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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>GUARDIAN COMMUNICATIONS, INC., UNITED STATES VOICE BROADCASTING, INC., and KEVIN BAKER,<br><br>Defendants. | **Case No. __________**<br><br>**COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION, AND OTHER RELIEF** |

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act"), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief for defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule (the "TSR" or "Rule"), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003), and 68 Fed. Reg. 45134, 45144 (July 31, 2003).

## JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a).

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b). Venue is proper in the Rock Island Division of the Central District of Illinois because the events giving rise to this claim occurred in, and the corporate defendants' principal places of business are located in, the city of Moline in Rock Island County, Illinois, within this district.

## DEFENDANTS

4. Defendant Guardian Communications, Inc. ("Guardian") is an Illinois corporation with its principal place of business at 1602 7th Street, Moline, Illinois 61265. Guardian is a telemarketer that initiates outbound telephone calls to consumers in the United States to induce the purchase of goods or services. Defendant Guardian transacts or has transacted business in this District.

5. Defendant United States Voice Broadcasting, Inc. ("USVB") is a Nevada corporation with its principal place of business at 1920 7th Street, Moline, IL 61265. USVB is a telemarketer that initiates outbound telephone calls to consumers in the United States to induce the purchase of goods or services. Defendant USVB transacts or has transacted business in this District.

6. Defendant Kevin Baker is the president, owner, and manager of defendant Guardian. Since at least January 2005, defendant Baker has been the manager of USVB and, since at least January 2006, has owned USVB. At all times material to this complaint, he has resided in, and transacted business in, this District. At all times material to this complaint, acting alone or in concert with others, defendant Baker has formulated, directed, controlled, or participated in the acts and practices of Guardian and USVB, including the acts and practices set forth in this complaint.

## THE TELEMARKETING SALES RULE

7. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose ("SBP") and the final amended TSR (the "Amended TSR"). 68 Fed. Reg. 4580, 4669.

8. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## DEFENDANTS' BUSINESS PRACTICES

9. Defendants are "telemarketer[s]" engaged in "telemarketing," as defined by the Amended TSR, 16 C.F.R. § 310.2.

10. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call.

11. Since on or around September 1, 2004, defendants have been engaged in a joint venture to sell a voice message delivery service designed to deliver prerecorded messages to consumers and to their telephone answering machines or voice mail services. This service is described as a "voice broadcasting" service.

12. Using the defendants' voice broadcasting services, sellers record voice messages. Defendants prepare these prerecorded messages for broadcast, maintaining a copy in their possession.

13. In providing voice broadcasting services, defendants use automated dialers to place calls to a database of telephone numbers. Defendants give their sellers the option of using the sellers' own database of telephone numbers or one prepared by the defendants.

14. Defendants' automated system for placing outbound telephone calls allows them to place up to 20 million telephone calls a day.

15. At all times relevant to this complaint, the defendants have maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

## Abandoned Calls

16. An outbound telephone call is "abandoned" under the Amended TSR if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting. 16 C.F.R. § 310.4(b)(1)(iv).

17. Since October 1, 2003, the Amended TSR has prohibited sellers and telemarketers from abandoning any outbound telephone call by not connecting the call to a sales representative within two (2) seconds of the person's completed greeting. *Id.*

18. When defendants' telephone calls are answered, their automated service detects whether the call has been answered by a live person, or by an answering machine or voice mail system.

19. In numerous instances, defendants have programmed their voice broadcasting services to play a prerecorded message only if a live person answers the call. In other instances, defendants have programmed their broadcasting services to play a prerecorded message regardless of whether the call is answered by a live person, or by an answering machine or a voice mail system. Finally, defendants in numerous instances have programmed their voice broadcasting services to play a prerecorded message only if the call is answered by an answering machine or voice mail system. If such a call is answered by a live person, the call is terminated immediately.

20. When a person answers a telephone call placed using defendants' voice broadcasting service, defendants cause the call to be abandoned because they do not connect the person to a sales representative within two seconds of the person's completed greeting. Defendants, when a live person answers, either will play a prerecorded message to the

individual or will terminate the call upon determining that the call has not been answered by an answering machine or voice mail system.

