover, for each violation, damages [ ] on behalf of consumers who complained to the [Division] within a reasonable time after it instituted proceedings under [the CSPA]." Utah Code §13-11-17(1)(c). A reasonable time for consumers to file complaints with the Division in this case was thirty days before the end of fact discovery.[9]

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[5] Order Denying Motion to Dismiss dated February 29, 2020, p. 5.
[6] MPSJ Order, p. 23.
[7] MPSJ Order, p. 25.
[8] Memorandum Decision dated December 27, 2021, p. 11.

11. Each of the Individual Defendants is personally liable, jointly, and severally, for the judgment in this matter.[10]

12. For purposes of assessing fines under the CSPA and the TFPA, violations occurring before May 8, 2017, are barred by the statute of limitations. For purposes of recovering damages on behalf of consumers who complained, violations occurring before June 24, 2015, are barred by the statute of limitations. Nevertheless, conduct occurring outside the statute of limitations period is relevant to the imposition of fines for violations that occurred after May 8, 2017.

13. The Division's action does not violate REW's substantive due process right. BODA is not unconstitutionally vague.[11]

14. REW asserted that it had reached a settlement with the Division. A bifurcated trial date was set for that matter. Shortly before the trial date, REW withdrew its defense. There was no settlement agreement between the Division and REW.[12]

FINDING OF FACT BASED ON EVIDENCE AT TRIAL

Consumer Evidence Presented by the Division

15. The Division called seven witnesses who testified in person in support of its case. The Court finds the testimony of the consumer witnesses to be highly credible and very persuasive[13]: Mr. Freddy Campbell, Ms. Tasha Salinas, Mr. Craig Curry, and Mr. Adam Wilson.

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[9] MPSJ Order, p. 26.
[10] MPSJ Order, p. 27.
[11] Memorandum Decision dated December 27, 2021, p. 10.
[12] Minute Entry dated September 26, 2022.
[13] The court evaluated the credibility of witnesses through the application of MUJI CV121 Believability of Witnesses.

Each of them recounted at length their experience with REW, the representations made to them, and the experience they had with REW prior to and after their purchase of REW products and services.

16. The Court finds the testimony of Blake Young, the Division investigator in this case, to be credible. He testified forthrightly as to the beginning of his investigation, the steps he took during the investigation, and the documents he gathered through that investigation.

17. The Court finds credible the testimony of the four witnesses deposed in this matter and whose testimony was submitted at trial.[14] The testimony of those deponents, subject to cross examination, provided an accurate statement of their experience with REW both prior to, and after, the purchase of REW products and services.

18. The Court has reviewed the consumer complaints set forth in Exhibit 189 and, in a different format, 789. The Court finds the statements of the consumers in those complaint forms, and the documentation provided in support of those complaints to be credible. The statements and documentation submitted are consistent with the testimony of the live consumer witnesses and the deposed consumers.

19. All of the consumer testimony, in whatever manner submitted, is mutually reinforcing and corroborative. The Court finds all of this consumer testimony highly credible.

Methods Employed by REW

20. REW and the Individual Defendants held themselves out as sellers of real estate training products and services. They regularly solicited, engaged in, and enforced consumer

[14] The four depositions were Jonathan Haskett, Jenette Litviak, Zafar Mohsenzadeh, and Tarja Newman. Ex. 24; Ex. 36; Ex. 40; Ex. 41.

transactions by selling real estate training and coaching packages.

Free Seminars

21. REW advertised its workshops primarily through radio advertising and direct mail. The advertisements invited consumers to register for free seminars.

22. The free seminars were advertised as providing consumers an opportunity to learn about real estate and tax lien investing as an investment or business opportunity.

23. REW advertised using various trade names, including "Chad Chiniquy Find, Fund, Flip," "Government Tax Lien Network," and "Real Estate and Tax Lien Network."

24. The radio advertisements began with attention getting statements such as "Are you ready to make a six-figure income this year?" and "Attention: This is an investor notice. Are you interested in making some extra cash buying real estate tax liens in your local area?" One advertisement offered free tax lien kits that REW claimed would "show you how to earn guaranteed returns between fifteen and thirty-five percent yearly, which is completely secured by the government."

25. One of REW's radio advertisements offered a "free tax lien kit" which would "walk you through how you could earn significant returns on your investment buying delinquent tax liens, which are secured to the property. They'll even show you how to do this inside your own retirement accounts."

26. The radio ad encouraged listeners to get ready to buy houses for pennies on the dollar, with little or none of their own money, working only five to ten hours per week.

27. These radio advertisements were widely disseminated. Consumers testified that

they had heard and acted on a radio advertisement.

28. Bove had control and authority over changes to radio advertisement scripts. Stevens was also instrumental in changing the language of the radio advertisements.

29. REW provided a list of the cities in which it aired the radio advertisements referenced above together with the number of REW buyers and GTLN (another name used by REW) buyers. From May 8, 2017, to November 30, 2017, REW aired the commercials and made sales in the following cities:

Market	GTLN[15] Buyers	Date	REW Buyers[16]	Date
GTLN Atlanta	68	July 9-12, 2017	9	July 21-23, 2017
GLTN Atlanta	61	Sept. 24-27, 2017	11	Oct. 6-8, 2017
GTLN Austin	23	June 14-16, 2017	2	June 23-25, 2017
GTLN Charlotte	50	Nov. 12-15, 2017		
GTLN Chicago	32	May 16-19, 2017	6	June 9-11, 2017
GTLN Chicago	30	Oct. 15-18, 2017	5	Oct 27-29, 2017
GTLN Dallas	30	June 4-7, 2017	4	June 15-17, 2017
GTLN Dallas	40	Aug. 13-16, 2017	8	Aug, 25-27, 2017
GTLN Dallas	30	Oct. 22-25, 2017	11	Nov. 10-12, 2017
GTLN DC	53	May 31-June 3, 2017	10	June 15-17, 2017
GTLN DC	42	Nov. 15-18, 2017		
GTLN Denver	37	July 23-25 2017	13	Aug 4-6 2017
GTLN Denver	45	Sept 24-27 2017	12	Oct 13-15 2017
GTLN Houston	42	June 11-14 2017	11	June 23-25 2017
GTLN Houston	38	Aug 6-9 2017	10	Aug 18-20 2017 GTLN
Houston	35	Nov 8-11 2017		
GTLN Indianapolis	34	Aug 20-23 2017	10	Aug 31 Sept 2 2017
GTLN Jacksonville	16	Oct22-25 2017	4	Nov 3-5 2017
GTLN Jacksonville	36	June 25-28 2017	5	July 14-16 2017
GTLN LA	52	Oct 15-18 2017	13	Oct 27-29 2017
GTLN LA	73	June 26-29 2017	17	July 14-16 2017
GTLN LA	55	Aug 27-30 2017	12	Sept 8-10 2017
GTLN Las Vegas	33	May 31 June 3 2017	5	June 9-11 2017
GTLN Las Vegas	34	Sept 10-13 2017	8	Sept 22-24 2017

[15] Government Tax Lien Network or "GRLN."
[16] Real Estate Workshop of "REW."

GTLN Miami	61	April 30 May 3 2017	8	May 11-13 2017
GTLN Miami	63	July 30 Aug 2 2017	9	Aug 18-20 2017
GTLN Michigan	48	Aug 13-16 2017	4	Aug 25-27 2017
GTLN Minneapolis	39	May 7-10 2017	2	May 19-21 2017
GTLN Minneapolis	24	Sept 17-20 2017	9	Sept 30 Oct 1 2017
GTLN Norfolk VA	29	July 16-20 2017	5	July 28-30 2017
GTLN NY	41	July 16-20 2017	7	July 28-30 2017
GTLN Orlando	35	July 30-Aug 1 2017	5	Aug 11-13 2017
GTLN Orlando	69	April 23-28 2017	7	May 11-13 2017
GTLN Orlando	41	Oct 29-Nov 1 2017	6	Nov 10-12 2017
GTLN Philly	24	Sept 6-9 2017	5	Sept 15-17 2017
GTLN Phoenix	29	May 7-10 2017	7	June 2-4 2017
GTLN Phoenix	30	Sept 17-20 2017	8	Sept 30-Oct 1 2017
GTLN Pittsburgh	25	Sept 10-13 2017	6	Sept 22-24 2017
GTLN Portland	18	Oct 8-10 2017	4	Oct 20-22 2017
GTLN Portland	25	April 9-11 2017	4	April 28-30 2017
GTLN Sacramento	30	June 19-21 2017	6	July 7-9 2017
GTLN Sacramento	26	Oct 1-4 2017	11	Nov 3-5 2017
GTLN San Diego	37	Feb 7-9 2017	4	Feb 17-19 2017
GTLN San Diego	40	July 23-25 2017	6	Aug 4-6 2017
GTLN San Diego	32	Oct 8-10 2017	13	Oct 20-22 2017
GTLN San Fran	47	Aug 20-23 2017	14	Sept 15-17 2017
GTLN San Fran	23	Oct 29 Nov 1 2017	9	Nov 17-19 2017
GTLN Seattle	53	April 30-May 2 2017	17	June 2-4 2017
GTLN Seattle	21	July 9-11 2017	3	July 21-23 2017
GTLN Seattle	25	Nov 5-8 2017	4	Nov 17-19 2017
GTLN St. Louis	26	Aug 27-30 2017	5	Sept 8-10 2017
GTLN Tampa	37	June 22-24 2017	11	July 7-9 2017

30. REW, and its alter ego, GTLN, made 2,119 sales of the 3-day Workshop and Advance Training after May 8, 2017, to consumers.

31. REW advertised that it would teach consumers a "five step process for getting deals funded immediately and tapping into my funding real sources to flip houses, with no credit or cash needed."[17] This radio advertisement aired in various markets.

32. From 2014 through 2018, REW held free seminars in conference rooms and hotel

[17] Admitted in Answer ¶53.

ballrooms. Typically, these seminars were held two times per day for two to four days per area.

33. REW sent some consumers a confirmation notice for the free event which stated that when consumers attended the private tax lien event, they would discover "the secret of Real Estate Tax Lien Certificates providing 16-25% fixed and secured rates of return"; "how to start earning an extra income of up to $7,800 or more per month"; "how to get your hands on great properties at 25% discount"; and "how to earn enough money to secure a safe, early retirement."

34. At the free seminars, consumers were given limited information about real estate and tax liens, but the actual purpose of the event was to entice consumers to purchase an additional three-say seminary from REW.

35. The information presented at the free seminars was approved by the REW principals.

36. REW had over 70,000 customers attend its events.

Three-day Seminars and Advanced Training Packages

37. From 2015 through 2017, REW conducted the three-day seminars for thousands of people in dozens of cities around the United States. More than 9,000 consumers purchased the three-day seminar from 2015 through 2018, and of these consumers, approximately 1,900 purchased an Advanced Training package.

38. REW's database showed that 1,955 individuals purchased products and services from it between January 1, 2014, and December 31, 2014. Another 1,489 individuals purchased between December 1, 2017, and July 31, 2018. The 1,489 sales are in addition to the 2,119

sales made in the period after May 8, 2017 referenced above. According to its own records, REW sold 3,608 seminars to consumers from May 8, 2017 to July 31, 2018.

39. The primary purpose of the three-day seminar was enticing consumers to purchase additional "Advanced Training" from REW. Consumers left the main seminar room to have one-on-one or small group meetings with REW "mentors" or "coaches" who encouraged consumers to purchase REW Advanced Training packages. The Advanced Training packages ranged in price from $39,900 to $50,000.

40. Although consumers were told that there would be additional training on purchasing or investing in tax liens, the focus was on selling them on fix and flip real estate training and training in other real estate investing strategies.

41. Consumers in attendance at the three-day seminars were informed that the price of the Advanced Training packages would be reduced by $10,000 for a limited time, generally if purchased during the three-day seminar.

42. During the three-day seminar, REW provided consumers with a ten-page brochure for its Advanced Training packages. It included earnings representations.

a. It advertised a two-day buy and hold seminar: "The goal of this is to help you become 'job optional' [sic] that you start producing an income that replaces the income your job is currently producing."

b. It advertised a "Money Lending Online Course: Creating Recurring Passive Income for Life!": "A business you can run from anywhere in the world! . . . Learn how to use your self-directed IRA, ROTH, 401K, Profit Sharing Plan, etc.

to grow your savings quickly and insure retirement."

43. One of REW's training books encouraged consumers to "be the Bank" when investing in real estate because you get a "[b]etter return than most of the market," "You're in control!", and your investment is "[l]iquid. [You] can sell the mortgage."

44. The same training book purported to compare the different returns a consumer might receive over a ten-year period if they were to invest $350,000 in real estate instead of the stock market, an annuity, U.S. bonds, or certificates of deposit. The projected returns from real estate investing are shown to provide the greatest annual return, approximately 10.8%, compared to approximately 6.5% for the stock market, 4% for an annuity, 3.9% for U.S. bonds, and 1.5% for certificates of deposit. These representations were unsupported by any credible evidence.

45. REW told consumers that the purchase price for the advanced training package would include a list of individuals or entities that would fund real estate purchases and/or rehabilitation of properties purchased by consumers. This never materialized - or they gave the customers access to a publicly available database which was not vetted or of any real value to the customers.

46. Defendants did not have one example of an individual from this list having funded any of their customer's projects.

47. REW made the following additional representations to consumers:

a. You might make a hundred, two hundred thousand flipping houses and other earnings representations.

b. If we made this investment, we would be able to retire in two to five years.

c. Consumers following REW real estate programs would make more money than other consumers who did not purchase REW products and services. "A presenter said that once he started out, he didn't do the greatest. But once he started following the REW process, things accelerated and he was – he had been able to quit his job and was going on vacation right after that class."

d. Consumers would receive personal coaching and hands on experience as part of the Advanced Training packages.

e. Consumers could make a six-figure income and have a three-step process to earn secured returns up to 24%.

f. Consumers could earn 16-25% fixed and secured returns and how to receive checks of up to $7,800 or more per month.

g. Consumers were given a Triple Your Investment Guarantee Certificate.

h. Consumers who purchased a one-on-one coaching program would get individualized hands-on coaching to show them how to use REW.

48. REW gave consumers a "Triple Your Investment Guarantee Certificate." In it, REW guarantees that if a consumer follows the steps taught them in their training, they will make a minimum of three times the money they paid REW or REW would give them their money back.

49. Entities with connections to REW engaged in telephone solicitations to upsell

Consumers on products and services (such as self-directed IRA accounts) because of their REW purchases.

50. One of the additional products that was sold to consumers by REW after the three-day workshop was personalized coaching services. The coaching services were pitched by REW as, "[i]f you are ready to make your investments and real estate dreams a reality, our proven and qualified instructors will show you how. . . . Allow our instructors to take you by the hand and walk you through the entire process."

51. The cost of the additional coaching services was generally $25,000.

52. The personal coaching lacked substance for those who received it and for some, they received no personal coaching.

53. The entire sales pitch by REW was as a guarantee - how you were guaranteed to make money if:

- They would train you on everything you needed to know.
- They would provide you with ready capital from their list of investors ready and willing to loan you capital.
- They would give you one on one assistance through the transactions - hand holding.

REW Operated as an Unregistered Telemarketer

54. REW made interstate telephone solicitations from Bluffdale, Utah.

55. REW did not register as a telemarketer in Utah.

56. Consumers purchased or agreed to purchase goods and services as a result of

REW's telephone solicitations, including purchasing additional training and mentoring.

57. REW also made telephone calls to set appointments for consumers to attend seminars where REW goods and services were sold.

58. Although only one REW principal testified at trial (Troy Stevens), Augie Bove, another REW principal, testified by Affidavit that, "REW uses telephone calls as one medium to confirm a request to attend a live event, not scheduled in the State of Utah."

59. Almost all of the 90,000 calls made by REW from February 2018 to November 2018 were for the purpose of confirming appointments or to collect outstanding balances from consumers. This 90,000 calls includes some personal calls by REW employees and administrative calls by REW, but the number of such calls was negligible compared to the solicitation calls.

60. Blake Young, an investigator for the Division, testified that after attending a REW free preview event, he received additional telephone calls.

61. Investigator Young testified that it was a sales call and, "the main focus of the call was whether or not I wanted to purchase the three-day event."

62. Investigator Young also testified as to the number of phone calls made by REW to consumers. Investigator Young issued a subpoena to REW's telecommunications provider. He testified that he identified the telecommunications provider as Jive Communications and explained the information he received from Jive Communications in response to the Division's subpoena.

63. For the period of time between February and October 2018, there were over

90,000 calls, both inbound and outbound calls.

64. Investigator Young's experience after attending the free seminar was consistent with other REW consumers who stated that their transactions occurred over the phone. One consumer stated, "After attending seminar (sic) I received a phone call a few days later about the prospective program. After some indecision on my part I paid for the program." Similarly, Alfie Gladney stated, "After attend seminar (sic) we called and they wanted more money before we could be hooked with a mentor, we were told if we paid during workshop, we would get education, and a mentor, that what convinced me to buy."

