

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TRAFFIC AND FUNNELS, LLC, a limited liability company;

WE CAPITAL, LLC, a limited liability company, also d/b/a The Sales Mentor and The Sales Mentor, LLC;

EVANS AND WELCH, INC., a corporation;

EVANS AND WELCH HOLDINGS, LLC, a limited liability company;

and

TAYLOR A. WELCH, individually and as an officer of Traffic and Funnels, LLC; WE Capital, LLC; Evans and Welch, Inc.; and Evans and Welch Holdings, LLC;

CHRISTOPHER A. EVANS, individually and as an officer of Traffic and Funnels, LLC; WE Capital, LLC; Evans and Welch, Inc.; and Evans and Welch Holdings, LLC;

PAYTON WELCH, individually; and

ASHTON SHANKS, individually and as an officer of Evans and Welch, Inc.,

Defendants.

Case No. 3:23-cv-01277

Judge William L. Campbell, Jr.

Magistrate Judge Barbara D. Holmes

STIPULATED ORDER FOR PERMANENT INJUNCTION, MONETARY JUDGMENT, AND OTHER RELIEF AS TO DEFENDANTS TRAFFIC AND FUNNELS, LLC; WE CAPITAL, LLC; EVANS AND WELCH, INC.; EVANS AND WELCH HOLDINGS, LLC; TAYLOR A. WELCH; PAYTON WELCH; AND ASHTON SHANKS

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction, Monetary Relief, and Other Relief (“Complaint”) for a permanent

injunction, monetary relief, and other relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b), 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108. The Commission and Defendants Traffic and Funnels, LLC; WE Capital, LLC; Evans and Welch, Inc.; Evans and Welch Holdings, LLC; Taylor A. Welch; Payton Welch; and Ashton Shanks (“Settling Defendants”) stipulate to the entry of this Stipulated Order for Permanent Injunction, Monetary Judgment, and Other Relief (“Order”) to resolve all matters in dispute in this action between them. The other Defendant in this action, Christopher A. Evans, stipulates to a separate order in this case.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45; the Telemarketing Act, 15 U.S.C. §§ 6101-08; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, in connection with the advertising, marketing, distribution, promotion, and sale of goods and services, including money-making opportunities and sales training programs throughout the United States. The Complaint alleges that these deceptive acts or practices included claiming falsely or without substantiation that consumers who purchased Defendants’ money-making opportunities would earn or were likely to earn substantial income.
3. Settling Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Settling Defendants admit the facts necessary to establish jurisdiction.

4. Settling Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.

5. Settling Defendants and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. **“Clearly and Conspicuously”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary

consumers to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
8. This disclosure must not be presented to the consumer through a hyperlink.
9. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

B. “**Defendants**” means all of the Defendants, individually, collectively, or in any combination.

1. “**Corporate Defendants**” means Traffic and Funnels, LLC; WE Capital, LLC; Evans and Welch, Inc.; Evans and Welch Holdings, LLC; and their successors and assigns, individually, collectively, or in any combination.

2. “**Individual Defendants**” means Taylor A. Welch, Payton Welch, and Ashton Shanks, individually, collectively, or in any combination.

3. “**Settling Defendants**” means Corporate Defendants and Individual Settling Defendants Taylor A. Welch, Payton Welch, and Ashton Shanks, individually, collectively, or in any combination.

C. “**Earnings Claim(s)**” means any representation, specific or general, about income, revenues, financial gains, percentage gains, profit, net profit, gross profit, or return on investment. Earnings Claims include, but are not limited to: (a) any chart, table, or mathematical calculation that demonstrates possible results based upon a combination of variables; (b) any statements from which a prospective purchaser can reasonably infer that he or she will earn a minimum level of income (e.g., “earn enough money to buy a Porsche,” “earn a six-figure income,” or “earn your investment back within one year”); and (c) any statements, claims, success stories, endorsements, or testimonials about the performance or profitability of representatives, endorsers, instructors, or customers.

D. “**Investment Opportunity**” includes anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

E. “**Telemarketing**” means any plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule.

F. “**Trust**” means the trust established by Taylor A. Welch and his spouse u/a/d July 23, 2020, for the benefit of their dependents, whose identity is known to the Commission, and whose name is included in the deed of trust security agreement attached in **Attachment A**.

G. “**Williamson County Property**” means the land situated, lying, and being in Williamson County, Tennessee described on **Attachment B** to this Order.

