



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MCS PROGRAMS, LLC, a Washington Limited Liability Company, also doing business as Mutual Consolidated Savings; UNITED SAVINGS CENTER, INC., a Washington corporation, also doing business as Mutual Consolidated Savings; USC PROGRAMS, LLC, a Washington Limited Liability Company, also doing business as Mutual Consolidated Savings; PAUL MORRIS THOMPSON, individually and as an officer of MCS Programs, LLC, United Savings Center, Inc., and USC Programs, LLC; and MIRANDA CAVENDAR, also known as Miranda Cavender, individually and as a manager of MCS Programs, LLC, United Savings Center, Inc., and USC Programs, LLC,

Defendants.

Case No. **C09 5380 RJB**
COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER RELIEF

[FILED UNDER SEAL]

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint against MCS Programs, LLC, United Savings Center, Inc., USC Programs, LLC, Paul Morris Thompson, and Miranda Cavendar (collectively, "Defendants"), alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to obtain temporary,

1 preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution,
2 disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in
3 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC's
4 Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

5 JURISDICTION AND VENUE

6 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
7 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

8 3. Venue in the United States District Court for the Western District of Washington is
9 proper under 28 U.S.C §1391(b) and (c), and 15 U.S.C. §§ 53(b).

10 PLAINTIFF

11 4. Plaintiff FTC is an independent agency of the United States Government created by
12 statute. 15 U.S.C. §§ 41- 58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the
13 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting
14 commerce. The FTC is also charged with enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101-
15 6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R.
16 Part 310, which prohibits deceptive and abusive telemarketing acts or practices. The FTC is
17 authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the
18 FTC Act and the TSR, and to secure such equitable relief as may be appropriate in each case, including
19 restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

20 DEFENDANTS

21 5. Defendant **MCS PROGRAMS, LLC**, is a Washington corporation with its principal
22 place of business at 1215 Earnest S. Brazill Street, Suite 33, Tacoma, Washington. MCS Programs also
23 does business as Mutual Consolidated Savings, among other names. Defendant MCS Programs
24 transacts or has transacted business in the Western District of Washington.

25 6. Defendant **UNITED SAVINGS CENTER, INC.**, is a Washington corporation with its
26 principal place of business at 1215 Earnest S. Brazill Street, Suite 33, Tacoma, Washington. United
27 Savings Center also does business as Mutual Consolidated Savings, among other names. Defendant
28 United Savings Center transacts or has transacted business in the Western District of Washington.

1 7. Defendant **USC PROGRAMS, LLC**, is a Washington corporation with its principal
2 place of business at 1215 Earnest S. Brazill Street, Suite 33, Tacoma, Washington. USC Programs also
3 does business as Mutual Consolidated Savings, among other names. Defendant USC Programs
4 transacts or has transacted business in the Western District of Washington.

5 8. Defendant **PAUL MORRIS THOMPSON** (“Thompson”) is owner, President, Chief
6 Executive Officer, and Registered Agent of the corporate Defendants, United Savings Center, MCS
7 Programs, and USC Programs. He has signed papers as president of United Savings Center and is
8 listed in corporate records as the only Member of the Board of both MCS Programs and USC
9 Programs. Since March 1, 1998, he has also owned “Mutual Consolidated Savings” as an assumed
10 business name registered in Washington state, and has done business under that name, among other
11 names. Thompson resides in, and transacts or has transacted business in, this District. At all times
12 material to this Complaint, acting alone or in concert with others, he has formulated, directed,
13 controlled, or participated in the acts and practices of the corporate Defendants, including the acts and
14 practices set forth in this Complaint.

15 9. Defendant **MIRANDA CAVENDAR** (“Cavendar,” also known as Miranda Cavender)
16 is employed as Chief Operating Officer by the corporate Defendants, United Savings Center, MCS
17 Programs, and USC Programs, and has also been employed in the unincorporated business owned and
18 operated by Thompson. She has been listed at times in official corporate records as president of
19 United Savings Center. Cavendar resides in, and transacts or has transacted business in, this District.
20 At all times material to this Complaint, acting alone or in concert with others, she has formulated,
21 directed, controlled, or participated in the acts and practices of the corporate Defendants, including the
22 acts and practices set forth in this Complaint, as well as participating in the unincorporated business
23 owned and operated by Thompson.