65. Mr. Craig Curry, a consumer, testified that he had heard an REW radio advertisement while in his work truck. He then called the phone number stated in the advertisement to register for the free seminar held in his area. Another consumer testified, "But I do know we got a phone call, something to the nature of confirming our attendance so that they would know the head count since they were providing lunch, they said."

66. Ms. Tasha Salinas, a consumer who attended both the free preview event and a three-day event testified regarding telephone solicitations she received after the three-day event. Upon receiving credit cards through Seed Capital, Ms. Salinas testified, "But once I got all the credit cards in, I had a person calling me from REW saying, hey, are you ready to get going on this?" She stated, "And so finally, it was—this guy. I'm going to say he hounded me because he was calling all the time, all the time."

67. On those calls, the REW telemarketer knew the amount of credit that Seed had obtained for Ms. Salinas. The telemarketer used that knowledge to sell a $35,000 package to

Ms. Salinas.

68. Mr. Campbell testified to receiving telephone calls soliciting one-on-one coaching services from him, "I started getting calls from REW, constant calls, to join the Mentorship program, you know. . . ." Another consumer also reported that phones calls were used to solicit the purchase of the mentorship program. "[on] 3/6/19 we were called and asked to pay ProSource an additional $25,000 which was billed to Advanced Mentoring. Apparently REW had become ProSource."

69. Tarja Newman testified that after purchasing goods and services from REW, she would receive regular solicitation calls. "[G]enerally when we got phone calls other that what we signed up for were usually related. When we pick up the phone, it was like, 'Because you paid for the diamond package, this one is offered to you as well, and you're entitled to something else.' And those are the calls we usually got. It was about once a week we got a call."

70. Mr. Hodgson, another REW consumer, attended the four-day workshop and elected not to purchase a mentoring package at that workshop. After returning home from the four-day workshop, Mr. Hodgson stated that, "After I returned home from the REW 4-day 'Fix and Flip' seminar a person by the name of Larry Lee called me from the REW Fix and Flip 'Mentoring Program.'" Mr. Hodgson purchased a coaching package for $15,000.

71. Isabelle and Charles Cate stated that the transactions they had with REW were "over the phone. Trade show, hotel, or other meeting location." Other consumers also reported that they received telephone solicitations. Jack Hinton reported the same thing. As one consumer put it, "Everyone that called wanted thousands more to help us."

72. Kyrah Dickens, a single mother, stated, "I paid to be a basic member to prosource and then was upsold to the master program . . .which was almost $40K to get a lifetime of assistance to purchase liens, deeds, and invest in properties with the help of expert advisors. About a few weeks later I received a call from one of their top advisors informing me that the $40K I'd spent wasn't enough to actually get the assistance that was promised when I bought the program and that I would now need to purchase additional services to get more one on one or expert purchase to fix and flip."

73. Bill Myrthil, another disappointed REW consumer stated, "They pretty much vanished after the workshops. They later called with a special mentorship program and attempted to solicit more money." As one consumer concluded, "Because after you signed up no one was there to really help you be success just a generic call center for people to call and they would tell you to pay more money for their advance program so someone could work with you one on one." After purchasing a product, consumers would receive follow-up calls to sell them additional goods or services. "I later received a call trying to get me to pay more $$ (sic) for additional items, which I said I wasn't interested. Very hard sell." Jacqueline Mapp reported, "They only call to upsell additional scams."

74. Another consumer, Ana Manzo, stated, "every time they called me, it was to try to get me to buy another package for $25,000 that would include a personal coach." Jonathan Haskett testified, "[M]y partner and I were propositioned via telephone on 5-10 subsequent occasions by the "home office" to invest another $10K to get the exclusive offers that had already been promised."

REW Pushed Consumers to Amass Debt to Purchase REW Training

75. To enable consumers to purchase additional training from them, REW partnered with a third party, Seed Capital, to offer financing for REW training packages and services. Seed Capital did not provide consumer financing directly. Rather it helped consumers apply for and obtain multiple credit cards.

76. Convincing consumers to obtain financing to pay REW was the primary focus of the three-day seminar.

77. Consumers paid between $3,000 and $4,000 to Seed Capital. Seed Capital would then open credit cards in the consumer's name. As Larice Rutley, REW consumer in 2018, stated, "After signing up I received emails and phone calls about opening the credit cards needed to finish paying the amount of $29,995 total. We did put a down payment of $7,500.00 and they helped me to open 6 credit cards with a total of $21,900."

78. In order to increase the consumer's credit limits, Seed Capital assisted consumers in falsely inflating their income on credit card applications.

79. REW received compensation from Seed Capital for REW consumers who paid Seed Capital. In the Ability to Repay/Income Calculation Worksheet completed by Seed Capital to open credit cards, Seed Capital used a projected future income figure provided by REW.

The Sales Scheme

80. Rather than providing training and products related to real estate investing and buying and selling tax liens, REW seminars operated only as a sales platform to entice consumers to purchase additional training. This was a step-by-step sales process consisting of

convincing the consumer to pay more and more money at each step – and the nature and step process of this extraction was not disclosed to the consumers. As one investor stated, "[t]he program was designed to string students along for months with multiple people promising you that you were going to make money in the end that will more than pay for your cost, however in order to do so you had to keep paying more and more money at each event that you attended."

81. REW did not maintain a list of satisfied customers during the time it was operating. Mr. Troy Stevens had no idea how many satisfied customers REW had. With all of the sales activity going on with REW, the court expected some credible evidence and analysis of prior customers.

82. No credible evidence of satisfied or successful consumers was presented at trial.

83. While REW represented to consumers that they could make money using the techniques taught by REW, it had no credible data to substantiate its claims.

84. REW made conflicting representations about earnings. This demonstrates that it lacked substantiation for its claims.

Mentoring Packages

85. One of the additional products that was sold to consumers by REW after the three-day workshop was personalized coaching services. REW pitched the coaching services by stating, as, "If you are ready to make your investments and real estate dreams a reality, our proven and qualified instructors will show you how. . . .Allow our instructors to take you by the hand and walk you through the entire process."

86. The cost of the additional coaching services was generally $25,000.

87. REW offered a number of goods or services it characterized as "coaching" or "mentoring." One specific product promised consumers that they could have one-on-one training from a mentor provided by REW. REW told consumers that a mentor or coach (the two terms were used interchangeably) would travel to their city and would provide real estate tailored to their market. REW described the coaching package to one consumer in a voicemail as follows:

> "Tiffany Lee here with Real Estate Workshop you attended this past weekend. I hope you both enjoyed the 3 days and learned a great deal. I am reaching out to you to see if you want to be part of what we do here on out, but NOT by doing advanced training that would require traveling all over the country to dive into this nor required the 40K to do so. Every now and then, not too often, we will strategically align ourselves with in a one on one with our seasoned investors for the next 6 months to 1 year. Essentially do everything that would be done in advanced training, but in a setting that is more intimate and one on one which for some makes it more productive. . . ."[18]

88. One consumer testified, "I paid an additional $25 K for one-on-one mentorship with a guy names (sic) Eric Blackwell, where I was basically guaranteed I would find a deal. I was told my mentor would be there to answer any questions I had. He stated he would come out to my area and find a deal for 2-3 days he would be in town." Another consumer stated, "I was told that if I pay for a one-on-one coach as my mentor. I would be taught step by step on how to find properties, and how to successfully (sic) and complete a deal."

89. Mr. Wilson explained his experience with the REW coaching program. He testified that the content of the program "was very specific. The coach was going to fly out to

[18] Statement of Rita De La Luz, Ex. 789, Bates No. 007075-76.

our location for a weekend, spend two full days with us. We have unlimited access to him as far as those three deals."

90. After the visit to the consumer's location, REW told consumers that they would continue to receive assistance. Mr. Wilson testified, "I expected to receive everything in here [the diamond package] plus what they told me about the coaching program which was a guaranteed handhold through the first three deals." "[L]ike with anything you invest in its --- I put my trust in them, and I expected to receive all these things that were in here plus the training of the first three deals." "I thought with a coach there should be no questions." "It's that real world experience that I was counting on, you know." "But the real value that I saw was the coaching and the handholding through the actual transactions."

91. The program was described by REW presenters in colloquial terms. Consumer Donato Cabarrubias stated, "He used the example that to get ahead in real estate was like swimming in a lake trying to get to the other bank, and with the mentorship it would be like being on a speed boat getting me to the other side of the lake." Mr. Wilson testified, "[T]he specific verbiage that was used was that there's a lot of different paths to Disneyland and you can either take a Honda Civic blindfolded or you can take the helicopter. With our coaching you're – it's like taking the helicopter."

92. Another consumer stated, "After struggling for 4 months to get our business off the ground, REW Senior Strategist Scott C (sic) convinced us that having a coach that will work with us one on one would provide us the training and couching (sic) to get us through an entire process on one property." Iris Ortiz, who purchased REW products and services, reported,

"Everything was misleading and the only way they promised an actual transaction was if you paid for one of their team members to come to your town for an additional $30,000."

93. Another consumer reported that REW represented the coaching package as follows: "As a result of the mentorship with Brian Petersen, we would have been able to work with a high quality-team of real estate professionals (contractors, realtors, etc.) that would be an important part of establishing our real estate investing business in our local market. During Brian's visit to our local market we would have secured a flip home." As another consumer stated, "A representative from the Work Shop Team was leading me on to pay additional money to partner with a coach on my first deal and I'm guaranteed to make my money back that I put out for the entire workshop."

94. REW sold this coaching package in other training seminars and over the phone Consumers made payments to REW and an entity called Advanced Mentoring which was a d/b/a of REW.

95. The price of the coaching package varied. Some consumers paid $25,000, while others paid varying amounts.

Misrepresented Mentorship Programs

96. REW's claims about the mentorship programs were false. Consumers testified that the mentors did not provide the assistance that REW promised them. Mr. Campbell testified that the REW strategy would not work in his market. The coach mentor did not offer him any properties owned by REW and did not give him a list of properties for sale in the San Francisco area as promised. The $25,000 coaching program payment left him with no money to

invest in real estate. "[A]fter going on, I realized that even though you use other people's money, you still got to have pocket money, you know, to close out and whatever. There is no such thing as you go in here with no money and get this like they made you believe."

97. Consumer Aida Ghidey testified that the mentor assigned to her was unfamiliar with her financial situation. "[T]he mentor is an investor, and wasn't prepared for my budget needs. I asked before the 3 days mentorship if he had an understanding of my budget needs, and showed me homes way above my down payment budget. . . . . Nice people but I had nothing to show for it by the end of the 3 day mentorship that I paid $25,000 for and is still (sic) making those credit card payments with interest."

98. Consumer Evan Martin stated, "We were promised a mentor to help us. We never got that mentor, we never got the help or services as promised and we have lost a lot of money and time. We called them; left messages and no calls were returned. We sent emails and none were returned."

99. Terry and Jerry Green, consumers who purchased a mentor package for $15,500, stated they were deceived about their mentor's experience. "Our mentor knew nothing about what our workshops taught us and even the REW software (pro stream) that we purchased to locate properties, Rick D (sic) our mentor knew very little about our training classes and workshops he was teaching us how to use Zillow to find properties." Another consumer testified that, "I purchased that private coaching because I had no idea how to do that all that myself. A man came to my house for several days, and, rather than help me find a house to buy and making sure I had one bought to flip, he took me to the Dollar Store to buy the right color

envelopes and stationary. . . .he did not lift a finger to help me get started" This consumer continued, "I basically paid him $8,333.33 per day to come to my area and not find me a deal. And when he returned to Utah he became less responsive and sometimes non-responsive to calls, emails, and text messages."

100. Mr. Wilson's experience was similar. "We were supposed to get all this access to REW, you know, the phone calls, the—the—the emails just---they were just non-existent after, you know, that initial rah-rah-rah, get your pumped up. They just tapered off." Mr. Wilson tried to find another mentor, as explained in this exchange: "Q: when this Mentorship with Mr. Damian didn't work out, you said you bought another Mentorship? A: So that was when we expressed concern with Aaron Darby. We told him that, hey, it's--- communication's really bad. Like, we—we need—we need help. Our coach is not very responsive. Do you have any recommendations? And he suggested we get ahold of Carl Bentley who is another REW coach. He said that he had specific deals, like, ready to go for REW investors like us, students, so I said okay." "And so, again, same thing. First few weeks, it was great communication with Carl Bentley. Got the motivation like, hey, you guys are—here's –here's some coaching tips. Here's some things that I look for when I'm buying." Despite his efforts to use a second coach recommended by REW, Carl Bentley also abandoned Mr. Wilson. "And then, when it came down to the metal to meet the meat (sic), I was like, okay, so let's have it. We need some access to deal that you have for us. And that's when it went radio silence."

101. Another consumer, Mr. Hodgson, through his Consumer Complaint, testified that "on the last day of the REW 4-day seminar at Orlando Florida the REW speaker tried to get

everybody in the audience to pay another $25,000.00 for a mentor to come to their area to hold their hand and walk them through their first house 'Fix and Flip' deal. I did not agree to do it because I was already feeling ripped off and scammed like I had made a big mistake getting involved in any of it!" He testified, "After I returned home from the REW 4-day 'Fix and Flip' seminar a person by the name of Larry Lee called me from the REW Fix and Flip 'Mentoring Program.' Larry was very convincing by telling me that 'if you sign up and pay REW another $15,000 for the REW 'Fix and Flip' mentoring program you will receive twenty ½ hour phone calls from a REW 'Fix and Flip' mentor who will walk you through step by step on how to fix and flip a house." Larry assured me the mentor would walk me through every step of the way until I successfully fixed and flipped my first house." Mr. Hodgson also testified "Larry promised me by saying 'As long as you follow through and do what the mentor tells you what to do you will make back the 30,000 you paid for the REW 'Platinum Program' plus you will make back the $15,000 you paid for signing up for the REW 'Fix and Flip' mentoring program." "I agreed to pay Larry Lee the $15,000 over the phone and gave him one of the credit card numbers off one of the credit cards I received from Seed Capital to the $15,000 to REW for the REW 'Fix and Flip' mentoring program." "The fix and flip mentors simply gave me the same information I had already received when I attended the 4-day REW 'Fix and Flip' seminar in Orlando! I then realized it was just another way for REW to once again scam me out of thousands of dollars I don't have!"

102. Lorraine Stacy, whose mentor visited her location, stated, "Eric Blackwell specifically, GUARANTEED that when he came to Dallas for his One-on-One with me that he

would find the right house to buy in which I could flip and make a significant profit. He verbatim "Guaranteed" that he would make that happen. He didn't find the right house in the 3 days he said he'd spend, but left without fulfilling his promise rather than staying as long as it took to find the right house to flip for profit."

103. Alethea and Pearl Atkins purchased a REW coaching package. They received no value for their purchase. "The promises of being able to buy and flip homes in our local market with the guidance of a REW mentor were completely false since Brian [their mentor] had no established team in our market and made no such efforts to even prepare himself to be of assistance to us during the scheduled time frame or thereafter."

104. Other consumers did not receive the coaching services they were promised, "Vince Autrey, who purchased a coaching program testified, "[T]he training and coaching didn't give the most important info needed to prevent me from losing a lot of money during a house flip project they were training me on. REW left out pertinent information regarding the real estate deal I was in while being coached and it seemed as if it was planned to do so." Another consumer, Rachael Bhagat, testified, "Also spoke and texted Brian Petersen who was our 1 on 1 mentor. I expressed frustrations and did not assist us either. He also stopped communicating with me."

105. Even after its putative "closure" in December 2018, REW was still selling mentorship programs. Helen Edwards stated, "[on] 3/6/19 we were called and asked to pay ProSource an additional $25,000 which was billed to Advanced Mentoring. Apparently REW had become ProSource." "[W]e were promised a personal mentor along with additional classes on

tax liens, asset protection and wealth training. . .We have not received the mentoring promised."

106. Consumer Kyrah Dickens, stated, "I paid to be a basic member to prosource (sic) and then was upsold to the master program . . .which was almost $40K to get a lifetime of assistance to purchase liens, deeds, and invest in properties with the help of expert advisors. About a few weeks later I received a call from one of their top advisors informing me that the $40K I'd spent wasn't enough to actually get the assistance that was promised when I bought the program and that I would now need to purchase additional services to get more one on one or expert purchase to fix and flip." Her transactions occurred in 2019.

107. One consumer testified that REW coaches encouraged them to make false statements. "[T]he personal coach was telling us to lie to people saying we had property for sale when we didn't."

REW Never Intended to Deliver Promised Services

108. REW never really intended to deliver the services it promised to consumers. After consumers purchased a training package from REW, they were unable to have meaningful contact with REW to follow up on their purchase. Mr. Curry's testimony at trial summarized his experience, "You know, you've got your literature that they give you, and supposedly you're supposed to have all those program supports and stuff like that, and we didn't get what was promised, no sir." Many other consumers echoed this sentiment.