ORDER

I. PROHIBITION CONCERNING EARNINGS CLAIMS

IT IS ORDERED that Settling Defendants, Settling Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, are permanently restrained and enjoined from making any Earnings Claims or assisting others in making any Earnings Claims, directly or indirectly, expressly or by implication, including the representation that consumers who purchase Settling Defendants' goods or services will earn or are likely to earn substantial income, unless:

- A. The Earnings Claims are non-misleading;
- B. At the time the Earnings Claims are made, Settling Defendants have a reasonable basis for the claims and have in their possession written materials that substantiate them;
- C. To the extent that the Earnings Claims concern the performance or profitability of specific representatives, endorsers, instructors, or customers:
 1. Settling Defendants must Clearly and Conspicuously disclose typical customer results and have written substantiation for such typical results; and
 2. If Settling Defendants make any statements characterizing or qualifying the typical results (by saying, for example, "most students do not earn income because they do not complete the program"), Settling Defendants must have written substantiation for those statements as well;
- D. Settling Defendants make the written substantiation for Earnings Claims available

upon request to the consumer, potential purchaser, and the FTC; and

- E. Any earnings of the Settling Defendants that form the basis for the Earnings Claims were achieved in compliance with the law.

II. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, or selling of any good or service, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

- A. The description of the good or service;
- B. That any past performance referenced in Settling Defendants' advertising, marketing, promoting, offering for sale, or selling of any good or service is indicative of future results;
- C. That any testimonials Settling Defendants use in the advertising, marketing, promoting, offering for sale, or selling of any good or service reflect the experience that consumers are likely to have using Settling Defendants' goods or services;
- D. That purchasers or users of Settling Defendants' goods or services will or are likely to achieve substantial profits or earnings;
- E. The risk, earnings potential, or profitability of goods or services that are the subject of a sales offer;
- F. The background, expertise, or other information about the skills or accomplishments of any person whose name or likeness is used in promoting Settling Defendants' goods or services to prospective purchasers;

- G. The level of experience required for consumers to effectively use Settling Defendants' goods or services;
- H. The time or effort required for consumers to effectively use Settling Defendants' goods or services;
- I. That Settling Defendants' goods or services will be sold to only a limited number of prospective participants, when in fact sales are not restricted to only a limited number of prospective participants;
- J. Any material aspect of the nature or terms of a refund, cancellation, or exchange policy for the good or service; or
- K. Any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

III. PROHIBITIONS REGARDING TELEMARKETING

IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants' officers, agents, and employees, and all other persons in active concert or participation with them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the Telemarketing of any goods or services are permanently restrained and enjoined from:

- A. misrepresenting the risk, earnings potential, or profitability of the good or service;
- B. misrepresenting any material aspect of an Investment Opportunity;
- C. misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;
- D. making a false or misleading statement to induce any person to pay for goods or services;
- E. violating any provision of the TSR, 16 C.F.R. Part 310, attached as **Attachment C**.

IV. JUDGMENT FOR MONETARY RELIEF AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Sixteen Million Three Hundred Sixty-Three Thousand Seventy Three and 11/100 Dollars (\$16,363,073.11) is entered in favor of the Commission against Traffic and Funnels, LLC; WE Capital, LLC; Evans and Welch, Inc.; Evans and Welch Holdings, LLC; Taylor A. Welch; and Payton Welch, jointly and severally, as monetary relief. This judgment is also joint and several with the judgment against Christopher A. Evans by separate order in this case.

B. Corporate Defendants and Individual Defendants Taylor A. Welch and Payton Welch are ordered to pay to the Commission the amount of Six Hundred Thousand Dollars (\$600,000), by electronic fund transfer in accordance with instructions provided by a representative of the Commission, as follows:

1. Three Hundred Thousand (\$300,000) within 7 days of entry of this Order, which undersigned counsel shall hold in escrow as of the date the Settling Defendants execute this Order for no purpose other than payment to the Commission;
2. Three Hundred Thousand (\$300,000) within 180 days of entry of this Order.

C. To secure the payment obligation under Section B.2 above, the Commission is granted, with the consent of Individual Defendant Taylor A. Welch and his spouse a lien on the Williamson County Property, pursuant to the terms of this Order and the attached deed of trust and security agreement (“Deed of Trust,” attached as **Attachment A**), which is incorporated herein as if fully set forth below verbatim.