COMMON ENTERPRISE

24
25 10. Corporate Defendants MCS Programs, LLC, United Savings Center, Inc., and USC
26 Programs, LLC, have operated and functioned as a common business enterprise while engaging in the
27 deceptive and unfair acts and practices alleged in this complaint. Because the corporate Defendants
28

1 have operated as a common enterprise, each of them is jointly and severally liable for the deceptive
2 and unfair acts and practices alleged below.

3 COMMERCE

4 11. At all times relevant to this Complaint, Defendants have maintained a substantial course
5 of trade, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C.
6 § 44.

7 DEFENDANTS’ BUSINESS PRACTICES

8 12. Since at least 2006, Defendants have telemarketed a “rapid debt reduction” program to
9 consumers nationwide in the U.S. and in Canada. In many instances, the telemarketing calls are
10 initiated by a live representative. In many other instances, they are initiated using a telemarketing
11 service that delivers prerecorded voice messages, known as “voice broadcasting” or “robocalling.”
12 Defendants also market their program via the Internet on several websites, including
13 www.mcsprograms.com, www.uscprograms.com, and www.mutualsavingsinc.com. Defendants tell
14 consumers that if they purchase Defendants’ program, Defendants will obtain substantially lower
15 interest rates for the consumers’ credit cards by negotiating with the card issuers. Defendants also
16 claim that their program will provide substantial savings to consumers, typically \$2,500 or more, and
17 enable consumers to pay off their debt three to five times faster without increasing their monthly
18 payments. Defendants and their telemarketers also expressly promise that a consumer can obtain a full
19 refund from Defendants if the consumer does not save at least the promised amount, typically \$2,500
20 or more. Defendants’ websites echo the telemarketers’ refund promise, stating that there is no risk to
21 the consumer because of the availability of a refund.

22 13. Defendants sometimes obtain the consumer’s credit card number before contacting the
23 consumer. Defendants and their telemarketers use this information to generate consumer trust by
24 displaying knowledge of the consumers’ accounts, which helps mislead the consumer about the
25 relationship between the bank issuing the credit card and Defendants.

26 14. Defendants typically charge a fee of between \$690 and \$899 USD for their “rapid debt
27 reduction” program. Defendants represent that the amount of the fee will be quickly offset by savings
28 achieved under the Defendants’ program.

1 15. Defendants do not disclose to Canadian consumers that the fee for their program is in
2 U.S. Dollars. Thus, when Canadian consumers authorize what they believe is a fee of \$690 Canadian
3 Dollars, they may later find they have been charged \$800 Canadian Dollars or more as a result of the
4 currency exchange rate.

5 16. In many instances, Defendants do not obtain substantially lower credit card interest
6 rates for consumers. Thus, in those instances consumers do not save thousands of dollars, and they are
7 unable to pay off their debts three to five times faster as a result of the promised reduction of their
8 credit card interest rates.

9 17. After a consumer has paid for the Defendants' service, Defendants send the consumer
10 general information about finances, along with a form for the consumer to complete and return listing
11 all of the consumer's indebtedness. Sometimes, Defendants then send the consumer a computer-
12 generated accelerated payment schedule or "Rapid Debt Reduction" plan, that, if adhered to, will
13 purportedly allow the consumer to pay off his or her debts years faster than if the consumer makes
14 only minimum monthly payments. In many instances, after Defendants have failed to achieve the
15 promised interest rate reduction for the consumer, Defendants claim their "Rapid Debt Reduction"
16 plan shows how the promised savings are realized by increasing the consumer's monthly payments.
17 Defendants do not disclose to consumers, prior to their purchase of the program, that the "Rapid Debt
18 Reduction" plan is the basis for the savings claims and that the promised savings may take decades to
19 achieve.

20 18. In many instances, Defendants do not honor their promise to refund if they do not save
21 consumers the amount promised, instead claiming that the consumer has failed to comply with
22 previously undisclosed conditions, or that Defendants have complied with their obligations in some
23 way other than providing the promised interest rate reduction and savings. When Defendants do
24 provide a refund, in many instances they deduct a "restocking fee" of 12.5%, also undisclosed prior to
25 charging a consumer's credit card.