109. Customers who attended REW Advanced Training tried to purchase properties.

Despite REW's claim that it would assist with the real estate transactions, when consumers tried to purchase properties, REW did not provide them with any assistance.

110. An example of this lack of support was detailed in the testimony of Adam Wilson, a retired, disabled, United States Marine captain. Mr. Wilson heard about the Government Tax Lien Network (a label for REW) on a local radio show and attend a free preview event in San Diego. He testified that REW's use of the title "Government Tax Lien Network" legitimized it for him. "It made it seem like they were affiliated with the government in some way." He continued, "usually when it's government, if it's backed by the government, treasuries, securities, those things are typically a guaranteed return. So, yes, I felt like it legitimized what was going on."

111. After attending the preview event, Mr. Wilson purchased the three-day event. He testified "When we got to the—the seminar it was more, you know, the fix and flips. And the profit potential was much higher depending on what you could get into." Mr. Wilson believed that REW offered a program that he could implement to become a real estate investor. He said, "If I followed their steps and I did you know, I followed the program, that I could make—you know, I could make a success as well." As he testified, "You know, being a Marine, I knew I can follow instructions to a T." As a consequence, he purchased the Advanced Training package for $39,995. He was told that it was discounted if he purchased it at the 3-day seminar.

112. Mr. Wilson attended a four-day event in Salt Lake City where he and other consumers toured properties putatively owned by other REW purchasers. Based on that

experience, Mr. Wilson testified that REW would assist him to make similar real estate purchases.

113. At the workshop, REW offered assistance to pay for the Advanced Training package by offering assistance to open additional credit cards. "They gave us guidance on raising our credit card limits." To raise the credit card limits, "there was a—a few different tactics they had as far as, you know, stating your income, possibly overstating."

114. After purchasing the Advanced Training program, Mr. Wilson testified that "I expected to receive everything in here plus what they told me about the coaching program which was a guaranteed handhold through the first three deals." He also stated that "like with anything you invest in—I put my trust in them—and I expected to receive all these things plus the training of the first three deals."

115. Mr. Wilson was convinced to pay another $25,000 to get Roderick Damian, an REW coach, to travel to San Diego, "specifically to coach for fix and flips." He paid for the coaching because, "the real value that I saw was the coaching and the hand-holding through the actual transactions." He was told that, "the coach was going to fly out to our location for the weekend, spend two full days with us. We have unlimited access to him as far as those first three deals. We went through the entire process."

116. Mr. Wilson testified that he relied on his [the coach's] experience. He was told that the coach had over a decade of experience. Everything from wholesaling properties to fix-and-flips to buy and holds. Mr. Damian did travel to San Diego but did not offer any meaningful assistance to Mr. Wilson.

117. When Mr. Wilson was preparing to execute the REW process that he had paid for, REW was nowhere to be found. He testified, "Communication started to taper off, though within weeks of going through the process, calling, and then, like, hey, where are you?" Mr. Wilson summarized his experience, "We were supposed to have all this access to REW, you know, the phone calls, the—the emails just –they were just nonexistent after, you know, that initial rah-rah-rah, get you pumped up. They just tapered off."

118. Despite REW's failure to assist him, Mr. Wilson continued to try to implement REW's process. After communication stopped, "So what I started doing, I was—I had gone to Okinawa in March of 2018, so I started doing a lot of this from—you know, it was late nights, late night phone calls late night emails, reaching out to whoever I could over in Houston." This dedication to building his business occurred despite Mr. Wilson's Marine obligations: "I'd wake up at 5 a.m. , PT with my Marines, full workday, because I was the operations officer for the 3rd Supply Battalion as well as the company commander, so I had about 106 Marines and sailors under my command."

119. Mr. Wilson, without the assistance of REW, identified a property in Houston, Texas to purchase, rehabilitate, and sell. He entered this venture with no assistance from REW or its coaches. He had expected that REW would provide support along the way and that was completely absent. The knowledge and the experience that he had paid for never materialized. As he stated, "I hold the coaches responsible because they weren't there for us."

120. Mr. Wilson's efforts to obtain a refund for his purchases were unavailing. "But I did believe that I was owed something because there was a contract that was broken,

especially when it came to the three deals that we were supposed to have our hand held through and they failed to perform. So there was definitely a refund that I wanted, but I was never (inaudible) contact them officially. Text message, email, try to attempt phone calls, they never responded to any of my requests."

121. Due to his involvement with REW, Mr. Wilson had to file Chapter 7 bankruptcy. As he testified, "So when I was out everything, that's—that's when I—I sunk into a deep state of depression. I was actually diagnosed with depression. I spent about a year and a half in therapy because, you know, I'd spent my life savings."

122. Sadly, Mr. Wilson's experience was not an isolated one. Many, many consumers reported the same lack of communication after purchasing REW's products and services. Damian Nash, a consumer who purchased REW products and services in 2017, stated, "We sent countless emails and very rarely got a response, and it was almost impossible to get someone on the phone." Rachel Bhagat expressed her frustration with REW: "I also spoke with and texted Brian Petersen who was our 1 on 1 mentor. I expressed frustrations, and he did not assist us either. REW consistently had other employees call me to try to get us to invest even more money with them, they promised a higher return on our investment if we invested more money with REW."

123. As with Mr. Wilson, other consumers found the name "Government Tax Lien Network" to mean that the program was affiliated with the government in some way. The logo was deceiving and implied governmental association. Mr. Craig Curry testified that, "how I perceived that logo was that they were government backed."

124. Even those consumers who paid extra for the services of an REW coach reported that the coaches failed to communicate with them. One consumer stated, "When I purchased the One on One Mentorship we did not receive that was sufficient to money spent. As a matter of fact we heard less and less from them."

REW's Misrepresentations Harmed Consumers

125. REW consumers were left with empty promises. Years after their involvement with REW, consumers reported that they continue to struggle with the debt that REW induced them to assume. One consumer explained, "I can't even rent a decent apartment and I've been harassed by creditors and debt collectors. My life as I knew it has been greatly impacted by their failure to provide me with clear and transparent steps and guide me to be successful in this business venture." Another consumer stated, "My family which consists of 5 children, my wife and I became homeless as a result of this situation."

126. The combination of the high costs of REW products and service, the encouragement to increase credit card limits or open new credit cards to pay for REW products and services, and the complete lack of support from REW lead many consumers to file bankruptcy.

127. Ultimately, REW purchasers concluded that the company was fraudulent. One consumer concluded, "The 1-on-1 training I felt was completely useless and it was the experience that me realize that this was almost likely a scam." Another agreed, "These type companies are scam companies. They sell you a dream, take your money and move on the next city." Another summarized, "All was misleading, liars, deceptive and con artists preying on

people who are trying to build a decent life."

128. Many consumers, dissatisfied with their experience with REW, requested refunds. Those requests were often denied. If REW offered a refund, it often came with a condition that prohibited consumers from contacting government agencies.

Consumer Complaint Questionnaires

129. The Division retained David Bateman, a Certified Public Accountant, to assist with compiling information from consumers who believe they had suffered losses with respect to REW.

130. Working with the Utah Attorney General's office, Mr. Bateman developed a questionnaire and identified an online platform (Survey Monkey) to use in disseminating the questionnaire to approximately 5,700 email addresses derived from information maintained in REW records.

131. Once consumers responded to the questionnaire, Mr. Bateman compiled the information from the responses received by the due date along with any additional supporting information consumers provided. Mr. Bateman explained: "We compiled the results as they came back as responses were made to the complaint form. We compiled that information in a spreadsheet and then the complaint form allowed for people to attach I believe, three—up to three documents directly onto the complaint form."

132. Many consumers submitted their questionnaire responses under penalty of perjury.

133. From the information submitted by consumers, Mr. Bateman prepared a

spreadsheet collected from the online platform. That spreadsheet was entered into evidence as Exhibit 189.

134. The Court determined that Mr. Bateman's opinions were supported by a sufficient threshold showing under Rule 702(b) in that the principles and methods underlying his analysis and testimony were sufficiently reliable, based upon sufficient facts and data, and were reliably applied to the facts.

135. From the information provided by consumers through their questionnaires, Mr. Bateman testified that the approximate consumer loss from their REW transactions totaled $10,357,000. Mr. Bateman's total accounted for all reported consumer losses, irrespective of the date the transactions occurred. Thus, some transactions fell outside the statute of limitations period. Further, Mr. Bateman's accounting did not distinguish between customers who had provided additional documentation and those who did not.

136. An analysis of the documented information submitted by consumers in response to Mr. Bateman's questionnaire is supported by the evidence in the record. A summary of the responses contained in Exhibit 189, submitted under oath, and specifically substantiated by the submissions contained in Exhibits 222 through 754, 787, and 788, finds that the total, signed and supported loss is $ 2,828,776.19.

137. An alternative and more conservative approach would be to use only (a) those complaints that were sworn under penalty of criminal perjury, and (b) that had receipts, checks, credit card statements or other documentation that matched the loss stated provides an alternative, and (c) was paid after May 8, 2017.

138. This more conservative approach is detailed in attachment "Exhibit A." It contains an analysis of consumer complaints and documents received by the Division using the above criteria. These underlying documents were entered into evidence during the trial.

139. This spreadsheet includes columns for (1) the consumer's name; (2) supported transaction amount (as discussed below); (3) the amount refunded to the consumer (if any); (4) an identification of exhibits (by number) admitted into evidence which support the consumer's claimed loss; (5) a detailed mathematical calculation reaching the supported transaction amount; and (6) a citation to the consumer's complaint, questionnaire response, or other exhibit.

140. The consumers included are only those whose REW purchases occurred on or after May 8, 2017. The consumers either sent a complaint to the Division or answered the questionnaire sent out by Mr. Bateman. Only consumers who submitted their complaints or questionnaire responses under penalty of perjury were included.

141. The column identified as the "supported transaction amount" is that amount which is supported by documentation received into evidence at trial. That documentation includes signed contracts, checks, credit card statements, or other documents that evidence a payment made to REW. It does not include consumers' reported amounts paid to third parties (like Seed Capital or travel expenses) or amounts for which there is no document verification.

142. All refunds made to the consumers in Exhibit "A" were included even if not supported by documentation. Even though many consumers reported receiving a refund from REW, there was very little or no documentation included with the consumer responses of the

receipt of a refund.

143. Despite the lack of documentation for refunds, the evidentiary analysis reflects full credit to REW for putatively issuing a refund.

144. The column identified as "Mathematical Calculation" sets forth the formula used to calculate the "supported transaction amount." This column shows the addition and subtraction used to reach the final amount of consumer loss supported by evidence in the record.

145. The column which lists exhibits listed are the documents received into evidence by exhibit number and, if appropriate, Bates number. This provides the support of consumer payments to REW.

146. The evidence of consumer loss after May 8, 2017, supported by documents in the record, totals $2,828,776.19.

147. There were consumer losses that occurred prior to May 8, 2017. An analysis of the complaints and documents received by the Division and in response to the questionnaire that reflects losses prior to May 8, 2017, is attached as Exhibit "B." These underlying documents were entered into evidence at trial.

148. This spreadsheet (Exhibit "B") includes columns for (1) the consumer's name; (2) supported transaction amount (as discussed below); (3) the amount refunded to the consumer (if any); (4) an identification of exhibits (by number) admitted into evidence which support he consumer's claimed loss; (5) detailed mathematical calculation reaching the supported transaction amount; and (6) citation to the consumer's complaint or questionnaire response.

149. The consumers listed on Exhibit "B" either sent a complaint to the Division or answered the questionnaire sent out by Mr. Bateman. Only consumers who submitted their complaints or questionnaire responses under penalty of perjury were included.

150. The column identified as the "supported transaction amount" is that amount which is supported by evidence received into evidence at trial. That documentation includes signed contracts, checks, credit card statements, or other documents that evidence a payment made to REW. It does not include amounts paid to third parties (like Seed Capital or travel expenses) or amounts for which there is no verification.

151. All refunds made to the consumers in Exhibit "B" were included even if not supported by documentation. Even though many consumers reported receiving a refund from REW, there was very little or no documentation included with the consumer responses of the receipt of a refund.

152. Despite the lack of documentation for refunds, the evidentiary analysis reflects full credit to REW for putatively issuing a refund.

153. The column identified as "Mathematical Calculation" sets forth the formula used to calculate the "supported transaction amount." This column shows the addition and subtraction used to reach the final amount of consumer loss supported by evidence in the record.

154. The evidence of consumer loss prior to May 8, 2017, supported by the evidence in the record is $1,083,799.00.

155. Mr. Rondeau, Defendants' expert, was retained to evaluate Mr. Bateman's

compilation and summary. He was not retained to determine the consumer loss attributable to REW's sale of products and services.

156. While he took issue with Mr. Bateman's methodology, Mr. Rondeau acknowledged that, "The numbers are—these consumers are—they submitted those things. The Court will evaluate those things."

157. While Mr. Rondeau challenged Mr. Bateman's analysis on a number of points, his main criticism of Mr. Bateman's summary is that it lacked the rigorous verification necessary for a forensic analysis of the claims submitted. Mr. Rondeau's challenge was not to the veracity of the documents submitted, but that, had he been preparing a similar analysis, he would have undertaken additional steps. He acknowledged that the weight of the documents and statements submitted for loss substantiation was a question for the Court.

158. A forensic analysis of the claims submitted is not necessary for the Court to find that the damage figure is sufficiently supported. Mr. Rondeau did not perform a forensic evaluation. Mr. Rondeau did no sampling, testing or auditing of the facts and data relied on by Mr. Bateman. In summary, Mr. Rondeau provided no meaningful challenge to Mr. Bateman's opinions.

159. Consumers provided information that supported the statements they made on the questionnaire. Exhibit 189 reflects that information and the supporting documentation. Each consumer was assigned an identification number. The information reflected in tabular fashion on Exhibit 189 is also set forth in a different format in Exhibit 789. Supporting documentation supplied by consumers is in evidence in Exhibits 222 through 754, 787, and 788.

160. An example is Ivan Barankevich, Consumer No. 118000417504, who purchased REW products and services. He claimed a loss of $65,592. Mr. Barankevich purchased products in March and April of 2018. His receipts for each training are entered in evidence as Exhibit 612. There is a receipt for the purchase of a 3-day event that contains redacted credit card information, dated March 12, 2018. There is a second receipt for the purchase of an Advanced Training package reflecting a payment of $39,995, made with four separate credit card payments, dated March 25, 2018. Finally, Mr. Barankevich purchased a 1-on-1 coaching package on April 28, 2018 for $25,000. Again, the receipt contains redacted credit information reflecting the use of several credit cards. These receipts total the amount he claimed.

161. Mr. Barankevich did not receive the training and services he purchased. In his claim form, he stated, "After a couple of trainings the company just disappeared I could not get in contact with anyone. I called an email but got nothing, then I found out form online that the company got shut down."

162. Another REW consumer, Billie Ross (Consumer No. 118000448331) purchased the 3-day workshop on October 18, 2017, the $39,995 Advanced Diamond Training program on October 22, 2017. She purchased two other REW products, a Wealth Structuring Program for $3,997 and a program called Noah's Ark for $9,995. All of the signed contracts contain redacted credit card information which is evidence of payment. Her claimed loss is supported by contract and evidence of payments.

163. Ms. Ross also did not receive the training and services she purchased. She reported, "[t]hey told us we could buy and flip homes with credit cards and encourages (sic) to

pay money and have a company apply for multiple credit cards. The market was flooded with home flippers and there was no way we could get in and make the money they said."

164. Many other consumers provided receipts that completely supported their claimed purchases and are in evidence.

165. Consumers also reported refunds when they received them. For example Janet Stegman (Consumer No. 118000772950) purchased $39,800 in training and services from REW. She submitted receipts for those totals. When she complained to REW about the total lack of support for coaching services, she obtained a $10,000 refund. She did not include that amount in her claim. Even with the refund, she concluded, "I was so excited to be joining the REW program, as they offered unending success and life dreams coming true. I now know they were a fraud and I was conned."

166. Abel Bastida (Consumer No. 118000415600) purchased training and services from REW, including the 3-day Workshop ($597), the Advanced Training Package for $29,900 and private training services for $20,000. After filing a complaint with an online dispute resolution company which was unsuccessful, the dispute was forwarded to the Division. Mr. Bastida reported that he received a $20,000 refund. His family was devastated by their encounter with REW. "My wife [s]ought counseling once we began to feel that we were dooped (sic), and eventually filed for bankruptcy which has caused residual pain and suffering both mentally, emotionally and financially ever since our time with Real Estate Workshop."

167. Another consumer who reported receiving a refund was Tarja Newman (Consumer No. 11800915743). Ms. Newman, whose deposition is in evidence at Exhibit 41,

purchased $61,240 in products and services from REW, including the Advanced Training Program ($40,000) and private coaching ($25,000). As did other consumers, Ms Newman attempted to resolve her issues with REW using an online complaint resolution system. To receive a refund from REW, Ms. Newman was required to withdraw all claims and keeping it confidential.