D. Individual Defendant Taylor A. Welch must submit to the clerk’s office of Williamson County for recording the Deed of Trust used to perfect the Commission’s lien on the

Williamson County Property within fourteen (14) days after entry of this Order, and must deliver to the Commission copies of such officially recorded documents within one (1) day after receipt of such documents. Individual Defendant Taylor A. Welch must also submit to the clerk's office of Williamson County for recording all documents used to release the Commission's lien on the Williamson County Property when it is satisfied, and must deliver to the Commission copies of such officially recorded documents within one (1) day after receipt of such documents.

E. In the event Corporate Defendants and Individual Defendants Taylor A. Welch and Payton Welch fail to make the required payment when due under Subsection B.2 above, or the Commission is not allowed to retain any such payment:

1. The entire judgment becomes immediately due and payable in the amount specified in Subsection A above, less any payment previously made pursuant to this Section or the judgment against Christopher A. Evans by separate order in this case, plus interest computed from the date of entry of this Order.
2. Upon motion by the Commission, the Court may appoint a receiver for the purposes of taking possession and control of and liquidating the Williamson County Property in partial or complete satisfaction of the payment required under Subsection B.2. The receiver will have the rights and powers and privileges of an equity receiver. The costs and expenses of the receivership, including reasonable compensation for the receiver and personnel retained by the receiver, will be paid solely from the proceeds of the Williamson County Property.

F. The Commission's agreement to this Order is expressly based on the following representations:

1. Individual Defendant Taylor A. Welch's representation that he, as co-trustee of the Trust which holds the Williamson County Property, has the right and authority to enter into the Deed of Trust;
2. The representation of Individual Defendant Taylor A. Welch that his spouse, as co-trustee of the Trust which holds the Williamson County Property in trust, has the right and authority to enter into the Deed of Trust;
3. Individual Defendant Taylor A. Welch's representation that the Williamson County Property is not encumbered by any lien or other encumbrance except by the lien disclosed in his sworn financial statements;
4. Individual Defendant Taylor A. Welch's representation that the mortgage payments, taxes, and insurance payments on the Williamson County Property are current;
5. The representation of Individual Defendant Taylor A. Welch and his spouse that they have waived their tenancy by the entirety rights in the Williamson County Property; and
6. The representation of Individual Defendant Taylor A. Welch and his spouse that they have waived their right to assert any homestead exemption in the Williamson County Property to the fullest extent permitted by applicable law—but solely in the amount of and for the purpose of securing the payment required by Subsection B.2 above.

If, upon motion of the Commission, the Court determines that Individual Defendant Taylor A. Welch made a material misrepresentation or omitted material information concerning the ownership or authority to pledge the Williamson County Property, or any lien or other

encumbrance of the Williamson County Property, the entire judgment becomes immediately due in the amount specified in Subsection A above, less any payment previously made pursuant to this Section or the judgment against Christopher A. Evans by separate order in this case, plus interest computed from the date of entry of this Order.

Provided that proceedings instituted under this provision would be in addition to, and not in lieu of, any other remedies, as may be provided by law, including, but not limited to, contempt proceedings or any other proceedings that the Commission may initiate to enforce this Order.

G. The Deed of Trust granted to the Commission herein is subordinate to the existing and aforementioned lien disclosed in Individual Defendant Taylor Welch's sworn financial statements.

H. Upon payment of the entire amount to the Commission as set forth in Subsection B above, the remainder of the judgment is suspended, subject to the Subsections below.

I. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Settling Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:

1. the Financial Statement of Individual Defendant Taylor A. Welch, signed on August 10, 2023, including the addenda and attachments;
2. the additional information and documents submitted by letter from Individual Defendant Taylor A. Welch's counsel Alexandra Megaris, Ellen Berge, and Brandon Wong to Commission Counsel Virginia Rosa and Frances Kern dated June 2, 2023;
3. the additional information, documents, and updated addendum submitted

by letter from Individual Defendant Taylor A. Welch's counsel Alexandra Megaris, Ellen Berge, and Brandon Wong to Commission Counsel Virginia Rosa and Frances Kern dated June 9, 2023;

4. the additional information and documents submitted by letter from Individual Defendant Taylor A. Welch's counsel Alexandra Megaris, Ellen Berge, and Brandon Wong to Commission Counsel Virginia Rosa and Frances Kern dated June 30, 2023;