26 19. While telemarketing their program, Defendants or their telemarketers have made
27 numerous calls to telephone numbers on the National Do Not Call Registry ("Registry"), as well as to
28 consumers who have previously asked Defendants not to call them again. In some instances,

1 Defendants or their telemarketers also “spoof” their calls by transmitting phony Caller ID information
2 so that call recipients do not know the source of the calls.

3 20. In numerous instances, Defendants, acting directly or through one or more
4 intermediaries, have initiated telemarketing calls that failed to disclose truthfully, promptly, and in a
5 clear and conspicuous manner to the person receiving the call: the identity of the seller; that the
6 purpose of the call is to sell goods or services; or the nature of the goods or service. In numerous
7 instances since December 1, 2008, Defendants, acting directly or through one or more intermediaries,
8 have initiated prerecorded telemarketing calls to consumers that failed to promptly make such
9 disclosures, or to immediately thereafter disclose the mechanism for asserting a Do Not Call request.

10 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

11 21. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or
12 practices in or affecting commerce,” including such acts or practices involving foreign commerce that
13 “involve material conduct occurring within the United States.”

14 22. Misrepresentations or omissions of material fact constitute deceptive acts or practices
15 prohibited by Section 5(a) of the FTC Act. 15 U.S.C. § 45(a).

16 **COUNT ONE**

17 **Misrepresentations in Violation of Section 5**

18 23. In numerous instances, in connection with the marketing, offering for sale, or sale of
19 Defendants’ “debt reduction” program, Defendants have represented, expressly or by implication, that:

- 20 A. Consumers who purchase Defendants’ “debt reduction” program will have their
21 credit card interest rates reduced substantially;
- 22 B. Consumers who purchase Defendants’ “debt reduction” program will save, in a
23 short time, hundreds or thousands of dollars, or more than the amount of the fees
24 consumers pay; and
- 25 C. Consumers who purchase Defendants’ “debt reduction” program will be able to
26 pay off their debt three to five times faster without increasing their monthly
27 payments.
- 28

1 B. Defendants may impose other conditions on the refund guarantee, such as
2 requiring the refund claim be made within a minimum or maximum period of
3 time after the consumer was charged; and

4 C. If the consumer requests a refund and any refund is given, Defendants may
5 retain 12% or more of the amount paid by the consumer.

6 28. Defendants' failure to disclose or disclose adequately the material information
7 described in Paragraph 27, in light of the representation described in Paragraph 26, constitutes a
8 deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9 **COUNT THREE**

10 **Failure to Disclose Material Fact to Canadian Consumers in Violation of Section 5**

11 29. In numerous instances, in connection with the marketing, offering for sale, or sale of
12 Defendants' "debt reduction" program to Canadian consumers, Defendants have represented, expressly
13 or by implication, that Canadian consumers who purchase Defendants' "debt reduction" program will
14 be charged a specific fee, typically between \$690 and \$899.

15 30. In numerous instances in which Defendants have made the representation above,
16 Defendants have failed to disclose, or to disclose adequately, to Canadian consumers, before charging
17 consumers' credit cards, that the specified fee for their program is in U.S. rather than Canadian
18 Dollars. Thus, Canadian consumers who authorize a fee of "\$690" may later find that they have been
19 charged \$800 Canadian or more as a result of the currency exchange rate.

20 31. Defendants' failure to disclose or disclose adequately the material information
21 described in Paragraph 30, in light of the representation described in Paragraph 29, constitutes a
22 deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

23 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

24 **AND THE NATIONAL DO NOT CALL REGISTRY**

25 32. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive
26 telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994.
27 On August 16, 1995, the FTC adopted the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310,
28 which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR. 68

1 Fed. Reg. 4580, 4669. On August 29, 2008, the FTC amended the TSR again. 73 Fed. Reg. 51164,
2 51204.

3 33. Defendants are “seller[s]” or “telemarketer[s]” engaged in “telemarketing,” and
4 Defendants have initiated, or have caused telemarketers to initiate, “outbound telephone calls” to
5 consumers, as those terms are defined in the TSR, 16 C.F.R. § 310.2(u), (z), (bb) and (cc).