168. Defendants argue against the use of the factual findings contained in Exhibits A and B attached hereto. The defendants incorrectly characterize these Exhibits as evidence. Exhibits A and B contain findings of fact based on evidence adduced at trial. The defendants provided no meaningful analysis, testing or challenge to this underlying evidence. The defendants' tactically put all of their effort into excluding the underlying evidence -- rather than addressing the evidence substantively through testing and cross-examining the evidence.

169. REW submitted no credible evidence of either consumer success or consumer losses.

Prior Violations of Law

170. Troy Stevens and Cory Wadsworth have been disciplined for violations of consumer protection laws before. Mr. Stevens and Mr. Wadsworth admitted to violating the Utah Telephone Fraud Prevention Act and the Business Opportunity Disclosure Act on 3 counts, agreed to a $7500 fine ($2,500 per violation) of which $5000 was suspended. The settlement agreement was dated September 26, 2014.

171. Mr. Stevens also entered into a Settlement Agreement dated December 11, 2014. Mr. Stevens admitted to violating the Utah Consumer Sales Practices Act which carried a

maximum civil penalty of $40,000. Mr. Stevens's Settlement Agreement contained a $30,000 administrative fine and Mr. Stevens agreed to comply with the Utah Consumer Sales Practices Act and the Utah Telephone Fraud Prevention Act.

172. REW ceased active operations in or around in December 2018 and transitioned its operations to a company called ProSource Tax Liens. Pro Source was a tax lien training company. Mr. Stevens had already entered into an Executive Consultation Agreement dated October 31, 2018, with ProSource.

173. In addition to ProSource, Mr. Stevens has worked for Elevate, a real estate education and training company, United Tax Liens, a real estate and training company, Epic, a real estate training and podcast company, and Homestretch, a marketing company for real estate training and coaching companies." Mr. Stevens filed for bankruptcy on April 10, 2023, the day before the trial in this matter commenced. He testified that he filed for bankruptcy in an effort to stop the trial in this matter from proceeding.

Attorney Fees, Investigation Expenses and Costs

174. The Division has incurred court costs.

175. The Division has incurred costs of investigation of this matter.

176. The Division has incurred attorney's fees in this matter.

II. CONCLUSIONS OF LAW

A. Interpretation of Utah's consumer protection statutes

The CSPA expresses the Legislature's intent that it be interpreted consistently with the Federal Trade Commission Act. Utah Code §13-11-2(4). "Because the Utah Legislature intended

for the UCSPA to be liberally construed so as to harmonize 'state regulation of consumer sales practices ... with the policies of the [FTC] Act,' the standards for analyzing deceptive act or practice claims under the UCSPA are generally the same as for misrepresentation claims under §5." *FTC v. Nudge, LLC*, Case NO. 2:19-cv-867-DBB-DAO, 2022 WL 2132695, *13 (D.Utah June 14, 2022).

The CSPA is also to be construed liberally to protect consumers from suppliers who commit deceptive and unconscionable sales practices, Utah Code §13-11-2(2), and to make Utah's laws uniform with the laws of other states which have enacted similar laws. Utah Code §13-11-2(5).

The general public interest is recognized and regarded as the primary purpose of all consumer regulation in Utah. Utah Code §13-1-1.

B. Rulings on the effect of Mr. Stevens' bankruptcy filing

Shortly before trial, Mr. Stevens filed for bankruptcy protection. On the morning of trial, Mr. Stevens argued that his bankruptcy implicated the automatic stay and that the trial could not proceed.[19]

Section 362(b)(4) of the United States Bankruptcy Code provides an exemption from the automatic stay for actions involving the Division's police and regulatory powers. The Court rules that this case fits within this exemption. In reaching this conclusion, the Court relies on *FTC v. Ameridebt*, 343 F.Supp.2d 451 (D. Md. 2004). Claims by a government entity enforcing

[19] Trial Tr., Day 1, p. 7, lns 14-19 ("Section 362 of the Bankruptcy Code is an automatic stay upon the filing of bankruptcy. It applies to every action that may affect Mr. Stevens in any way. And since there's joint and several liability in this case, this case cannot go forward.").

consumer protection laws, seeking rescission, restitution, and disgorgement would primarily serve the public purposes of justice and deterrence regardless of whether private rights of consumers may be adjudicated in some fashion. *See also, SEC v. Wolfson,* 309 B.R. 612, 617 (D. Utah 2004) (SEC regulatory enforcement action exempt from automatic bankruptcy stay.)

This Court has the authority to decide whether the bankruptcy automatic stay applies to this case. *City of Beverly v. Bass River Golf Management, Inc.*, 92 Mass.App.595, 599 n. 5 (2018) (state court has concurrent jurisdiction with Bankruptcy Court to determine the applicability of the automatic stay provisions of the Bankruptcy Code;) *In re: Bona*, 124 B.R. 11, 15 (S.D.N.Y. 1991) (state court has concurrent jurisdiction with the bankruptcy court to determine the applicability of the automatic stay.)

The Court rules that it is appropriate for it to determine the amount of a money judgment while a bankruptcy proceeding is pending involving Mr. Stevens, so long as no action is taken by the Division to enforce the judgment.

C. Rulings on motions in limine

Before trial, REW filed motions in limine seeking to limit the presentation of the Division's evidence.

MIL 1 – testimony of investigator Blake Young

REW sought in its Motion in Limine Number 1 to exclude the testimony of Division investigator Blake Young. Mr. Young was identified as a fact witness and was allowed to testify on that basis. As part of his investigation, Mr. Young attended an event presented by REW and reviewed recordings of other events. He also reviewed other materials relating to this matter. A

law-enforcement officer's testimony based on knowledge derived from the investigation at issue is admissible as lay testimony under Rule 701 of the Utah Rules of Evidence. *See, U.S. v. Draine*, 26 F.4th 1178, 1187 (10th Cir. 2022). This includes the officer's opinions and inferences unless they are based on scientific, technical, or specialized knowledge.

In addition, this was a bench trial. "When weighing the probativeness of the evidence against the possible prejudice, we must take into consideration the fact that the trial was to the bench, not to a jury. The evil that Rule 403 is intended to combat—unfair prejudice—is primarily of concern during a jury trial." *State v. Modes*, 2020 UT App. 136, 475 P.3d 153, fn. 8, quoting *State v. Real Prop. at 633 E. 640 N., Orem*, 942 P.2d 925, 930 (Utah 1997). "Other circuits have held, and we agree, that excluding evidence in a bench trial under Rule 403's weighing of probative value against prejudice [is] improper." *U.S. v. Kienlen*, 349 Fed.App'x 349, at *2 (10th Cir. 2009) (cleaned up).

Mr. Young was allowed to describe what he saw and heard based on his own observations. As a law enforcement officer, he was allowed to testify based on knowledge derived from his investigation of the case. He testified about the facts he perceived based on his background generally but was not allowed to offer testimony based on scientific, technical, or other specialized knowledge that would convert him to an expert witness.

MIL 2 – damages disclosures

Defendants' Motion in Limine Number 2 sought to exclude evidence of actual damages. The Division provided a timely computation of damages and to the extent that the Bateman damage report came later in discovery (due to court involvement in the customer questionnaire

process), there was a showing of good cause. The consumer related special damages required tabulation of these consumer questionnaires. The Defendants did not specify how they might be prejudiced or specify what additional discovery or other work they were unable to accomplish on the issues related to the special damages. To the extent the Defendants argue that the Division has not provided a detailed calculation of the special damages figure, the Court finds that there was a sufficient disclosure of the method of calculation even if it was not spelled out in the detail that the Defendants maintain is required by Rule 26. In other words, the Defendants had all of the raw data from which the damages were to be calculated and had a description of the categories of damages (columns from the spreadsheet) taken from this raw data to make up the Division's claimed damages figures. Motion in Limine Number 2 was denied.

MIL 3 – consumer complaints

Defendants' Motion in Limine Number 3 sought to exclude consumer complaints. The Court determined that consumer complaints were admissible under Rule 807 of the Utah Rules of Evidence, the residual rule. Rule 807 requires that the out of court statement have equivalent circumstantial guarantees of trustworthiness, must be offered as evidence of a material fact, must be more probative on a point for which it is offered than any other evidence the proponent can obtain through reasonable efforts, and that admission of the evidence must serve the purposes of the rules and the interests of justice. In addition, notice must be given.

The Court finds that all of the elements of Rule 807 were met. There were sufficient guarantees of trustworthiness. The complaints were based on the complainants' personal

knowledge, were under oath or penalty of perjury, and were reported in the apparent expectation that they would be the basis for action against the Defendants. These factors provide confidence in the truth of the complainants' assertions. Consumer complaints filed under penalty of perjury contain sufficient circumstantial guarantees of trustworthiness to meet the requirements of Rule 807. *FTC v. Kuykendall*, 312 F.3d 1329, 1343 (10th Cir. 2002) *vacated on other grounds*, 71 F.3d 745, 767 (10th Cir. 2007) (en banc).; *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 576, (7th Cir.1989) *overruled on other grounds, FTC v. Credit Bureau Ctr., LLC*, 937 F.3d 764, 767, 7th Cir. 2019).

Even those complaints not filed under penalty of perjury are sufficiently trustworthy and are of some evidentiary value. The complainants are known and named. Anonymous complaints are less likely to be trustworthy than complaints which identify the consumers by name. *See, Bohler-Uddeholm America, Inc. v. Ellwood Group, Inc.*, 247 F.3d 79, 113 (3d Cir. 2001). The complaints were made to a government agency, increasing their trustworthiness. *FTC v. Magazine Solutions, LLC*, Civil Action No. 7-692, (W.D. Pa. March 16, 2009) at 2-3.

In addition, many of the complaints appear to be mutually corroborative. Although there was a request for information, each consumer responded unilaterally. This is a further indication of their trustworthiness. *Id.*

The consumer complaints contain admissible documentary evidence. They include notes taken by consumers at Defendants' seminars of the representations made. They include checks and credit card receipts, which are business records. They include brochures and other materials from Defendants, which are also business records.

The complaints were offered as evidence of Defendants' business practices and were therefore probative. Adding to their probative value, Defendants apparently failed to maintain similar records of consumer issues. As such, the same evidence could not be obtained elsewhere through reasonable efforts.

Admission of the complaints eliminated the expense of bringing many people from throughout the country to testify as to the information included in the complaints. *See, Magazine Solutions*, at *2. ("Admission of the consumer complaints would also eliminate the needless expense of bringing in hundreds of consumers from across the country to testify to what is essentially already written down in complaint form.")

The interests of justice were served by admission because the evidence assisted in determining the truth. *See, id., citing Bohler-Uddholm* at 113.

The Division gave Defendants fair and adequate notice of its intent to admit the complaints as evidence at trial.

In the CSPA, the Utah Legislature authorized the Division to "receive and act upon" consumer complaints. Utah Code, §13-11-7(1)(d). It also authorized the Division to bring an action to recover, for each violation, actual damages on behalf of consumers who complained to the Division within a reasonable time. It appears the Legislature intended that the consumer complaints be admissible in the recovery actions brought.

Federal courts frequently admit consumer complaints in FTC cases under the residual hearsay rule because it is the most efficient method of delivering probative evidence to the court. *See FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 608 (9th Cir. 1993) (consumer complaint letters

admissible under the residual hearsay rule); *FTC v. Magazine Solutions, LLC*, 2009 WL 690613, at *1-2 (W.D. Pa. Mar. 16, 2009) (same); *FTC v. Cyberspace.com, LLC*, 2002 WL 32060289, at *3, n.5 (W.D. Wash. July 10, 2002) (consumer e-mails and complaint letter admissible).

Based on the foregoing, the Court denied Defendants' Motion in Limine Number 3.

MIL 4 – use of depositions at trial

Four consumer witnesses, each of whom lives outside Utah and more than 100 miles from the courthouse, were deposed in this matter and the Division introduced their testimony by deposition transcript. Defendants objected by filing Motion in Limine Number 4.

The Court applied Rule 32 of the Utah Rules of Civil Procedure. Rule 32(a)(3)(B) says the deposition of a witness may be used by any party for any purpose if the court finds that the witness is at a greater distance than 100 miles from the place of the trial, unless it appears that the absence of the witness was procured by the party offering the deposition. Deposition testimony of witnesses living more than 100 miles from the place of trial is freely admissible at trial. *Buster v. Gale*, 866 P.2d 837, 843 (Alaska 1994), citing *Klepal v. Pennsylvania R.R. Co.*, 229 F.2d 610, 612 (2d Cir. 1956). *Buster* relied on Professor Moore: "'Although the proximity of a witness is to be measured at the time the deposition is offered, a showing that the witness resided beyond the 100-mile distance at some recent earlier time will usually be sufficient to admit the deposition, in the absence of evidence to the contrary.' *See*, 4a James W. Moore & Jo Desha Lucas, Moore's Federal Practice ¶ 32.05, at 32-32 to 32-33 (2d ed. 1993)."

According to their deposition transcripts, Jenette Litviak lives in Henderson, Nevada. Deposition of Jenette Litviak, page 6, lines 17 to 19. Jonathan Haskett lives in San Diego,

California. Deposition of Jonathan Haskett, pages 4, line 24 to page 5, line 1. Zafar Mohsenzadeh lives in San Diego County, California. Deposition of Zafar Mohsenzadeh, page 5, lines 12 to 18. Tarja Newman lives in Davie, Florida. Deposition of Tarja Newman, page 5, lines 16 and 17. Defendants introduced no evidence that these witnesses lived within 100 miles of the place of trial.

Defendants argued that the Division procured the absence of these witnesses. They offered no evidence to support the claim. Instead, they argued that the Division could have arranged for these witnesses to appear. But "procuring absence and doing nothing to facilitate presence are quite different things.'" *Marshall v. Van Gerven*, 790 P.2d 62, 64 (Utah App. 1990). A deposition will be admitted unless the party offering it "actively took steps to keep the deponents from setting foot in the courtroom." *Caron v. General Motors Corp.*, 37 Mass.App.Ct. 744, 643 N.E.2d 471, 479 (1994). Courts, *Caron* notes, are "fairly uniform" in allowing depositions to substitute for the testimony of distant witnesses. *Id.*

The mere absence of the deponent from the 100-mile area is sufficient, and the party attempting to submit the deposition into evidence need not proffer an excuse for the failure of the deponent to appear in court. *Marshall,* 70 P.2d at 64. Motion in Limine Number 4 was denied.

MIL 5 – expert report

Defendants filed Motion in Limine Number 5 to exclude the admission of the Division's expert report. The expert, Mr. Bateman, testified in person. The expert report is hearsay and not properly admitted as substantive evidence. The Court did not receive Mr. Bateman's report

as substantive evidence but did receive it for demonstrative purposes to the extent it accurately reflected Mr. Bateman's testimony and also to assist in rulings on objections at trial as to the scope of Mr. Bateman's testimony.

CONSUMER SALES PRACTICES ACT

D. Conclusions relating to application of the CSPA

The Utah Consumer Sales Practices Act (CSPA) has a number of purposes including "to protect consumers from suppliers who commit deceptive and unconscionable sales practices." Utah Code Ann. § 13-11-2 (2). The Division seeks application of this purpose of the CSPA.

A deceptive act or practice by a supplier in connection with a consumer transaction violates the CSPA whether it occurs before, during, or after the transaction. Utah Code §13-11-4(1).

The Court finds, by a preponderance of the evidence, that: Defendants were suppliers as defined by the CSPA; they engaged in deceptive acts or practices in connection with consumer transactions that were likely to mislead ordinary consumers acting reasonably under the circumstances; the deceptive acts or practices were material, meaning they were likely to affect a consumer's decision to buy a product or service; and the deceptive acts were done knowingly or intentionally.

The evidence established that Defendants regularly solicited, engaged in, and enforced consumer transactions by selling real estate training and coaching packages. This is the definition of supplier under the CSPA. Utah Code §13-11-3(6).

REW engaged in deceptive acts or practices. In assessing whether a representation or

practice is likely to mislead consumers, a court may consider the overall net impression conveyed by the representation. *FTC v. Cyberspace.Com, LLC,* 453 F.3d 1196, 1200 (9th Cir.2006) ("A solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures."); *FTC v. Stefanchik,* 559 F.3d 924, 928 (9th Cir.2009) ("Deception may be found based on the `net impression' created by a representation."). Further, "[t]he failure to disclose material information may cause an advertisement to be deceptive, even if it does not state false facts," *Sterling Drug, Inc. v. FTC,* 741 F.2d 1146, 1154 (9th Cir.1984), and the deception may not be sufficiently cured merely by the inclusion of disclaimers in small print. *Cyberspace.Com,* 453 F.3d at 1200. *FTC v. John Beck Amazing Profits, LLC,* 865 F.Supp.2d 1052, 1066-7 (C.D. Cal. 2012).