5. the additional information submitted by letter from Individual Defendant Taylor A. Welch's counsel Alexandra Megaris, Ellen Berge, and Brandon Wong to Commission Counsel Virginia Rosa and Frances Kern dated July 26, 2023;

6. the additional documents submitted by letter from Individual Defendant Taylor A. Welch's counsel Alexandra Megaris, Ellen Berge, and Brandon Wong to Commission Counsel Virginia Rosa and Frances Kern dated August 14, 2023;

7. the Financial Statement of Individual Defendant Payton Welch, signed on July 27, 2023, including the attachments;

8. the additional documents submitted by email from Individual Defendant Payton Welch's counsel Brandon Wong to Commission Counsel Virginia Rosa and Frances Kern dated July 28, 2023;

9. the additional documents submitted by email from Individual Defendant Payton Welch's counsel Brandon Wong to Commission Counsel Virginia Rosa and Frances Kern dated August 2, 2023;

10. the Financial Statement of Corporate Defendant Traffic & Funnels, LLC, signed by Taylor A. Welch, co-founder, on August 10, 2023, including the attachments;

11. the additional information and documents submitted by letter from Corporate Defendant Traffic & Funnels, LLC's counsel Alexandra Megaris, Ellen Berge, and Brandon Wong to Commission Counsel Virginia Rosa and Frances Kern dated May 23, 2023;

12. the additional information and documents submitted by letter from Corporate Defendant Traffic & Funnels, LLC's counsel Alexandra Megaris, Ellen Berge, and Brandon Wong to Commission Counsel Virginia Rosa and Frances Kern dated June 9, 2023;

13. the Financial Statement of Corporate Defendant WE Capital, LLC, signed by Taylor A. Welch, co-founder, on August 10, 2023, including the attachments;

14. the additional information and documents submitted by letter from Corporate Defendant WE Capital's counsel Alexandra Megaris, Ellen Berge, and Brandon Wong to Commission Counsel Virginia Rosa and Frances Kern dated June 9, 2023;

15. the additional document submitted by letter from Corporate Defendant WE Capital's counsel Alexandra Megaris, Ellen Berge, and Brandon Wong to Commission Counsel Virginia Rosa and Frances Kern dated June 14, 2023;

16. the Financial Statement of Corporate Defendant Evans and Welch Holdings, LLC, signed by Taylor A. Welch, co-founder, on August 10, 2023, including the attachments;

17. the additional information and documents submitted by letter from Corporate Defendant Evans and Welch Holdings, LLC's counsel Alexandra Megaris, Ellen Berge, and Brandon Wong to Commission Counsel Virginia Rosa and Frances

Kern dated June 9, 2023;

18. the Financial Statement of Corporate Defendant Evans and Welch, Inc., signed by Taylor A. Welch, partner, on August 11, 2023;

19. the additional documents submitted by letter from Corporate Defendant Evans and Welch, Inc.'s counsel Alexandra Megaris, Ellen Berge, and Brandon Wong to Commission Counsel Virginia Rosa and Frances Kern dated August 14, 2023; and

20. the additional document submitted by email from Individual Defendant Taylor A. Welch's counsel Alexandra Megaris to Commission Counsel Virginia Rosa and Frances Kern dated September 19, 2023.

J. The suspension of the judgment will be lifted as to any Settling Defendant if, upon motion by the Commission, the Court finds that Settling Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

K. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Settling Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section or the judgment against Christopher A. Evans by separate order in this case, plus interest computed from the date of entry of this Order.

V. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

A. Settling Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any

assets.

B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

D. Settling Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Settling Defendants previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

E. All money received by the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for consumer relief, such as redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after such redress is completed, the Commission may apply any remaining money for such related relief (including consumer information remedies) as it determines to be reasonably related to Settling Defendants' practices alleged in the Complaint. Any money not used for relief is to be deposited to the U.S. Treasury. Settling Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VI. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Settling Defendants, their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

A. failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. Settling Defendants represent that they have provided this redress information to the Commission. If a representative of the Commission requests in writing any information related to redress, Settling Defendants must provide it, in the form prescribed by the Commission, within 14 days;

B. 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 a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the marketing or sale of money-making opportunities or sales training programs; and

C. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VII. COOPERATION

IT IS FURTHER ORDERED that Settling Defendants must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated

with the transactions or the occurrences that are the subject of the Complaint. Settling Defendants must provide truthful and complete information, evidence, and testimony. The Settling Individual Defendants must appear, and the Corporate Defendants must cause their officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