21. On or after October 1, 2003, defendants have conducted voice broadcasting telemarketing campaigns causing tens of millions of calls to be abandoned through the foregoing means.

**Failing to Transmit Caller Identification Information**

22. Since January 29, 2004, the Amended TSR has prohibited sellers and telemarketers from failing to transmit, or cause to be transmitted, the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service ("Caller ID service") in use by a recipient of a telemarketing call. 16 C.F.R. § 310.4(a)(7). Under the Amended TSR, telemarketers may substitute the name of the seller on behalf of which a telemarketing call is placed, and the seller telephone number that is answered during regular business hours. *Id.*

23. The corporate defendants' communications carriers, at times material to this complaint, made available to the defendants the ability to transmit or to cause to be transmitted to Caller ID services the name of the telemarketer or the name of the seller on behalf of which the telemarketing call was being placed.

24. In numerous instances, on or after January 29, 2004, defendants have transmitted or caused to be transmitted to Caller ID services the text "Cust Service," "Services, Inc.," "Card Services," "DWC," or "LTR" as the name of the caller.

25. The transmitted text set forth in Paragraph 24 did not contain the name or abbreviated name of either corporate defendant or a seller on behalf of which the telemarketing call

had been placed.

26. Therefore, defendants in numerous instances have failed to transmit, or cause to be transmitted, to Caller ID systems the name of the telemarketer or the name of the seller.

**Placing Calls on Behalf of Sellers Who Had Not Paid**
**for Access to the National Do Not Call Registry**

27. The Amended TSR established a "do-not-call" registry, maintained by the Commission (the "National Do Not Call Registry" or "Registry"), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at *donotcall.gov*.

28. Since September 2, 2003, sellers, telemarketers, and other permitted organizations have been able to access the Registry over the Internet at *telemarketing.donotcall.gov* to download the registered numbers.

29. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at *donotcall.gov*, or by otherwise contacting law enforcement authorities.

30. Since October 17, 2003, sellers and telemarketers have been prohibited from calling numbers on the Registry in violation of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

31. Since October 17, 2003, sellers and telemarketers have been generally prohibited from calling any telephone number within a given area code unless the seller, or someone on

that seller's behalf, first has paid the annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry. 16 C.F.R. § 310.8(a) and (b).

32. On or after October 17, 2003, the defendants, on behalf of numerous sellers, have called telephone numbers in various area codes without those sellers, or some person on their behalf, first having paid the annual fee for access to the telephone numbers within area codes that are included in the National Do Not Call Registry.

## VIOLATIONS OF THE TELEMARKETING SALES RULE

### Count I
### (Abandoning Calls)

33. In numerous instances, in connection with telemarketing, defendants have abandoned, or caused others to abandon, an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iv).

### Count II
### (Failing to Transmit Caller Identification Information)

34. In numerous instances, in connection with telemarketing, defendants have failed to transmit or cause to be transmitted, when made available by their communications carrier, either the name of the telemarketer or the name of the seller on behalf of which the telemarketing call was being placed, to any Caller ID service in use by a recipient of a telemarketing call, in violation of the TSR. 16 C.F.R. § 310.4(a)(7).

## Count III
## (Placing Calls on Behalf of Sellers That Had Not Paid National Registry Fees)

35. In numerous instances, in connection with telemarketing, defendants have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code without the seller, either directly or through another person, first paying the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

## CONSUMER INJURY

36. Consumers in the United States have suffered and will suffer injury as a result of defendants' violations of the TSR. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest.

## THIS COURT'S POWER TO GRANT RELIEF

37. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.

38. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (2007), authorizes this Court to award monetary civil penalties of not more than $11,000 for each violation of the TSR.

39. Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

40. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by defendants' violations of the Amended TSR and the FTC Act.

## PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and pursuant to its own equitable powers:

A. Enter judgment against defendants and in favor of plaintiff for each violation alleged in this complaint;

B. Award plaintiff monetary civil penalties from each defendant for every violation of the TSR;

C. Permanently enjoin defendants from violating the TSR and the FTC Act; and

D. Award plaintiff such other and additional relief as the Court may determine to be just and proper.

Dated: November 6, 2007

Respectfully submitted,

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