In demonstrating that a representation is likely to mislead, the Division must establish that (1) such representation was false or (2) the advertiser lacked a reasonable basis for its claims. *See In re Thompson,* 1984 FTC LEXIS 6, at *379 (to make a case that advertising is deceptive, the FTC has the burden of showing that the material claims communicated to reasonable consumers by the advertising are false in some manner); *FTC v. U.S. Sales Corp.,* 785 F.Supp. 737, 748 (N.D.Ill.1992) ("Apart from challenging the truthfulness of an advertiser's representations, the FTC may challenge the representation as unsubstantiated if the advertiser lacked a reasonable basis for its claims.")

"For an advertiser to have had a 'reasonable basis' for a representation, it must have had some recognizable substantiation for the representation prior to making it in an advertisement." *FTC v. Direct Mktg. Concepts, Inc.,* 569 F.Supp.2d 285, 298 (D.Mass.2008)

(citations omitted). "Defendants have the burden of establishing what substantiation they relied on for their product claims." *FTC v. QT, Inc.,* 448 F.Supp.2d 908, 959 (N.D.Ill.2006).

Because the Utah Legislature declared that the CSPA is to be interpreted consistently with the FTC Act, the Court determines that the same standards for misrepresentation and substantiation applicable to the FTC Act also apply to the CSPA.

E. The standard of proof for unconscionability under the CSPA is preponderance of the evidence.

While The CSPA does not specify a burden of proof, the general rule is that civil cases are decided by a preponderance of the evidence unless otherwise specified. As the CSPA is silent as to the applicable burden of proof for establishing claims of unconscionability, the Court has applied the preponderance of the evidence standard. Application of the preponderance of the evidence standard is consistent with the Legislature's intent which was "to protect consumers from suppliers who commit deceptive and unconscionable sales practices." Utah Code §13-11-2(2). If the Utah legislature had intended for there to be a different burden of proof for unconscionable acts or practices, it would have written in that higher standard. It did not.

Furthermore, the CSPA "shall be construed liberally to promote. . .uniform[ity in] the law . . . among the states which enact similar laws." Id. §13-11-2(5). The Uniform Consumer Sales Practices Act, upon which Utah's CSPA is based, has been adopted by two other states, Ohio, and Kansas. Courts in these states have concluded that the preponderance of the evidence standard applies to unconscionability claims as well as violations of other provisions of

the CSPA. The Ohio case of *Fikri v. Best Buy* stands for the proposition that claims under the CSPA are governed by the preponderance of the evidence standard. 1 N.E.3d 484, 488-91 (Ohio App. 2017). The court in *Fikri* interpreted Ohio's Consumer Sales Practices Act which, like Utah, prohibits both deceptive acts or practices along with unconscionable acts or practices. See Ohio 67 Revised Code §§ 1345.02 and 1345.03. The *Fikri* court held that to prove a violation of the OCSPA, "the burden of proof is on the party bringing the action to prove the facts necessary for his case by a preponderance of the evidence." *Fikri*, 1 N.E.3d at 489. The preponderance of the evidence standard articulated by the *Fikri* court applies to all violations of Ohio's CSPA. *Id.* At 489-91.

Kansas enacted the Kansas Consumer Protection Act ("KCPA") contains the same provisions regarding deceptive acts and practices and unconscionability as the CSPA. Kansas Stat. Ann. §§ 626, 627. In evaluating the burden of proof required to prove deceptive acts and practices, the Kansas Court of Appeals held that "the legislature clearly intended to increase the protections afforded by consumers by enacting the KCPA. Equating the burden or quality of proof required to establish a deceptive practice with the proof required to establish common law fraud is contrary to that intent. If the legislature intended to include a clear and convincing standard, it could easily have done so. Because there is no support for the imposition of this higher standard, we will not read it into the statute." *Ray v. Ponca/Universal Holdings, Inc.,* 913 P.2d 209, 212 (Kan. Ct. App. 1995). Thus, the Kansas court concluded that it is the State's burden to prove violations of the CSPA, including both deceptive conduct and unconscionability by the preponderance of the evidence. *Id.* at 212-13.

New Jersey has not adopted the CSPA, but it has adopted its own similar consumer protection statute. New Jersey's statutes prohibit both deceptive and unconscionable consumer transactions in a single statutory provision. N.J. Stat. Ann. § 56:8-2. The case of *Hyland v. Aquarian Age 2000* involved an unconscionability claim by the New Jersey Attorney General against a health club in which "the issue of burden of proof was also addressed by the court. 'It is the court's opinion that since this is a civil action, preponderance of evidence, the usual civil standard of proof, should be the applicable standard.'" *Hyland v. Aquarian Age 2,000, Inc.*, 372 A.2d 370, 372 (N.J. Super. Ct. Ch. Div. 1977); *see also Liberty Mut. Ins. Co. v. Land*, 892 A.2d 1240, 1248 (N.J. 2006) (recognizing the preponderance standard for the consumer statutes).

These cases are consistent with Utah law. There is little doubt that the standard of proof generally applied in civil proceedings is the preponderance of the evidence standard. *See Johns v. Shulsen*, 717 P.2d 1336, 1338 (Utah 1986) ("It is universally recognized that the standard of proof in civil actions is by a preponderance of the evidence."); *Lipman v. Industrial Comm'n*, 592 P.2d 616, 618 (Utah 1979) (noting preponderance is "usual standard of proof . . . used in most civil actions"); *Morris v. Farmers Home Mut. Ins. Co.*, 28 Utah 2d 206, 500 P.2d 505, 507 (1972) (stating preponderance is "universally recognized standard of proof required to establish facts in a civil case"). The Utah legislature has not imposed a higher burden of proof on the Division in its enactment of the CSPA.

In *Dunlap v. Jimmy GMC of Tucson, Inc.*, the Arizona Court of Appeals recognized that a plaintiff has the burden of proving common law fraud by clear and convincing evidence. 136

Ariz. 338, 666 P.2d 83, 88-89 (Ariz.Ct.App.1983). The court further concluded that the purpose of the consumer protection statute was to provide consumers a cause of action that was easier to establish than common law fraud, and therefore, statutory claim must be proven by only a preponderance of the evidence. *Id.* at 89; *accord, Betsinger v. D.R. Horton, Inc.* 232 P.3d 433, 435 (Nev. 2010).

In keeping with the CSPA's mandate that it should be interpreted liberally and consistently with similar consumer protection statutes in other states and the general rule in Utah, this Court applies a preponderance standard.

F. REW's business model constituted a deceptive act or practice within the meaning of the CSPA.

The CSPA prohibits suppliers from engaging in deceptive acts or practices. Utah Code Ann. §13-11-4(1). The Court finds, by a preponderance of the evidence, that REW's business model constituted a deceptive act or practice. Consumers were invited to a free seminar to learn about tax lien investing. The free seminar was a sales pitch for a three-day seminar, which cost hundreds of dollars. At the three-day seminar, consumers who attended were pitched with additional services costing tens of thousands of dollars. Consumers testified that the presentations were ways for REW to sell them additional products and services. In its Answer, REW admitted the allegations of paragraph 69 of the Complaint:

> The primary focus of the three-day seminar was enticing consumers to purchase "Advanced Training" from REW. Consumers left the main seminar room to have one-on-one or small group meetings with REW "mentors" or "coaches" who encouraged consumers to purchase REW Advanced Training packages. REW Advanced Trainings have been sold using various names,

> including the "Platinum" package which cost $39,900, and the "Diamond" Package which cost $49,900. Advanced Trainings sold as part of the Chad Chiniquy presentations were referred to as the Protégé package which cost $40,000 and the Protégé Elite package which cost $50,000. Consumers in attendance at the three-day seminar were informed that the price of the Advanced Training packages would be reduced by $10,000 for a limited time, generally if purchased during the three-day seminar.

In addition to this admission, REW failed to introduce evidence at trial sufficient to establish that the primary focus of its three-day seminars was other than to entice consumers to purchase Advanced Training from REW.

Because REW did not tell consumers the presentations they were buying were primarily sales pitches, its business model was deceptive and misleading. In *FTC v. Zurixx*, the Division, in conjunction with the FTC, brought an action against a Utah company that utilized the same business model as REW. Judge Kimball noted that the FTC and the Division provided evidence that the Zurixx business model injured consumers at in-person seminars and through telesales and by the use of false and misleading representations regarding the nature of the products the consumer was paying to receive and the potential earnings the consumer could expect based on the product Zurixx was selling. *FTC v. Zurixx*, 2021 WL 5179139, 2:19-cv-713-DAK-DAO (D. Utah Nov. 8, 2021).

The Court finds that because REW's business model was a deceptive act or practice under the CSPA, every transaction it conducted violated the CSPA.

G. REW's unsubstantiated earnings claims were deceptive and misleading.

The Court finds that REW made widespread, unsubstantiated earnings claims. In both its printed materials and its oral presentations, REW told consumers they could make money by

using the information REW would provide them.

In fact, the evidence introduced at trial shows that very few, if any, consumers made money using what REW taught. The Division issued a subpoena to REW asking for information about consumers who had generated revenue using REW's methods. In response, REW pointed to a website with approximately four testimonials and referenced evaluation forms it collected at its presentations.[20] Neither the testimonials nor the evaluation forms were introduced at trial. In any event, neither constitutes sufficient substantiation. They were merely anecdotes from allegedly satisfied consumers. Anecdotal evidence from allegedly satisfied customers is not sufficient for substantiation. *See, FTC v. Your Baby Can LLC*, *3, 2014 WL 12789110, Case No. 12CV2114 DMS (BGS) (S.D. Cal. 03/18/2014.

The Division introduced evidence from four consumer witnesses and four deposition witnesses. None of them made money based on the services provided by REW. Like the FTC, the Division can prove its claim though a smaller number of injured consumers. *See Figgie Int'l*, 994 F.2d at 605-06. From this small sample, a court can infer a pattern or practice of deceptive behavior in conjunction with other supporting evidence. *See FTC v. Sec. Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991). In addition, the Division introduced complaints from hundreds of consumers, most of whom stated they did not make money based on the services provided.

At trial, REW did not introduce any substantiation of its earnings claims. Indeed, it admitted in its Answer that it did not gather information from consumers about whether they

[20] Trial Tr. Day 2, pp. 250–251, lns 20–3 and pp. 251–2, lns 24-13 Young Test.

made money using REW's products or services. At trial, Mr. Stevens admitted that REW did not maintain a list of satisfied customers. Without information about consumer success, substantiation would be impossible.

Accordingly, the Court finds by a preponderance of the evidence that REW made earnings representations to consumers. The Court also finds by a preponderance of the evidence that these earnings representations were false and that they were unsubstantiated. A finding either that the claim is false or that it is unsubstantiated satisfies the requirements of the CSPA. Utah Code Ann. § 13-11-4 (1) and (2)(a).

The Court finds by a preponderance of the evidence that REW made these false and unsubstantiated earnings claims on a widespread basis. REW held its seminars in many cities around the country. REW admits that 70,000 people attended its events and admits it had at least 9,000 consumers. The Court finds by a preponderance of the evidence that the earnings claims were material. Earnings claims are generally considered material because they strike at the heart of a consumer's purchasing decision. *Nudge*, 2022 WL 2132695 at n. 183.

The *Nudge* court relied on well-established 10th Circuit precedent, *FTC v. Freecom Communications Inc.,* 401 F.3d 1192, 1206 (10th Cir. 2005). In *Freecom,* the 10th Circuit concluded that false and unsubstantiated earnings representations were widely disseminated. *Id.* Coupled with the evidence that consumers purchased the products, the court concluded that the "district court erroneously believed that the FTC had to present a 'parade' of consumer witnesses to establish its case against [the Defendant]." *Id.* Instead, the *Freecom* court

recognized that gross receipts from the sale of the products is an appropriate measure of damages, "notwithstanding limited consumer testimony of particularized injury." *Id.*

H. REW deceptively told consumers they would have the help of mentors.

The Court finds by a preponderance of the evidence that REW told consumers who paid for it that they would have the help of mentors. At trial, consumers testified that REW told them REW would provide them with mentors who would take them by the hand and walk them through the process. REW conveyed to consumers, and convinced many consumers, that they needed a mentor to be effective.

Consumers credibly testified, either no mentor was assigned to them or the mentors did not provide the services promised and were therefore ineffective. Mr. Curry testified that on multiple occasions he called the number he had been given to speak with a mentor. He would sometimes call three or four times a day for support, but never received even one return phone call. Mr. Wilson testified that he originally received some mentorship, but subsequently the help ceased, and he did not get proper guidance from REW. He reached out to his mentor multiple times, to ask hard questions and to have his transactions evaluated. He reached out several times a week but quit calling when his mentor failed to respond. The testimony of these witnesses is consistent with numerous complaints submitted by consumers.

REW did not submit any credible evidence contradicting this consumer testimony.

When REW told consumers, either expressly or by implication, that it would assign mentors to them and that the mentors would provide them assistance, it was acting as a supplier within the meaning of the CSPA. REW regularly solicited, engaged in, and enforced

consumer transactions by making representations about mentorships.

Defendants' representations that they would assign mentors and that the mentors would help consumers be successful were false. "Because the Utah Legislature intended for the UCSPA to be liberally construed so as to harmonize "state regulation of consumer sales practices ... with the policies of the [FTC] Act," the standards for analyzing deceptive act or practice claims under the UCSPA are generally the same as for misrepresentation claims under § 5." *Nudge*, 2022 WL 2132695, at *13.

The Division may demonstrate that a claim is likely to mislead a reasonable customer under a 'falsity theory,' a 'reasonable basis theory,' or both. *FTC v. Nat'l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1190 (N.D. Ga. 2008). In this case, the Division established that Defendants' representations were likely to mislead under both theories. Defendants' representations were false. Ample consumer testimony established that Defendants told consumers that mentors would "hold them by the hand" and "walk them through successful transactions," allowing the consumers to make back the tens of thousands of dollars they paid for mentoring services. The consumer testimony established that Defendants either did not provide mentors at all, or that the mentors did not provide the services promised. Defendants did not offer any evidence from consumers who received the promised mentoring services or who were successful in applying the principles taught by mentors.

A representation is material if it is likely to affect a consumer's decision to buy a product or service. And it is likely to mislead if the net impression it [was] likely to make on the general populace" is false, misleading, or unsubstantiated. Determining a representation's net

impression involves not only looking at what is literally represented, but also analyzing the representation in light of the context and circumstances in which it was made, including any disclaimers or disclosures that accompanied it. *Nudge*, 2022 WL 2132695, at *12. "[T]he creation of a misleading net impression violates § 5 and the UCSPA regardless of whether it is done expressly or by implication. The same is true whether a single statement or many are involved." *Id.* at *15.

Multiple consumers testified that Defendants promised them they would receive the help of mentors who would assist them in completing transactions. That multiple consumers gave similar testimony supports the conclusion that a reasonable consumer would believe Defendants would provide the promised services. The high cost of the services also supports this conclusion. Consumers would be unlikely to pay tens of thousands of dollars for mentoring services unless they believed the services would, in turn, help them make money.

The evidence also demonstrates that Defendants lacked a reasonable basis for their representations. Defendants admit they did not maintain any records that would track whether their consumers made money from the training or the mentorship they received. REW admitted in response to paragraph 249 of the Complaint that "REW did not track the success of consumers who purchased training or services from REW." Without a systematic method for gathering such information, REW could not have a reasonable basis for stating that it would provide mentors who would help consumers complete successful real estate transactions.

"For an advertiser to have had a 'reasonable basis' for a representation, it must have had some recognizable substantiation for the representation prior to making it in an

advertisement." *FTC v. Direct Mktg. Concepts, Inc.*, 569 F.Supp.2d 285, 298 (D.Mass. 2008) (citations omitted). "Defendants have the burden of establishing what substantiation they relied on for their product claims." *FTC v. QT, Inc.*, 448 F.Supp.2d 908, 959 (N.D.Ill. 2006).

Although Defendants claimed at trial that they provided effective mentors, they did not introduce any evidence from either mentors or consumers to prove their assertion. That is to say, Defendants failed to meet their burden of establishing what substantiation they relied on in promising that mentors would help consumers complete real estate transactions or that using a mentor would help recover the tens of thousands of dollars consumers paid for the services.

The Court finds by a preponderance of the evidence that Defendants falsely represented that, for a fee, they would provide mentors to consumers and that those mentors would work with the consumers to complete successful real estate transactions. The Court further finds that Defendants falsely represented that by using a REW mentor, consumers would recover the cost of the program. The Court also finds by a preponderance of the evidence that these representations were false. The Court also finds that Defendants lacked a reasonable basis for making these representations. The Court finds by a preponderance of the evidence that REW's misrepresentations were material and widely disseminated.

I. REW deceived consumers about funding.

REW told consumers that the purchase price for the advanced training package would include a list of individuals or entities that would fund real estate purchases and/or rehabilitation of properties purchased by consumers. Based on the evidence adduced at trial,

including evidence from the consumers, the Court finds by a preponderance of the evidence that REW did not provide the promised funding. REW did not introduce any countervailing evidence at trial that it provided funding to consumers.