VIII. NOTICE TO CUSTOMERS

IT IS FURTHER ORDERED that, within 7 days of entry of this Order, Settling Defendants shall email notice in the form shown in **Attachment D** to all persons who purchased Settling Defendants' goods or services of any type at any time between January 1, 2018, and the date of the entry of this Order with the subject line "What the FTC Settlement Means for Customers of The Sales Mentor, Inbound Closer, and Sales Pro Academy." Notices sent by email shall be sent from an email address that Settling Defendants regularly use for communicating with consumers, and Settling Defendants shall make commercially reasonable efforts to leverage technologies to ensure the deliverability of emails (for example, but not limited to, SPF, DKIM, and use of sending IP addresses with known good reputations). Within 15 days of entry of this Order, Settling Defendants shall mail the form shown in **Attachment D** via first-class mail, postage prepaid with address forwarding requested, to the last known mailing address of any intended email recipient whose emailed message delivery fails. No information other than that contained in **Attachment D** shall be included in or added to the notice required by this Section, nor shall any other materials be transmitted with the notice.

IX. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Settling Defendants obtain acknowledgments of receipt of this Order:

A. Each Settling Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 10 years after entry of this Order, each Individual Defendant for any business that such Settling Defendant, individually or collectively with any other Settling Defendants, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Settling Defendant delivered a copy of this Order, that Settling Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

X. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Settling Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Settling Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Settling Defendant must: (a) identify the primary physical, postal,

and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Settling Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Settling Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Settling Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email, and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Settling Defendant performs services whether as an employee or otherwise and any entity in which such Settling Defendant has any ownership interest; and (c) describe in detail such Settling Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 10 years after entry of this Order, each Settling Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Settling Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Settling Defendant has any ownership interest in or controls directly or indirectly that

may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defendant must report any change in:

(a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Settling Defendant performs services whether as an employee or otherwise and any entity in which such Settling Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Settling Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Settling Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Traffic and Funnels.

XI. RECORDKEEPING

IT IS FURTHER ORDERED that Settling Defendants must create certain records for 10 years after entry of the Order and retain each such record for 5 years. Specifically, each Corporate Defendant and each Individual Defendant for any business that such Settling Defendant, individually or collectively with any other Settling Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each unique advertisement or other marketing material.

XII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Settling Defendants' compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, each Settling Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by

Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Settling Defendant. Settling Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Settling Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Settling Defendants or any individual or entity affiliated with Settling Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Defendants pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

XIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this ___ day of _____, 202__.

UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF:

FEDERAL TRADE COMMISSION

A handwritten signature in cursive script that reads "Virginia Rosa". The signature is written in black ink and is positioned above a horizontal line.

Date: December 5, 2023

Virginia Rosa
Frances L. Kern
Attorneys
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, DC 20580
202-326-3068 / vrosa@ftc.gov (Rosa)
202-326-2391 / fkern@ftc.gov (Kern)
202-326-3395 *facsimile*

FOR DEFENDANTS TRAFFIC AND FUNNELS, LLC; WE CAPITAL, LLC; EVANS AND WELCH, INC.; EVANS AND WELCH HOLDINGS, LLC; TAYLOR A. WELCH; PAYTON WELCH; AND ASHTON SHANKS:

/s/ Ellen Berge

Date: 9/27/2023

Alexandra Megaris

Ellen Berge

Venable LLP

~~Rockefeller Center~~ 600 Massachusetts Avenue N.W.

~~24th Floor~~ Washington, DC 20001

~~New York, NY 10020~~ 202.344.4000

~~212 307 5598~~ 202.344.8300 *facsimile*

~~amegaris@venable.com~~ *facsimile*

etberge@venable.com

etberge@venable.com

COUNSEL FOR Traffic and Funnels, LLC; WE Capital, LLC; Evans and Welch, Inc.; Evans and Welch Holdings, LLC; Taylor A. Welch; Payton Welch; and Ashton Shanks

DEFENDANTS: Traffic and Funnels, LLC; WE Capital, LLC; Evans and Welch, Inc.; Evans and Welch Holdings, LLC; Welch Equities, LLC; Taylor A. Welch; Payton Welch; and Ashton Shanks

Date: _____

Taylor A. Welch, individually and as an officer of Traffic and Funnels, LLC; WE Capital, LLC; Evans and Welch, Inc.; and Evans and Welch Holdings, LLC; and as co-trustee of the Trust and joint owner of the Williamson County Property

Date: _____

Payton Welch, individually

Date: _____

Ashton Shanks, individually and as an officer of Evans and Welch, Inc.