6 34. The TSR prohibits telemarketers and sellers from making any false or misleading
7 statement to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

8 35. The TSR prohibits telemarketers and sellers from misrepresenting, directly or by
9 implication, in the sale of goods or services, any material aspect of the performance, efficacy, nature,
10 or central characteristics of the goods or services that are the subject of a sales offer. 16 C.F.R.
11 § 310.3(a)(2)(iii).

12 36. The TSR also prohibits sellers and telemarketers from failing to disclose truthfully in a
13 clear and conspicuous manner, before a customer pays for goods or services, the total purchase cost
14 and, if the seller or telemarketer makes a representation about a refund or cancellation policy, a
15 statement of all material terms and conditions of such policy. 16 C.F.R. § 310.3(a)(1)(i) and (iii).

16 37. As of March 31, 2003, the TSR also prohibits any seller or telemarketer from
17 “[d]isclosing or receiving, for consideration, unencrypted consumer account numbers for use in
18 telemarketing.” 16 C.F.R. § 310.4(a)(5).

19 38. The TSR requires telemarketers in an outbound telephone call to disclose truthfully,
20 promptly, and in a clear and conspicuous manner, the following information:

- 21 A. The identity of the seller;
22 B. That the purpose of the call is to sell goods or services; and
23 C. The nature of the goods or services.

24 16 C.F.R. § 310.4(d)(1), (2), and (3).

25 39. Since December 1, 2008, the TSR has prohibited a telemarketer from engaging, and a
26 seller from causing a telemarketer to engage, in initiating an outbound telephone call that delivers a
27 prerecorded message unless the message immediately discloses:

- 28 A. The identity of the seller;

1 B. That the purpose of the call is to sell goods or services; and

2 C. The nature of the goods or services.

3 16 C.F.R. § 310.4(b)(1)(v)(B)(ii).

4 40. The TSR also prohibits sellers and telemarketers from initiating an outbound telephone
5 call to any person when that person previously has stated that he or she does not wish to receive an
6 outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

7 16 C.F.R. § 310.4(b)(1)(iii)(A).

8 41. Since December 1, 2008, the TSR has prohibited a telemarketer from engaging, and a
9 seller from causing a telemarketer to engage, in initiating an outbound telephone call that delivers a
10 prerecorded message unless, immediately following the disclosures described in paragraph 39, the
11 prerecorded message discloses how the person called can assert a Do Not Call request pursuant to 16
12 C.F.R. § 310.4(b)(1)(iii)(A). The disclosure must state that the person called can assert the request by
13 using:

14 A. an automated interactive voice and/or keypress-activated opt-out mechanism, in
15 the case of a call that could be answered in person by a consumer; or

16 B. a toll-free telephone number, in the case of a call that could be answered by an
17 answering machine or voicemail service. The toll-free number must connect
18 directly to an automated interactive voice or keypress-activated opt-out
19 mechanism.

20 In either case, the opt-out mechanism must automatically add the number called to the seller's entity-
21 specific Do Not Call list and immediately disconnect the call once invoked. In the case of a call that
22 could be answered in person, the opt-out mechanism must be available for use at any time during the
23 message, and in the case of a call that could be answered by an answering machine or voicemail
24 service, the opt-out mechanism must be accessible at any time throughout the duration of the
25 telemarketing campaign. 16 C.F.R. § 310.4(b)(1)(v)(B)(ii)(A)-(B).

26 42. In addition, the TSR, as amended in 2003, establishes a "do-not-call" registry (the
27 "National Do Not Call Registry" or "Registry"), maintained by the FTC, of consumers who do not
28 wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers

1 on the Registry without charge either through a toll-free telephone call or over the Internet at
2 www.donotcall.gov.

3 43. Since October 17, 2003, sellers and telemarketers have been prohibited from calling
4 numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

5 44. Since January 29, 2004, sellers and telemarketers have been required to transmit or
6 cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier,
7 the name of the telemarketer, to any caller identification service in use by a recipient of a
8 telemarketing call, or, alternately, to transmit or cause to be transmitted the name of the seller on
9 behalf of which a telemarketing call is placed and the seller's customer service telephone number.
10 16 C.F.R. § 310.4(a)(7).