The Court finds that these funding misrepresentations were both material and widely disseminated.

J. REW deceived consumers about debt and credit card financing.

The Court finds by a preponderance of the evidence that REW engaged in deceptive acts and practices relating to consumers and Seed Capital. REW encouraged consumers to pay $3,000 to $4,000 to Seed Capital to obtain credit cards by representing that consumers would earn enough using what they would learn from REW to pay off the credit cards before any interest would accrue. Consumers testified at trial that they did not make sufficient money to repay the credit cards before interest accrued. This testimony was corroborated by consumer complaints. REW did not introduce any credible evidence contradicting this consumer testimony.

K. REW acted knowingly or intentionally.

A supplier also violates the CSPA when it acts knowingly or intentionally with regard to the certain specified acts and practices outlined in subsections 13-11-4(2)(a)-(z). Utah Code §13-

11-4(2)(a)-(z). "A person engages in conduct: (2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with

respect to the result of his conduct when he is aware that his conduct is reasonably certain to cause the result." Utah Code §76-2-103.

The Court finds by a preponderance of the evidence that REW knew of the nature of its conduct. It formulated its deceptive business model. It prepared its radio advertisements and other marketing materials. It prepared the materials distributed in its presentations. REW knew it lacked any data to substantiate its earnings claims. The information presented at the free seminars was approved by the REW principals.

From 1985 to 1995, the CSPA required a plaintiff to prove a defendant acted with intent to deceive. In 1995, the Utah Legislature amended the statute and changed the requirement from "intent to deceive" to acting "knowingly or intentionally." Under this standard, specific intent is not required, and a court may consider the circumstances "which the supplier knew or had reason to know" to decide whether an act is deceptive. *Heard v. Bonneville Billing and Collections,* 216 F.3d. 1087 (10th Cir. 2000) (interpreting Utah's CSPA statute). REW knew or had reason to know its actions were deceptive, misleading, and unconscionable.

L. REW indicated its products and services had the approval or sponsorship of government entities.

A supplier commits a deceptive act or practice if the supplier knowingly or intentionally indicates that the subject of a consumer transaction has sponsorship or approval if it has not. Utah Code §13-11-4(2)(a) and (i). The preponderance of the evidence established that REW indicated it was sponsored or approved by the federal government and by county governments. REW used pictures of national symbols like the U.S. Capitol Building and an eagle to give the

impression of sponsorship. It called one of its programs the Government Tax Lien Network. In its written materials and oral presentations, it said that the tax liens were guaranteed by the government. Consumers testified that they believed REW was sponsored by or backed by the government and that this was important to their decision to purchase.

REW did not introduce any evidence to establish it was affiliated with or sponsored by any government entity. Nor did it introduce any evidence contradicting the consumer testimony introduced by the Division.

The Court finds by a preponderance of the evidence that REW's indications of government sponsorship or approval were unsubstantiated, widely disseminated, and material.

M. REW acted unconscionably.

In section 13-11-4, the CSPA protects consumers from deceptive and misleading conduct. In section 13-11-5, it protects consumers from unconscionable conduct. A supplier violates the CSPA if it engages in an unconscionable act or practice, whether the act occurs before, during, or after the transaction.

The Court finds by a preponderance of the evidence that REW's conduct was unconscionable within the meaning of the CSPA. REW consistently misled consumers about the nature of their transactions. Consumers were promised that if they attended the free event, they would receive information related to buying and selling tax liens. Instead, they were given a sales pitch for a three-day workshop at which they would receive information related to

buying and selling tax liens. Consumers who purchased the three-day workshop testified that REW presenters barely mentioned tax liens, but instead gave barebones information about buying and flipping property. Consumers also testified that the three-day workshop was simply a ruse, an opportunity for REW to pitch even more expensive training products. Finally, those consumers who purchased that advanced training later learned that the promised training never materialized and were instead sold coaching or mentoring services.

Thus, REW not only mispresented the type or nature of the products and services it was offering, but the sales model itself was unconscionable. It was unconscionable because REW did not offer training; in reality, it offered a sales funnel, nothing more.

REW's sales were also unconscionable because the evidence at trial showed that REW knew many, if not most, of its consumers would lose money in its program. Because REW was not offering actual training, it knew that consumers could not be successful using its nonexistent program. REW used the same sales funnel in every market it entered. Since REW only made money if it sold additional training or products, it had no incentive to actually train consumers. This is underscored by REW's complete lack of substantiation for its claims.

REW knew that many of these consumers were borrowing the money to pay REW or otherwise could not afford it. In fact, REW paired with Seed Capital to encourage consumers to open credit cards, not to invest in real estate, but to purchase additional REW products or training. To do so, REW encouraged consumers to mislead banks by overstating their income.

Due to REW's close collaboration with Seed Capital and REW's knowledge of its consumers' finances, REW knew, or should have known, that this would result in future economic hardship for consumers, but it did nothing to mitigate those consequences. This is an operational definition of unconscionable sales acts or practices.

The CSPA is a uniform act promulgated by the Uniform Laws Commission. When the Utah Legislature adopted the CSPA, it had before it the comments of the commission which drafted it. Those comments help understand unconscionability under the CSPA.

The first comment says: "These subsections forbid unconscionable advertising techniques, unconscionable contract terms, and unconscionable debt collection practices. As under Uniform Commercial Code §2-302, unconscionability is a question of law for the court. "Unconscionability typically involves conduct by which a supplier seeks to induce or to require a consumer to assume risks which materially exceed the benefits to him of a related consumer transaction." 1962 Official Text with Comments (Emphasis added).

The Court finds by a preponderance of the evidence that REW sought to induce consumers by encouraging them to assume substantial risks. REW encouraged consumers to liquidate their retirement accounts to pay for REW training. It encouraged consumers to take out credit cards (with their concomitant, albeit sometimes deferred, high interest rates), with a primary purpose of paying REW for training. REW did this even though most consumers did not make money from the training they received and even though REW could not substantiate its

claims.

The Uniform Laws Commission also includes as unconscionable "such conduct as the sale of goods, services, or intangibles to a low-income consumer whom the salesman knows, or has reason to know, does not have sufficient income to make the stipulated payments."

The preponderance of the evidence shows that REW knew many of its consumers did not have sufficient income to pay for REW's training. This is evident because REW encouraged consumers to obtain credit cards to pay for their training. It encouraged consumers to gamble their retirement on a program that had no proven track record. If REW's consumers had sufficient income to pay for REW's services, REW would not have needed to encourage them to undertake high interest debt or liquidate their retirement funds.

The Court finds by a preponderance of the evidence that REW, together with Seed Capital, encouraged consumers to deceive credit card companies by overstating their income. REW received compensation from Seed Capital for REW consumers who paid Seed Capital for its services. Seed Capital directed consumers to tell credit card companies that their income was $100,000 more than it actually was, based on the premise that consumers would net $100,000 per year by using REW's techniques. Because consumers trusted in the promised results of REW, they had no reason to believe REW was instructing them to mislead the credit card companies. The same cannot be said for REW, which knew that it could not substantiate the promise that consumers would obtain a $100,000 per year jump in their income. REW's

conduct would shock the conscience of a reasonable person.

The Court finds as a matter of law that no fair-minded person could view REW's conduct without a profound sense of injustice, and it was thus unconscionable. *Carlson v. Hamilton*, 332 P.2d 272, 275 (Utah 1958).

N. Actual damages are appropriate

The CSPA authorizes the Division to recover, for each violation, actual damages on behalf of consumers who complained to it within a reasonable time after it instituted proceedings under the CSPA. Utah Code §13-11-17(1)(c). The Division introduced evidence of two categories of actual damages: money paid by consumers to REW and money paid by consumers to others as a result of consumers' transactions with REW.

In determining the amount of damage in this case, the Court considered the testimony of two expert witnesses, David Bateman for the Division and Daniel Rondeau for REW. It also considered the complaints filed by consumers and the documentation submitted by consumers.

To arrive at an amount of actual loss for consumers, Mr. Bateman notified REW consumers of this action and provided them with instructions about how to timely file a complaint against REW. He reviewed the consumer complaints and accepted the amount each consumer provided for three categories: the amount the consumer paid to REW; any amount refunded; and amounts not paid to REW but that represented losses to the consumer. Each consumer complaint, and its supporting documentation, was accepted into evidence.

"The level of persuasiveness required to establish the *fact* of loss is generally higher

than that required to establish the *amount* of a loss." *Atkin Wright & Miles v. Mountain States Telephone,* 709 P.2d 330, 336 (Utah 1985) (emphasis in original) (citations omitted). The wrongdoer, rather than the injured party, bears the burden of some uncertainty in the amount of damages. *Id.* There must still be evidence that rises above speculation and provides a reasonable, even though not necessarily precise, estimate of damages. *Id.*

The Court received ample evidence of the fact of loss. Each of the consumer witnesses who testified at trial or whose deposition was introduced, testified that they lost money. The court found this evidence credible and persuasive. Mr. Campbell testified that he paid REW approximately $70,000 and received a refund of $35,000, for a $35,000 loss. He testified he paid $3,000 to Seed Capital to arrange credit cards. He paid for transportation to REW events.

Ms. Salinas testified that she paid $600 to REW for the three-day training. She then paid $35,000 to REW for Advanced Training. She also suffered other losses. At REW's instruction, she took out credit cards to pay for her training. She has paid interest on those credit cards. She paid Seed Capital $3,495.

Mr. Curry testified that he paid $597 to REW for the three-day presentation. He paid REW $39,995 for Advanced Training. He paid for it out of the retirement account he held with his wife.

Mr. Wilson testified that he paid four or five hundred dollars for the three-day presentation and $39,995 for the Advanced Training.

The amount of loss is supported by evidence and is not mere speculation. It is supported by the consumer complaints and by the documents submitted with the complaints.

Nevertheless, the Court has reviewed Exhibit 189, which Mr. Bateman prepared to summarize the consumer complaints. The Court accepted claims where the consumer expressed that the complaint was filed under penalty of perjury and where the consumer included documentation of the transaction. Those consumers, the numbers of the trial exhibits containing their documentation, and their documented loss, are set out in Exhibit A to these Findings of Facts and Conclusions of Law.

Consumers who complained to the Division within a reasonable time suffered actual damages of $2,828,776.19. The Court finds by a preponderance of the evidence that actual damages on behalf of consumers should be awarded against Defendants in favor of the Division in the amount of $2,828,776.19.

TELEPHONE FRAUD PREVENTION ACT

O. REW violated the TFPA.

This Court ruled on summary judgment that the undisputed facts show REW violated the TFPA, and that ruling is incorporated here. The Division alleges Defendants violated the TFPA in two ways. It alleges Defendants made telephone solicitations without being properly registered with the Division, and Defendants made misrepresentations in the course of their telephone solicitations. The Division has met its burden and the Court finds by a preponderance of the evidence that REW violated the TFPA both by failing to register and by making misrepresentations.

i. Defendants made telephone solicitations without being properly registered.

It is unlawful for any solicitor to solicit a prospective purchaser on behalf of a telephone soliciting business that is neither registered with the Division nor exempt from registration under the TFPA. Utah Code §13-26-11(1)(a). There are three elements to this claim: that the solicitor made telephone solicitations, that it was unregistered, and that it was not exempt. The Court finds by a preponderance of the evidence that all three elements are met here.

A telephone solicitation includes the sale or solicitation of goods or services over the telephone where the purchaser's agreement to purchase is made over the telephone, and the purchaser pays for or agrees to commit to pay for the goods or services over the telephone. Utah Code §13-26-2(7)(a)(i)(A). A telephone solicitation also includes a telephone call in which the solicitor "induces a prospective purchaser over the telephone, to make and keep an appointment that directly results in the purchase of goods or services by the purchaser that would not have occurred without the telephone solicitation and inducement by the solicitor[.]" Utah Code §13-26-2(7)(a)(i)(B). A person or entity is a solicitor if they make a telephone solicitation or cause a telephone solicitation to be made. Utah Code §13-26-2(9).

REW's binding judicial admissions in its Answer established that it conducted telemarketing sales and asked consumers to purchase additional training and mentoring. In its Answer to the Complaint, REW admitted paragraph 48, which alleged that REW and the individual defendants utilized telephone solicitations to sell goods and services. REW admits that consumers purchased goods and services during these telephone solicitations or consumers agreed to commit to payment prior to or upon receipt by the consumer of the goods

and services. REW admits that REW and the individual defendants used telephone solicitations to set appointments for consumers to attend REW events which resulted in the sale of goods or services. Each of these calls satisfied the definition of a telephone solicitation set out in Utah Code §13-26-2(7)(a)(i). The first element of a violation for failure to register under the TFPA is therefore met. In addition, the Court finds by a preponderance of the evidence that REW made telephone solicitations to upsell consumers on products and services from other companies as a result of their REW purchase. Each of these attempts to upsell over the telephone constitutes an additional telephone solicitation.

REW's use of telephones in its business was pervasive. According to Mr. Bove, REW used telephone calls as one medium to confirm a request to attend a live event not scheduled in the State of Utah. Mr. Bove also testified that the 90,000 calls made from February 2018 to November 2018 were for the purpose of confirming appointments or to collect outstanding balances from consumers.

After Division Investigator Blake Young attended an REW free preview event, he received additional telephone calls. Mr. Young testified, "the main focus of the call was whether or not I wanted to purchase the three-day event." Investigator Young testified that this was a sales call. The record contains statements from many consumers that they received sales calls over the phone. At trial, Investigator Young testified that neither REW nor any of its affiliated entities were registered telemarketers as required by the TFPA. REW offered no contradictory evidence. The Court finds by a preponderance of the evidence that REW was not

a registered telemarketer.

The Court finds by a preponderance of the evidence that REW was not exempt from registration. REW does not argue it is exempt from registration; it argues instead that the Division said it was exempt under the "event sales" exception. This argument fails for several reasons. First, the Court has already found at summary judgment that REW violated the TFPA and ruled against it on its affirmative defense of waiver. Second, there is no "event sales" exemption. Third, the facts adduced at trial do not support a claim for estoppel against the government.

At summary judgment, the Court determined that REW violated the registration provisions of the TFPA. Paragraph 39 of the Summary Judgment Order reads: "Telephone soliciting businesses must be registered with the Division as described in the TFPA. Neither REW nor the Individual Defendants were registered with the Division in connection with their REW activities.

Pages 22 and 23 of the Summary Judgment Order say:

> The TFPA makes it unlawful for any solicitor to solicit a prospective purchaser on behalf of a telephone soliciting business that is neither registered with the division nor exempt from registration under the TFPA. Utah Code § 13-26-11(1)(a). A telephone solicitation includes the sale or solicitation of goods or services over the telephone, where the purchaser's agreement to purchase is made over the telephone, and the purchaser pays for or agrees to commit to pay for the goods or services over the telephone. Utah Code § 13-26-2(7)(a)(i)(A). A telephone solicitation also includes a telephone call in which the solicitor "induces a prospective purchaser over the telephone, to make and keep an appointment that directly results in the purchase of goods or services by the purchaser

that would not have occurred without the telephone solicitation and inducement by the solicitor[.]" *Id.* § 13-26-2(7)(a)(i)(B). A person or entity is a solicitor if they make a telephone solicitation or cause a telephone solicitation to be made. *Id.* § 13-26-2(9).

Defendants' binding judicial admissions provide conclusive evidence that Defendants violated the TFPA. REW staff conducted telemarketing sales, and asked consumers to purchase additional training and mentoring. ¶ 189. During these telephone solicitations, consumers both purchased goods and services and committed to payment prior to or upon receipt by the consumer of goods and services. *See* ¶ 48. This satisfies the first prong for liability under the TFPA.

REW also used telephone calls to set appointments for consumers to attend seminars where REW goods and services were sold. ¶ 190. This independently establishes that Defendants violated the first prong of the TFPA. REW also made telephone solicitations to upsell consumers on products and services (such as selfdirected IRA accounts) from other companies as a result of their REW purchase(s). ¶ 82. Each of these attempts to upsell over the telephone constitutes an additional violation of the TFPA.

Page 25 of the Summary Judgment Order says:

The Court rules that the admissions set forth in the Defendants' Answer establish violations of the TFPA and BODA, the two Acts which are the subject of the Division's Motion for Partial Summary Judgment. In light of the Court's ruling above, the Defendants' judicial admissions are binding, and they cannot be rebutted with contrary evidence. As the Division correctly points out, the factual statements in the Complaint and the corresponding admissions in the Answer provide conclusive evidence that the Defendants violated the TFPA and BODA. The Defendants' submitted Declarations, from the Individual Defendants, cannot create an issue of fact.

On page 27, the Court granted the Division summary judgment against REW's waiver defense.