FOR DEFENDANTS TRAFFIC AND FUNNELS, LLC; WE CAPITAL, LLC; EVANS AND WELCH, INC.; EVANS AND WELCH HOLDINGS, LLC; TAYLOR A. WELCH; PAYTON WELCH; AND ASHTON SHANKS:

Alexandra Megaris
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New York, NY 10020
212-370-6210
212-307-5598 *facsimile*
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etberge@venable.com

Date: _____

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Taylor A. Welch, individually and as an officer of Traffic and Funnels, LLC; WE Capital, LLC; Evans and Welch, Inc.; and Evans and Welch Holdings, LLC; and as co-trustee of the Trust and joint owner of the Williamson County Property

Date: 9/22/23

Payton Welch, individually

Date: _____

Ashton Shanks, individually and as an officer of Evans and Welch, Inc.

Date: _____

FOR DEFENDANTS TRAFFIC AND FUNNELS, LLC; WE CAPITAL, LLC; EVANS AND WELCH, INC.; EVANS AND WELCH HOLDINGS, LLC; TAYLOR A. WELCH; PAYTON WELCH; AND ASHTON SHANKS:

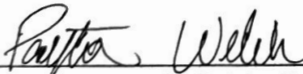
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Date: _____

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Date: _____
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Payton Welch, individually

Date: 09-27-2023

Date: _____
Ashton Shanks, individually and as an officer of Evans and Welch, Inc.

FOR DEFENDANTS TRAFFIC AND FUNNELS, LLC; WE CAPITAL, LLC; EVANS AND WELCH, INC.; EVANS AND WELCH HOLDINGS, LLC; TAYLOR A. WELCH; PAYTON WELCH; AND ASHTON SHANKS:

Date: _____

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COUNSEL FOR Traffic and Funnels, LLC; WE Capital, LLC; Evans and Welch, Inc.; Evans and Welch Holdings, LLC; Taylor A. Welch; Payton Welch; and Ashton Shanks

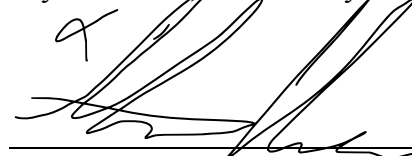
DEFENDANTS: Traffic and Funnels, LLC; WE Capital, LLC; Evans and Welch, Inc.; Evans and Welch Holdings, LLC; Welch Equities, LLC; Taylor A. Welch; Payton Welch; and Ashton Shanks

Date: _____

Taylor A. Welch, individually and as an officer of Traffic and Funnels, LLC; WE Capital, LLC; Evans and Welch, Inc.; and Evans and Welch Holdings, LLC; and as co-trustee of the Trust and joint owner of the Williamson County Property

Date: _____

Payton Welch, individually



Date: 09/22/2023

Ashton Shanks, individually and as an officer of Evans and Welch, Inc.

ATTACHMENT A

THIS INSTRUMENT PREPARED BY:
KIMBERLY K. HOLLINGSHEAD, ESQ.
HOLLINGSHEAD & ASSOCIATES, PLLC
1720 WEST END AVENUE, SUITE 403
NASHVILLE, TN 37203

AFTER RECORDING RETURN TO:
KIMBERLY K. HOLLINGSHEAD, ESQ.
HOLLINGSHEAD & ASSOCIATES, PLLC
1720 WEST END AVENUE, SUITE 403
NASHVILLE, TN 37203

**THE MAXIMUM PRINCIPAL INDEBTEDNESS
FOR RECORDING PURPOSES IS: \$300,000.00**

DEED OF TRUST

THIS INDENTURE made and entered into this _____ day of November, 2023, by and between **TAYLOR WELCH AND [REDACTED], CO-TRUSTEES OF [REDACTED]** DATED JULY 23, 2020, Grantor, and Kim Hollingshead, 1720 West End Avenue, Suite 403, Nashville, TN 37203, Trustee, for the benefit **THE FEDERAL TRADE COMMISSION**, together with its successors and assigns, Grantee.