11 45. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c) and
12 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or
13 deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act,
14 15 U.S.C. § 45(a).

15 **COUNT FOUR**

16 **Misrepresentations and False and Misleading Statements in Violation of the TSR**

17 46. In numerous instances, in the course of telemarketing goods and services, Defendants
18 have misrepresented, expressly or by implication, that:

- 19 A. Consumers who purchase Defendants' "debt reduction" program will have their
20 credit card interest rates reduced substantially;
- 21 B. Consumers who purchase Defendants' "debt reduction" program will save, in a
22 short time, hundreds or thousands of dollars, or more than the amount of the fees
23 consumers pay; and
- 24 C. Consumers who purchase Defendants' "debt reduction" program will be able to
25 pay off their debt three to five times faster without increasing their monthly
26 payments.

27 47. Defendants' acts and practices, as alleged in Paragraph 46 above, are deceptive
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1 telemarketing acts or practices that violate Sections 310.3(a)(2)(iii) and 310.3(a)(4) of the TSR,
2 16 C.F. R. §§ 310.3(a)(2)(iii) and 310.3(a)(4).

3 **COUNT FIVE**

4 **Failure to Disclose Material Refund Conditions in Violation of the TSR**

5 48. In numerous instances, in the course of telemarketing goods and services, Defendants
6 have represented, expressly or by implication, that consumers who purchase Defendants' "debt
7 reduction" program are guaranteed a full refund if they do not achieve the amount of savings
8 represented by Defendants.

9 49. In numerous instances in which Defendants have made the representation above,
10 Defendants have failed to disclose, or to disclose adequately, to consumers, before charging
11 consumers' credit cards, that:

12 A. Consumers who do not achieve the guaranteed savings as a result of Defendants
13 negotiating reduced interest rates with consumers' creditors may be denied a full
14 refund if the amount of savings guaranteed potentially can be achieved by
15 following a multi-year, accelerated debt payment schedule provided to
16 consumers by Defendants;

17 B. Defendants may impose other conditions on the refund guarantee, such as
18 requiring the refund claim be made within a minimum or maximum period of
19 time after the consumer was charged; and

20 C. If the consumer requests a refund, and any refund is given, Defendants may
21 retain 12% or more of the amount paid by the consumer.

22 50. Defendants' acts and practices as alleged in Paragraphs 48-49 are deceptive
23 telemarketing acts or practices that violate Section 310.3(a)(1)(iii) of the TSR, 16 C.F.R.
24 § 310.3(a)(1)(iii).

25 **COUNT SIX**

26 **Failure to Disclose Purchase Cost to Canadian Consumers in Violation of the TSR**

27 51. In numerous instances, in connection with the marketing, offering for sale, or sale of
28 Defendants' "debt reduction" program to Canadian consumers, Defendants have represented, expressly

1 or by implication, that Canadian consumers who purchase Defendants’ “debt reduction” program will
2 be charged a specific fee, typically between \$690 and \$899.

3 52. In numerous instances in which Defendants have made the representation above,
4 Defendants have failed to disclose, or to disclose adequately, to consumers, before charging
5 consumers’ credit cards, that the specified fee for their program is in U.S. rather than Canadian
6 Dollars. Thus, Canadian consumers who authorize a fee of “\$690” may later find that they have been
7 charged \$800 Canadian or more as a result of the currency exchange rate.

8 53. Defendants’ acts and practices as alleged in Paragraphs 51-52 are deceptive
9 telemarketing acts or practices that violate Section 310.3(a)(1)(i) of the TSR, 16 C.F.R.
10 § 310.3(a)(1)(i).

11 **COUNT SEVEN**

12 **Violating the National Do Not Call Registry**

13 54. In numerous instances, in connection with telemarketing, Defendants have engaged, or
14 caused a telemarketer to engage, in initiating an outbound telephone call to a person’s telephone
15 number on the National Do Not Call Registry in violation of Section § 310.4(b)(1)(iii)(B) of the TSR,
16 16 C.F.R. § 310.4(b)(1)(iii)(B).