REW did not introduce evidence at trial sufficient to cause the Court to reverse its decision on summary judgment. Courts do not generally reopen what has been decided absent exceptional circumstances. *See Mower v. Simpson*, 392 P.3d 861 (Utah App. 2017) (exceptional circumstances are narrowly defined as: (1) when there has been an intervening change of

controlling authority; (2) when new evidence has become available; or (3) when the court is convinced that its prior decision was clearly erroneous and would work a manifest injustice, *citing Thurston v. Box Elder County*, 892 P.2d 1034, 1039 (Utah 1995)).

Defendants have not referenced any intervening change of controlling authority. Defendants did not introduce any new evidence at trial relating to its exemption status nor did Defendants introduce evidence that the Court's summary decision was clearly erroneous and would work a manifest injustice.

Defendants' equitable estoppel argument fares no better. First, Defendants did not meaningfully argue at summary judgment that they were exempt or that the Division was estopped. Instead, Defendants argued they had reached a settlement agreement with the Division. The Court scheduled an evidentiary hearing to give Defendants an opportunity to prove the existence of a settlement agreement. Defendants then abandoned that argument. Applying the reasoning of *Mower*, Defendants have not introduced an intervening change of controlling authority about estoppel, introduced new evidence that the Division should be estopped, or convinced the Court that its prior summary judgment order was clearly erroneous. Because Defendants did not establish these facts, the Court will not reverse its summary judgment order finding that they violated the TFPA.

Defendants' "exemption by estoppel" argument also fails on the merits. Estoppel principles do not defeat the Division's TFPA claims. Estoppel is only available against the

government to prevent manifest injustice and requires "very specific written representations by authorized government entities." *Benson v. Peace Officer Standards and Training Council*, 261 P.3d 643, 647 (Utah Ct. App. 2011). *See also Holland v. Career Service Review Board*, 856 P.2d 678, 682 (Utah Ct App. 1993) ("[E]quitable estoppel is only assertible against the State or its institutions in unusual situations in which it is plainly apparent that failing to apply the rule would result in manifest injustice"); *Anderson v. Public Serv. Comm'n*, 839 P.2d 822, 827 (Utah 1992) ("The few cases in which Utah courts have permitted estoppel against the government have involved very specific written representations by authorized government entities."). The Utah Court of Appeals decision in *McLeod v. Retirement Board*, is instructive. The plaintiff argued that he relied on three telephone conversations with unnamed Utah Retirement System employees in making his retirement decision, but he had no record of the calls and could not remember to whom he had spoken. The court said, "[W]e cannot ignore a petitioner's burden to establish the factual predicate of estoppel against a government entity *with something approaching 'certainty.'*" 257 P.3d 1090, 1096 (Utah Ct App. 2011) (emphasis added). *See also, Davis v. Utah*, 2021 WL 3930277 (10th Cir. 2021) (District Court properly denied equitable estoppel claim because there was no written representation).

The general rule prohibiting a claim of estoppel against the government safeguards the interests of the public, which may be jeopardized by the vagaries of political tides, frequent changes of public officials, the possibility of collusion, or of circumventing procedures set up by law, then suing for the value of goods furnished or services rendered. Activities which are

strictly prohibited by statute are considered to be strongly against public policy. When considering a violation of such statutes, "*it is quite universally held that no estoppel will lie* against the government." *Prows v. State of Utah*, 822 P.2d 764, 769 (Utah 1991) (emphasis in original). The TFPA strictly prohibits a telemarketer from soliciting without registration. In this case, equitable estoppel does not apply.

Defendants' argue that there was evidence that there were multiple meetings with the Division and that defendants made every change suggested by the Division and that they did not need to register as a telemarketing company. The Court did not find this testimony credible.

And there is no "event sales" exemption to the TFPA. Exemptions from registration under the TFPA are found in Utah Code § 13-26-4. For example, the TFPA exempts regulated public utilities, newspapers, regulated broadcasters, publicly traded companies regulated by the SEC, and some charities. It does not exempt "event sales" or anything similar. Even if Mr. Stevens' testimony were given full credit that the Division told REW qualified for an exemption that does not exist, that representation would not create an estoppel. *See Monarrez v. Utah Dep't of Transp.*, 2014 UT App 219, 335 P.3d 913, *aff'd*, 2016 UT 10, ¶ 40, 368 P.3d 846 (court properly granted summary judgment in the government's favor despite plaintiff's assertion that government should be estopped because he relied on a letter from the government); *Fuller v. United States*, 475 F. Supp. 3d 762, 767 (S.D. Ohio 2020) ("It is well established that estoppel cannot be used against the government on the same terms as against private parties. . . .

[R]eliance on misinformation provided by a government employee does not provide a basis for an estoppel."). As discussed above, Ohio has also adopted the Consumer Sales Practices Act, and Ohio court decisions are useful in interpreting Utah's similar law. Further, the CSPA itself provides that one of its purposes is to make Utah law consistent with other states' consumer protection laws.

ii. REW violated the TFPA by making misrepresentations.

Separately, REW misrepresentations also violated the TFPA. It is unlawful under the TFPA for a seller in connection with a telephone solicitation to make or cause to be made a false material statement or fail to disclose a material fact necessary to make the seller's statement not misleading. As indicated in the previous section, REW admitted conduct which meets the statutory definition of a seller, and it admits that it made telephone solicitations. The evidence at trial established that REW made false material statements or failed to disclose material facts.

Many consumers stated that the calls they received were continuations of the sales pitch. After attending the free event or the three-day event, consumers were called to sell them the next event, mentoring, additional training, or credit card services. By statute, a telephone solicitation includes a call in which the solicitor induces a prospective purchaser over the telephone, to make and keep an appointment that directly results in the purchase of goods or services by the purchaser that would not have occurred without the telephone solicitation

and inducement by the seller. Utah Code §13-26-2(10)(A)(i)(B). Because the telephone solicitation incorporates sales made at appointments, it also incorporates the misrepresentations made during those sales.

In conclusion, because REW did not register under the TFPA, it did not have approval for any transaction solicited over the telephone. Thus, it is not strictly necessary to determine whether the telephone solicitations contain misrepresentations; REW's failure to register is a *prima facie* violation of the TFPA. Nevertheless, because Defendants' scheme was deceptive at its core, every telephone solicitation was deceptive and constitutes an independent violation of the TFPA.

Remedies under the TFPA are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law. Utah Code §13-26-10.

BUSINESS OPPORTUNITY DISCLOSURES ACT

P. REW violated BODA.

The Court also ruled on summary judgment that the undisputed facts show REW violated BODA. A seller of an assisted marketing plan is required to register with the Division and make certain disclosures to potential consumers under BODA. Utah Code §13-15-2(2). On summary judgment, the Court ruled that REW sold assisted marketing plans. It sold products and services for an initial required consideration of $500 or more for the purpose of enabling

the purchaser to start a business. REW also represented that it would provide consumers with a sales or marketing program that would enable the consumers to derive income that exceeded the price they paid for the marketing plan. Utah Code §13-15-2(a)(a)(iv). REW did not register with the Division and did not provide consumers with the required disclosures. *See Nudge,* 2022 WL 2132695, at *44 (Division entitled to summary judgment on its BODA claim against entity using REW's business model.)

However, the Court also ruled that it lacked jurisdiction to impose fines under BODA. BODA was amended in 2022, but the conduct at issue in this case predated the amendment. Under the statute, as applicable in this case, this Court retains the authority to grant judgment, impose injunctive relief, and award reasonable attorney's fees, costs of court, and investigative fees. Utah Code §13-15-6(3).

The Court permanently enjoins each Defendant from violating BODA and awards the Division its reasonable attorney's fees, costs of court, and investigative fees. The Court directs the Division to submit appropriate evidence of fees and costs. Defendants shall have the opportunity to object to the amounts requested, and the Division will have the opportunity to reply. The Court will then determine the amount of and costs to be awarded.

FINES

Q. Fines are appropriate in this case.

The Court finds by a preponderance of the evidence that it is appropriate to impose

fines, jointly and severally, against each of the Defendants. The Court has discretion in deciding whether to impose a fine and the amount of the fine. The Court's task was made more difficult in this case because the Division submitted papers containing differing recommended fines. The Division has explained the reasons for these differing recommendations. The Court has considered the Division's recommendations as to the appropriate amount of fines. It has also conducted its own analysis of the fine factors contained in the CSPA and exercised its discretion under both the CSPA and the TFPA in determining a fine amount that is both reasonable and which serves the need to deter future misconduct, both by the Defendants and by other potential violators.

i. CSPA fines/penalties.

The Court has carefully considered the fine factors set forth by the Utah legislature in Utah Code §13-11-17(6) in light of the evidence presented at trial and concludes that a fine in the amount of $30,636,610 against all Defendants, jointly and severally, is appropriate for their violation of the CSPA.

The CSPA authorizes the Division to bring an action in this Court to obtain a fine. Utah Code §13-11-17(1)(d). The amount of the fine to be assessed under the CSPA is within the discretion of the Court after applying the factors set out in the statute. The amount of a fine is inherently imprecise. *State ex rel. Utah Air Quality Bd. v. Truman Mortensen Fam. Tr.*, 2000 UT 67, ¶34, 8 P.3d 266, 273.

The statutory fine factors are:

(a) the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation;

(b) the harm to other persons resulting either directly or indirectly from the violation;

(c) cooperation by the supplier in an inquiry or investigation conducted by the enforcing authority concerning the violation;

(d) efforts by the supplier to prevent occurrences of the violation;

(e) efforts by the supplier to mitigate the harm caused by the violation, including a reimbursement made to a consumer injured by the act of the supplier;

(f) the history of previous violations by the supplier;

(g) the need to deter the supplier or other suppliers from committing the violation in the future; and (h) other matters as justice may require.

Utah Code §13-11-17(6).

The Utah Securities Act includes similar fine factors. In considering those factors, the Utah Court of Appeals said: "it is apparent that the regulation's purpose was to provide a framework for weighing and balancing the applicable factors to ensure fine assessments were commensurate with the gravity of the particular violation and consistently applied over time. That is, the factors were not simply a list of the various categories for which discrete dollar amounts could be combined into a total civil penalty assessment, as appeared to occur in this case. Rather, the regulation required the Commission to set a fine amount based on a multi-factor balancing inquiry that took various elements, such as investor loss, into account." *Phillips v. Department of Commerce*, 397 P.3d 863, 872 (Utah App. 2017). This determination is inherently imprecise. *Id.* at 873.

While the CSPA limits a fine in an administrative proceeding to $2,500 per violation, Utah Code §13-11-17(4)(1), no such limitation exists in a court of competent jurisdiction. The amount of the fine is in the Court's discretion after consideration of the fine factors in §13-1117(6). *See Phillips,* at 868-9 (Utah App. 2017) (recognizing that the Legislature may provide different fine amounts in administrative and judicial proceedings).

In determining the number of violations for purposes of imposing a fine, the Court has considered only violations that occurred on or after May 8, 2017, which is the statute of limitations applicable for this remedy. As indicated above, based on the information provided by REW in response to a subpoena, 3,608 consumers purchased from REW after May 8, 2017.

However, the Court has also considered REW's conduct occurring before that date to the extent it bears on the factors to be considered.

As set out above, the Court determines by a preponderance of the evidence that, because REW's business model was deceptive, each sale constituted a violation of the CSPA. The Court also finds by a preponderance of the evidence that REW violated the CSPA in other, specific ways. For example, REW implied that its services were sponsored or approved by the government. It made earnings misrepresentations. It failed to provide the mentoring services it promised. It failed to timely provide refunds. It acted unconscionably. Each of the violations occurred many times and each violation under the

CSPA supports a separate fine. In short, REW committed multiple violations for each consumer. For purposes of calculating a fine in this matter, the Court considered all of the foregoing factors, but for simplicity, based its fine only on one violation per REW sale during the statute of limitations period.

The first factor to be considered under the CSPA is the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation. The Court finds by a preponderance of the evidence that REW's conduct was extremely serious, widespread, and persistent. It was serious for several reasons. First, REW's business model itself was deceptive. This is not a case where there was a sound business model, but an overzealous salesperson occasionally made a misrepresentation. REW's entire business was designed to ensnare consumers, offering them free training, then progressively more expensive training, without substantiation that its consumers would be likely to earn more from their training than they paid for it.

REW's conduct was also extremely serious because it encouraged consumers to incur thousands or even tens of thousands of dollars in credit card debt. For example, Mr. Campbell testified that he got six or seven credit cards which he used to pay REW. In other cases, consumer harm may be relatively small, for example when a consumer purchases an inexpensive product. In this case, the magnitude of loss detrimentally changed the lives of many consumers.

The extent and depth of this harm proves the seriousness of the conduct.

REW's conduct was also serious because it was unconscionable. REW knew it lacked substantiation for its earnings claims and sold its products and services anyway. It worked with Seed Capital to encourage consumers to deceive credit card companies about their earnings.

These are particularly serious matters because REW's conduct was extensive. In its Answer, it admitted in paragraph 49 of the Complaint that from 2015 to 2017, REW made at least 189 visits to various cities (each representing approximately four to eight free events and three-day events) across 22 states, the District of Columbia, and Canada. Mr. Stevens testified that over 70,000 consumers attended REW events. REW also admitted that since 2017 it has hosted many additional events. REW admitted paragraph 72 of the Complaint: more than 9,000 consumers purchased the three-day seminar from 2015 through 2018, and of those consumers, approximately 1,900 purchased an Advanced Training package.

REW's conduct was persistent. REW sold its products over a period of at least four years, from 2015 to 2019.

The first fine factor weighs heavily in favor of a substantial fine.

The second fine factor is the harm to other persons resulting either directly or indirectly from the violation. The Court finds by a preponderance of the evidence that REW's consumers were badly harmed by REW's conduct. REW typically charged $597 for its three-day seminars. REW admitted this in response to paragraph 67 of the complaint.

In that same paragraph, REW admits it sold more than 10,000 three-day seminars. It charged consumers between $29,900 and $39,900 for its Advanced Training Packages. It admitted this in response to paragraph 69 of the complaint. In addition to credit cards, REW encouraged consumers to use their retirement savings to pay for REW training, Consumers suffered substantial financial harm. Some were forced into bankruptcy. Others lost their homes. At least one consumer became homeless. Many consumers said their credit was, and remains, impaired.

Using the numbers as admitted by REW, the 9,000 consumers who paid $597 for the three-day seminar paid REW $5,373,000. The 1,900 consumers who purchased Advanced Training paid REW at roughly between $56,810,000 and $75,810,000 (given the amount charges was typically from $29,900 to $39,900. Adding the $5,373,000 for three-day seminars and using the bottom estimate of $56,810,000 for AdvancedTraining, REW collected from consumers yields approximately $62,183.000.

This is a conservative number for several reasons: 1) It covers the period only from 2015 to 2018. REW operated in both 2014 and 2019. 2) It uses the smallest number for the price of the Advanced Training Package. 3) It does not include any payments made for additional mentoring programs. Some consumers spent tens of thousands of dollars on additional mentoring. For example, Mr. Campbell testified he paid an additional $25,000 for a mentor. 4) It does not include any revenues derived from REW collusion with Seed Capital.

REW did not introduce any credible evidence rebutting the amount it collected from consumers.

The Division introduced evidence that REW provided partial refunds to some consumers. However, even accounting for this, the end result was that REW took tens of millions of dollars from consumers, thereby harming consumers directly.

The record also contains evidence of harm done to consumers indirectly. For example, the record reflects that REW referred consumers to Seed Capital to obtain credit cards to use to pay REW. Both Mr. Campbell and Ms. Salinas testified they paid Seed Capital $3,000. In addition, some consumers lost additional money because REW did not provide the service it promised.

In *Division of Consumer Protection v. Smilelove, LLC*, the Division brought an administrative action under the CSPA. DCP Case No. 118617 *et al.* It alleged harm to 4,122 consumers who paid an aggregate of more than $5,770,000 for goods they never received. After an administrative hearing, the Director of the Department of Commerce imposed a fine of $5,873,850, applying the CSPA fine factors. The magnitude of consumer loss and the egregiousness of REW's conduct justifies a much higher fine in this case.

Mr. Campbell and Mr. Wilson both testified that they had to file bankruptcy because of his transactions with REW. Ms. Salinas testified that she had intended to refinance her home to send her son to college, but was unable to do so because of her

transactions with REW. She cannot qualify for a loan to buy a car. She cannot get a credit card. Mr. Curry paid $10,000 to REW on a credit card and took the remainder of the $39,900 price from his retirement savings.

REW's harm extends beyond its consumers. Credit card companies extended credit based on false information. REW consumers testified that they have struggled, and sometimes failed, to repay credit card obligations.

The third fine factor is the extent of cooperation by the supplier in an inquiry or investigation conducted by the enforcing authority concerning the violation. REW did not cooperate. The Division sought information from REW by subpoena. Although REW provided some information in response, its submissions were incomplete.