RECITALS

A. Pursuant to that certain Stipulated Order for Permanent Injunction, Monetary Judgement and Other Relief (“Stipulated Order”), as to Defendants _____ (collectively, “Defendants”) entered on _____, in the action styled Federal Trade Commission v. Traffic and Funnels, LLC, et al., No. _____ (D. _____), (1) payment of Three Hundred Thousand Dollars and 00/100 (\$300,000) payable to the order of Grantee on such date and in such manner as provided in the Stipulated Order (“Secured Indebtedness”), and (2) the performance of each agreement of Grantor incorporated by reference or contained herein or reciting it is so secured (collectively with Secured Indebtedness, “Secured Obligations”).

B. It is a condition of the obligation to Grantee that Grantor executes and deliver this Deed of Trust.

C. Grantor is the owner of the fee simple estate in the Land (defined below) and Improvements (defined below);

D. The Trustee or Co-Trustees of [REDACTED] dated July 23, 2020, have the full power and authority to do any and all things necessary or proper to manage, control, invest and reinvest the assets constituting the trust estate, consistent with the provisions of the Trust Agreement of [REDACTED] dated July 23, 2020, and of applicable law, in the same manner as if the Trustee were the fee simple owner of the trust estate. This includes, but is not limited to, the power to enter into agreements, invest funds, mortgage, pledge, assign or transfer any part of the trust estate, and execute requisite documents.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the due and punctual payment and performance of all of the Secured Obligations as and when the same become due and payable, Grantor has bargained and sold and does hereby bargain, sell, convey and confirm unto the said Grantee the following described real estate situated and being in Williamson County, Tennessee, further described in Exhibit “A.”

TO HAVE AND TO HOLD, the aforescribed real estate, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining unto the said Grantee, its successors and assigns, in fee simple forever, and the said Grantor does hereby covenant with the said Grantee, its successors and assigns, that it is lawfully seized in fee of the

ATTACHMENT A

aforescribed real estate; that it has a good right to sell and convey the same; that the same is encumbered only by the encumbrances listed on Exhibit B, and that the title and quiet possession thereto it will, and its heirs and personal representatives shall, warrant and forever defend against the lawful claims of all persons.

The Grantor desires to secure and make certain the payment of said Secured Indebtedness, and of any and all renewals and extensions thereof. Now, therefore, the Grantor agrees and binds itself that so long as any part of the Secured Indebtedness aforesaid shall remain unpaid, it will pay all mortgage payments and taxes and assessments against said property promptly when due, and deposit all tax receipts with the Grantee of the greater portion of the outstanding Secured Indebtedness secured hereby; will insure the buildings on said property for not less than the lesser of (1) the insurable value thereof or (2) the total Indebtedness secured by mortgages, deed of trust or other security instruments encumbering the aforescribed real estate against loss or damage by fire and the perils against which insurance is afforded by extended coverage endorsement in some insurance company or companies approved by the Grantee of the greater portion of the outstanding Secured Indebtedness secured hereby, cause said policies to contain a standard mortgage clause in favor of the Grantee of said Secured Indebtedness and deposit said policies with the Grantee of the greater portion of the outstanding Secured Indebtedness secured hereby as further security for said debt; will protect the improvements on said property by proper repairs, and maintain them in good repair and condition; will not do anything or suffer or permit anything to be done whereby the lien of this Deed of Trust might or could be impaired; will pay such expenses and fees as may be necessary in the protection of the property and the maintenance and execution of this trust, including, but not being limited to, expenses incurred by the Trustee in any legal proceeding to which it is made or becomes a party. The net proceeds resulting from the taking of all or any part of the property by eminent domain, or from any sale in lieu thereof, shall be applied upon the Secured Indebtedness in inverse order of its maturity; and in the event of the destruction of the improvements by fire or other casualty, the net proceeds of the insurance shall be applied upon the Secured Indebtedness secured hereby in inverse order of its maturity.

The owner of any part of the Secured Indebtedness aforesaid may, at its discretion, advance and pay such sums as may be proper to satisfy taxes, maintain insurance and repairs, and protect and preserve the property; and such amounts so paid shall be held and treated as part of the expense of administering this trust, shall be repaid on demand with interest at the highest rate legally chargeable on the date of the advance, and shall be secured by the lien of this Deed of Trust.

If the said Grantor shall pay said Secured Indebtedness when due, and shall pay such sums as shall be necessary to discharge taxes and maintain insurance and repairs and the costs, fees and expenses of making, enforcing and executing this trust, when they shall severally be due and payable, then this conveyance shall be of no further force and effect, and the owner of the Secured Indebtedness shall execute proper deed of release or enter marginal satisfaction on the record of this deed of trust, or in the alternative, the Trustee shall reconvey by quit claim the property herein described, no later than fourteen (14) calendar days from Grantee's receipt of the same Secured Indebtedness, all at expense of said Grantor.