17 **COUNT EIGHT**

18 **Failing to Honor Do Not Call Requests**

19 55. In numerous instances, in connection with telemarketing, Defendants have engaged, or
20 caused a telemarketer to engage, in initiating an outbound telephone call to a person who previously
21 has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of
22 Defendants, in violation of the TSR, 16 C.F.R. § 310.4(b)(iii)(A).

23 **COUNT NINE**

24 **Failing to Transmit Caller Identification**

25 56. In numerous instances, in connection with telemarketing, Defendants have failed to
26 transmit or cause to be transmitted the telemarketer’s telephone number, and, when made available by
27 the telemarketer’s carrier, the name of the telemarketer, or, in the alternative, the seller’s name and
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1 customer service telephone number, to caller identification services in use by recipients of
2 telemarketing calls, in violation of Section 310.4(a)(7) of the TSR, 16 C.F.R. § 310.4(a)(7).

3 **COUNT TEN**

4 **Failing to Make Required Oral Disclosures**

5 57. In numerous instances, in the course of telemarketing goods and services, Defendants
6 have, in outbound telephone calls, failed to disclose promptly and in a clear and conspicuous manner
7 to the person receiving the call:

- 8 A. The identity of the seller;
9 B. That the purpose of the call is to sell goods or services; and
10 C. The nature of the goods or services.

11 58. Defendants' acts and practices as alleged in Paragraph 57 are abusive telemarketing acts
12 or practices that violate the TSR, 16 C.F.R. § 310.4(d)(1), (2), and (3).

13 **COUNT ELEVEN**

14 **Initiating Unlawful Prerecorded Messages**

15 59. In numerous instances, on or after December 1, 2008, in the course of telemarketing
16 goods and services, Defendants have initiated, or caused a telemarketer to initiate, outbound telephone
17 calls delivering prerecorded messages that do not promptly provide the disclosures required by
18 § 310.4(d) of the TSR and the further disclosures required by § 310.4(b)(1)(v)(B)(ii)(A)-(B).

19 60. Defendants' acts or practices as alleged in Paragraph 59 are abusive telemarketing acts
20 or practices that violate the TSR, 16 C.F.R. § 310.4(b)(1)(v)(B)(ii).

21 **CONSUMER INJURY**

22 61. Consumers in the United States and elsewhere have suffered and will suffer injury as a
23 result of Defendants' violations of the FTC Act and the TSR. Absent injunctive relief by this Court,
24 Defendants are likely to continue to injure consumers and harm the public interest.

1 **THIS COURT’S POWER TO GRANT RELIEF**

2 62. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
3 injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the
4 FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including
5 rescission of contracts and restitution, and the disgorgement of monies, to prevent and remedy any
6 violation of any provision of law enforced by the FTC.

7 63. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act,
8 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress
9 injury to consumers or other persons resulting from Defendants’ violations of the TSR, including the
10 rescission and reformation of contracts and the refund of money.

11 64. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief
12 to remedy injury caused by the Defendants’ law violations.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the
15 FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C.
16 § 6105(b), and the Court’s own equitable powers, requests that the Court:

- 17 a. Award plaintiff such preliminary injunctive and ancillary relief as may be
18 necessary to avert the likelihood of consumer injury during the pendency of this
19 action and to preserve the possibility of effective final relief, including, but not
20 limited to, temporary and preliminary injunctions and an order freezing assets;
- 21 b. Permanently enjoin Defendants from violating the FTC Act and the TSR, as
22 alleged herein;
- 23 c. Award such relief as the Court finds necessary to redress injury to consumers
24 resulting from Defendants’ violations of the FTC Act and the TSR, including,
25 but not limited to, rescission or reformation of contracts, restitution, refund of
26 monies paid, and the disgorgement of ill-gotten monies; and
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1 d. Award plaintiff the costs of investigating and bringing this action and
2 reasonable attorneys' fees, as well as such other and additional relief as the
3 Court may determine to be just and proper.
4

5 Dated: June 25, 2009
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Respectfully Submitted,

7 DAVID C. SHONKA
Acting General Counsel

8 CHARLES A. HARWOOD
9 Regional Director

10 Maxine R. Stansell
11 MAXINE R. STANSELL # 9418
12 ELEANOR DURHAM Member MD Bar
13 Attorneys for Plaintiff Federal Trade Commission
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