The fourth fine factor weighs efforts by the supplier to prevent occurrences of the violation. REW claims it met with the Division to ask how to bring its advertising into compliance and that it changed some of its advertising as a result. REW introduced no evidence that it made the promised changes. The Court finds that this misses the larger picture. While REW's advertisements contained earnings representations that lacked substantiation, simply modifying the language of the advertisements would not cure the misleading and deceptive nature of REW's business. REW's business model was predicated on a deception: that consumers were paying for training when in fact, REW's primary focus of the seminars was to push consumers to buy additional services. REW introduced no evidence that it made any effort to modify its business model to eliminate

its deceptive nature. Further, REW did not introduce evidence that it changed the language of its advertising in any meaningful way.

The fifth fine factor considers efforts by the supplier to mitigate the harm caused by the violation, including a reimbursement made to a consumer injured by the act of the supplier. While the Division introduced evidence that REW provided partial refunds to a few consumers, REW refused to provide full refunds to most customers. Mr. Campbell testified that he asked for a refund and REW refused. Ms. Salinas testified that she, too, asked for a refund and was denied. REW did not introduce any additional evidence of efforts to mitigate the harm it caused. To the contrary, the evidence showed that once the Division brought a citation, REW changed names again and continued in a similar pattern by enticing consumers into further purchases.

The sixth fine factor addresses the need to deter the supplier or other suppliers from committing the violation in the future. This encompasses two types of deterrence: specific and general. The Court finds that a large fine is necessary to deter the individual defendants from further violations. Mr. Stevens has twice before entered into settlement agreements with the Division for similar conduct. He agreed to pay small fines and to refrain from further violations of the CSPA, the TFPA, and BODA.[21] Mr. Wadsworth also entered into one of the settlement agreements.[22]. These settlement

[21] See Exs. 89 and 90 and Testimony of Blake Young, Trial Tr. Day 3, pp. 43-48, lns 20-22; *id.*, pp. 219-23, lns 15-9.

agreements did not stop Mr. Stevens and Mr. Wadsworth from establishing a new business and continuing to violate the very provisions they had agreed to obey. Given the failure of prior settlements to deter violations, a large fine is needed to deter future conduct.

The Court also finds that a large fine is necessary to deter unconscionable conduct. REW should have been deterred by the shocking nature of its actions. Because it was not deterred by legal or moral constraints, a large fine is necessary to impose external motivation.

A large fine is needed for general deterrence purposes as well. "Disgorgement alone is an insufficient remedy" because "there is little deterrent in a rule that allows a violator to keep the profits if [he] is not detected and requires only a return of ill-gotten gains if [he] is caught." *SEC v. Williams*, 2016 WL 3645158 (D. Utah 2016), quoting *SEC v. Inorganic Recycling Corp.*, No. 99 Civ. 10159 (GEL), 2002 WL 1968341, at *4 (S.D.N.Y. 2002). Using the numbers as admitted by REW, consumers paid REW at least $62,183,000.

Under the reasoning of *Williams*, a total award against Defendants of less than $62,183,000 is too small for general deterrence. It sends the message to potential violators that if they are caught, the amount they are obligated to repay will be less than the money they brought in. Nonetheless, as some of REW's conduct occurred outside

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[22] Ex. 90.

the statute of limitations period, and after considering all eight of the factors, the Court finds that a CSPA fine of $30,636,610 is appropriate. This would send a message to potential violators that they cannot expect to profit from deceiving consumers.

Some guidance about the magnitude of fines can be inferred from the statutory structure of the CSPA. The statute limits the amount the Division can impose as an administrative fine to $2,500. "In addition to other penalties and remedies set out under this chapter, and in addition to its other enforcement powers under Chapter 2, Division of Consumer Protection, the division director may issue a cease-and-desist order and impose an administrative fine of up to $2,500 for each violation of this chapter." 17-11-17(4)(a). The legislature imposed no such limit on the Court. Had the legislature intended to limit the amount of the fine available in court to $2,500 per violation, it could have done so.

There have been two recent settlements with companies whose operations mirrored REW's. In *FTC and Utah Division of Consumer Protection v. Zurixx*, Case No. 2:19-CV-0713DAK-DAO (D. Utah Dec. 15, 2022), the parties stipulated to a monetary judgment against the company in the amount of $104,700,000, of which $36,500,000 was attributable to claims by the Division. The individual defendants each stipulated to pay $2,333,333.33, with liability for the entire $104,700,000 if they failed to pay. In *FTC andUtah Division of Consumer Protection v. Nudge*, Nudge and related individuals agreed to pay $16.7 million. Case No. 2:19-cv-00867DBB-DAO (D. Utah2023).

As *Phillips* teaches, one consideration in setting a fine under the factors is consistency over time. Zurixx, Nudge, and REW all engaged in similar conduct over similar time frames. The fines attributable to each should be similar.

Considering the statutory fine factors, the Court determines that an appropriate fine for violations of the CSPA is $30,636,610 to be entered jointly and severally against each Defendant. This amount is justified because: 1) REW's misconduct was egregious and widespread; 2) the harm to consumers as individuals was often catastrophic, shattering their economic well-being and forcing some into bankruptcy; 3) two of the Defendants have entered into stipulations with the Division in the past which failed to deter future violations; and 4) given the magnitude of payments from consumers, a large fine is necessary to deter other potential violators from engaging in similar conduct.

At least 3,608 consumers purchased from REW after May 8, 2017. The statutory fine factors also contemplate, however, that the fine may account for transactions outside the statute of limitations period. REW admits that it sold at least 9,000 of its three-day event packages and 1,900 of its Advanced Training packages during the period outside the limitations period.

The Court finds that a fine of $2,500 per violation is inadequate in this case given the circumstances. The Court finds that a fine in the amount of $30,636,610 is appropriate for Defendants' violations of the CSPA. This represents a fine of $8,491.30 for each of the 3,608 transactions after May 8, 2017.

TFPA fines. The TFPA provides that a person who violates one of its provisions is subject to a civil penalty in a court of competent jurisdiction of up to $2,500 for each violation of the chapter. Utah Code §13-26-8(2). The TFPA also says that each telephone solicitation made in violation of the TFPA is a separate violation. Utah Code §13-26-8(3)(b). A telephone solicitation is defined as a sale or solicitation of goods in which the seller solicits the sale over the telephone and the purchaser's agreement to purchase is made over the telephone; and the purchaser, over the telephone pays for or agrees to commit to payment for goods or services prior to or upon receipt by the purchaser of the goods or services. It includes a telephone solicitation which induces a prospective purchaser to make and keep an appointment that results in a sale that would not have occurred without the telephone solicitation.

The Court finds by the preponderance of the evidence that every sale of an REW three-day seminar was based on a telephone solicitation by REW. REW advertised by direct mail and by radio advertising. Prospective purchasers were directed to call REW. During that call, REW solicited prospective purchasers to attend a presentation in which REW sold its three-day presentation. The Court finds, therefore, that each sale of an REW three-day presentation constitutes a separate violation of the TFPA.

Based on the information provided by REW to the Division in response to subpoena, the Court finds by a preponderance of the evidence that at least 3,608 consumers purchased presentations from REW after May 8, 2017. The number of TFPA

violations far exceeds 3,608 because the Court finds that REW made multiple solicitations with respect to each transaction and each solicitation constitutes a separate violation.

The Court finds by a preponderance of the evidence that it is appropriate to impose a fine of $2,500 for each of the 3,608 transactions during the statute of limitations period. Utah Code §13-26-8(2). The Court imposes the maximum penalty per violation in this case because it finds by a preponderance of the evidence that: 1) REW's violations were widespread. They occurred over several years and throughout the United States; 2) REW's violations were systemic. It engaged in substantive violations by making or causing to be made false material statements or failing to disclose material facts necessary to make its statements not misleading in violation of the statute. Utah Code §13-26-11(2)(b); and 3) REW's victims suffered substantial losses. Those who purchased Advanced Training Packages typically paid nearly $30,000 or more to REW.

Every solicitation made by REW violated the TFPA irrespective of whether it resulted in a sale to a consumer. Utah Code §13-26-11(1)(a) makes it unlawful for a seller to solicit a prospective purchaser if the seller is not registered with the Division or exempt from registration. The violation is complete upon solicitation. REW admits it solicited, not just attendance at its three-day event and Advanced Training, but also upsells of other products and services.

The Court imposes a fine of $9,020,000 against each of the Defendants jointly and

severally for their violations of the TFPA. This represents a $2,500 fine for each of 3,608 consumer transactions.

The TFPA provides that a person who violates one of its provisions is subject to a civil penalty in a court of competent jurisdiction of up to $2,500 for each violation of the chapter. Utah Code §13-26-8(2). The TFPA also says that each telephone solicitation made in violation of the TFPA is a separate violation. Utah Code §13-26-8(3)(b). A telephone solicitation is defined as a sale or solicitation of goods in which the seller solicits the sale over the telephone and the purchaser's agreement to purchase is made over the telephone; and the purchaser, over the telephone pays for or agrees to commit to payment for goods or services prior to or upon receipt by the purchaser of the goods or services. It includes a telephone solicitation which induces a prospective purchaser to make and keep an appointment that results in a sale that would not have occurred without the telephone solicitation.

The Court finds by the preponderance of the evidence that every sale of an REW three-day seminar was based on a telephone solicitation by REW. REW advertised by direct mail and by radio advertising. Prospective purchasers were directed to call REW. During that call, REW solicited prospective purchasers to attend a presentation in which REW sold its three-day presentation. The Court finds, therefore, that each sale of an REW three-day presentation constitutes a separate violation of the TFPA.

Based on the information provided by REW to the Division in response to subpoena, the Court finds that The Court finds by a preponderance of the evidence that at least 3,608

consumers purchased presentations from REW after May 8, 2017.

The number of TFPA violations far exceeds 3,608 because the Court finds, REW made multiple solicitations with respect to each transaction and each solicitation constitutes a separate violation.

The Court finds by a preponderance of the evidence that it is appropriate to impose a fine of $2,500 for each of the 3,608 transactions during the statute of limitations period. Utah Code §13-26-8(2). The Court imposes the maximum penalty per violation in this case because it finds by a preponderance of the evidence that: 1) REW's violations were widespread. They occurred over several years and throughout the United States; 2) REW's violations were systemic. It engaged in substantive violations by making or causing to be made false material statements or failing to disclose material facts necessary to make its statements not misleading in violation of the statute. Utah Code §13-26-11(2)(b); and 3) REW's victims suffered substantial losses. Those who purchased Advanced Training Packages typically paid nearly $30,000 or more to REW.

Every solicitation made by REW violated the TFPA whether or not it resulted in a sale to a consumer. Utah Code §13-26-11(1)(a) makes it unlawful for a seller to solicit a prospective purchaser if the seller is not registered with the Division or exempt from registration. The violation is complete upon solicitation. REW admits it solicited, not just attendance at its three-day event and Advanced Training, but also upsells of other products and services.

The Court imposes a fine of $9,020,000 against each of the Defendants jointly and severally for their violations of the TFPA. This represents a $2,500 fine for each of 3,608

consumer transactions.

ATTORNEY FEES, COSTS OF INVESTIGATION AND COSTS

R. Attorney's fees, costs of investigation, and costs

The CSPA and BODA provide for the award of attorney's fees to the Division. The CSPA states: "Any judgment granted in favor of the enforcing authority in connection with the enforcement of this chapter shall include, in addition to any other monetary award or injunctive relief, an award of reasonable attorney's fees, court costs, and costs of investigation." Utah Code §13-11-17.5. Use of the word "shall" establishes that the Legislature intended an award of fees, cost and the costs of investigation to be mandatory.

Similarly, under BODA, in the event of a judgment in its favor the Division "is entitled to an award of reasonable attorney's fees, costs of court, and investigative fees." Utah Code §13-15-6(3).

The Court determines that the Division is entitled to an award of attorney's fees, costs, and the costs of investigation. The Court directs the Division to submit appropriate evidence of fees and costs. Defendants shall have the opportunity to object to the amounts requested, and the Division will have the opportunity to reply. The Court will then determine the amount of and costs to be awarded.

III. JUDGMENT

IT IS HEREBY ORDERED that judgment is hereby entered jointly and severally against Defendants in the amount of $2,828,776.19 for equitable monetary relief, including but not

limited to consumer redress and disgorgement and in the amount of $39,656,610 for fines and penalties.

A. All funds paid as equitable monetary relief pursuant to this Order shall be deposited into a fund administered by the Division or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. If direct redress to consumers is wholly or partially impracticable or funds remain after redress is complete, any remaining funds will be placed into the Consumer Education and Training Fund established by Utah Code §13-2-8. All fines and penalties collected shall also be placed into the Consumer Education and Training Fund.

B. Defendants shall cooperate fully with the Division and its agents in all attempts to collect the amount due under this Order. Defendants shall provide the Division with their federal and state tax returns for the preceding two years, and to complete standard-form financial disclosure forms fully and accurately within ten (10) business days of receiving a request from the Division.

C. Defendants are hereby required, unless they have done so already, to furnish to Plaintiff their taxpayer identifying numbers (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of the Defendants' relationships with the government.

IV. INJUNCTION

IT IS HEREBY FURTHER ORDERED that Defendants, whether acting directly or through any other person, corporation, partnership, subsidiary, division, or agent, are permanently

restrained and enjoined from engaging in any business which advertises, markets, promotes, offers to sell or sells, any materials, services, programs or aids, in any form, including but not limited to, business coaching, real estate coaching, tax lien coaching or wealth creation.

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, and attorneys, and all other persons or entities, in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from misrepresenting, or assisting others in misrepresenting in any advertising, marketing, promotion, sales offer or sales, any material facts, including but not limited to:

a. Defendants' affiliation with, approval or endorsement by, any person, business, government or quasi-governmental entity;

b. The potential earnings available in any enterprise;

c. The nature or terms of any refund, cancellation, exchange, or repurchase policy.

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, and attorneys, and all other persons or entities, in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from, either directly or indirectly:

a. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including credit card, bank account, or other financial account), of any person which Defendant obtained prior to entry of this Order in connection with the advertising, marketing, promotion, offering for sale,

or sale of those products and services declared in the Complaint filed in this action (the "Customer Information");

b. Failing within thirty (30) calendar days after entry of this Order to dispose of the Customer Information in all forms in their possession, custody, or control. Disposal shall be by means that protect against unauthorized or inadvertent access to the Customer Information, such as by physical destruction of any papers, and by erasing or destroying any electronic media such that it cannot be retrieved. Customer Information that, on the date scheduled for destruction has been requested by a government agency or required by law, regulation, or court order to be disclosed is not subject to the destruction requirement in this Paragraph.

V. COMPLIANCE MONITORIING

IT IS FURTHER ORDERED that, the Division is authorized to use all other lawful means, including but not limited to:

1. Obtaining discovery from any person using the procedures prescribed by Utah R. Civ. P. 30, 31, 33, 34, 36, 45, and 69;

2. Having its representatives pose as consumers of Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendants, without the necessity of identification or prior notice; and

3. Defendants shall permit representatives of the Division, upon at least ten (10) calendar days' notice, to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present and

counsel for the Defendants may be present. This Order shall not limit the Division's lawful use of compulsory process, pursuant to any of the laws of the State of Utah, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce.

VI. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of three (3) years from the date of entry of this Order,

1. Defendants shall notify the Division of the following:

a. any changes in any Defendants' residence or business offices, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. any changes in any Defendant's employment status (including self-employment), and any change in any Defendant's ownership interest in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business with which the Defendant is affiliated, employed by, creates or forms, or performs services for, and a detailed description of the Defendant's duties and responsibilities in connection with the business or employment; and

c. any changes in any Defendant's name or use of any aliases or fictitious names within ten (10) days of the date of such change.

B. One hundred eighty (180) days after the date of entry of this Order and thereafter on January 15, 2025 and 2026, and 2027, Defendants shall provide a written report to the Division, which is true and accurate and sworn to under penalty of perjury, setting forth the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. Defendants' then-current residence addresses, mailing addresses, and telephone numbers;

2. Defendants' then-current employment status (including self-employment), including the name, addresses, and telephone number of each business that Individual Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of Individual Defendant's duties and responsibilities in connection with the business or employment;

3. Any other changes required to be reported under Subsection A of this Section;

4. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and

5. Any other changes required to be reported under Subsection A of this Section.

C. Defendants shall notify the Division of the filing of a bankruptcy petition by any Defendant within fifteen (15) days of filing.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Division a truthful sworn statement acknowledging receipt of this Order.

Dated this 3rd day of September, 2024

Judge Kent Holmberg

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 190907053 by the method and on the date specified.

EMAIL: GREGORY CHRISTIANSEN GREG@GUARDIANLAW.COM

EMAIL: PETER ROBINSON PETER@API.LAW

EMAIL: PHILIP MARTIN PHILIP@VALLISLEGAL.COM

EMAIL: THEODORE KANELL TKANELL@PCKUTAH.COM

EMAIL: KEVIN MCLEAN KMCLEAN@AGUTAH.GOV

EMAIL: JENNIFER KORB JKORB@AGUTAH.GOV

EMAIL: PEISHEN ZHOU PEISHENZHOU@AGUTAH.GOV

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09/03/2024 /s/ REFUGIO RANGEL

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