But if said Grantor shall fail to pay any part of said Secured Indebtedness, whether principal or interest, promptly when the same becomes due, or shall fail to pay any sum necessary to satisfy and discharge taxes and assessments before they become delinquent, or to maintain insurance or repairs, or the necessary expense of protecting the property and executing this trust, then, or in either event, all of the Secured Indebtedness herein secured shall, at the option of the owner of any of said Secured Indebtedness and without notice, become immediately due and payable, principal and interest, and the said Trustee is hereby authorized and empowered to enter and take possession of said property, and before or after such entry to advertise the sale of said property for twenty one days by three weekly notices in some newspaper published in Franklin, Tennessee, if the land described in this Deed of Trust is situated in Williamson County, Tennessee, or in some newspaper published in the County or Counties in which the land described in the Deed of Trust is situated, if other than Williamson County, Tennessee, and sell the said property for cash to the highest bidder, free from equity of redemption, statutory right of redemption, homestead dower, homestead exemption, tenancy by the entirety, and all other rights and exemptions of every kind, all of which are hereby expressly waived, but solely in the amount of the Secured Indebtedness and for the purpose of securing payment of same Secured Indebtedness, and said Trustee shall execute a conveyance to the purchaser in fee simple, and deliver possession to the purchaser, which the Grantor binds itself shall be given without obstruction, hindrance or delay.

The owners of any part of the Secured Indebtedness hereby secured may become the purchaser at any sale under this conveyance.

If the notes secured hereby are placed in the hands of an attorney for collection, by suit or otherwise, or to enforce their collection by foreclosure or to protect the security for their payment, the Grantor will pay all costs of collection and

ATTACHMENT A

litigation, together with an attorney's fee as provided in said notes, or, if none is so provided, a reasonable attorney's fee, and the same shall be a lien on the premises herein conveyed and enforced by a sale of the property as herein provided.

The proceeds of any sale shall be applied as follows: first to the payment of the expenses of making, maintaining and executing this trust, the protection of the property, including the expense of any litigation and attorney's fees, and the usual commissions to the Trustee; second, to the payment of the Secured Indebtedness herein secured or intended so to be, without preference or priority of any part over any other part, and any balance of said Secured Indebtedness remaining unpaid shall be the subject of immediate suit; and third, should there be any surplus, the Trustee will pay it to the Grantor, or he assigns. In the event of the death, refusal, or of inability for any cause, on the part of the Trustee named herein, or of any successor trustee, to act hereunder, or for any other reason satisfactory to the owner of the said Secured Indebtedness, the owner or owners of the majority of the outstanding Secured Indebtedness aforesaid are authorized either in their own name or through an attorney or attorneys in fact appointed for that purpose by written instrument duly registered, to name and appoint a successor or successors to execute this trust, such appointment to be evidenced by writing, duly acknowledged; and when such writing shall have been registered, the substituted trustee named therein shall thereupon be vested with all the right and title, and clothed with all the power of the Trustee named herein and such like power of substitution shall continue so long as any part of the Secured Indebtedness secured hereby remains unpaid. The Grantor, for itself, its heirs, representatives, successors and assigns, covenants and agrees that any time after default in payment of any of the Secured Indebtedness hereby secured, or upon failure to perform any of the covenants to be kept and performed by it, said Trustee may enter upon and take possession of said property and collect the rents and profits therefrom with payment of such to the Trustee after default being full acquittance to the tenant, but the Trustee shall be required to account only for the net rents received by it; and from and after the conveyance of said property under this Deed of Trust, and all persons under it, shall, at the option of the purchaser, be and become the tenants at will of the purchaser, at a reasonable monthly rental, commencing with the date of delivery of the Trustee's Deed.

In the event that more than one Trustee be named herein, any one of such Trustees shall be clothed with full power to act when action hereunder shall be required, and to execute any conveyance of said property. In the event that more than one Trustee be named herein and the substitution of a trustee shall become necessary for any reason, the substitution of one trustee in the place of those or any of those named herein shall be sufficient. The term "Trustee" shall be construed to mean "Trustees" whenever the sense requires. The necessity of the Trustee named, or any successor in trust, making oath or giving bond, is expressly waived.

No waiver by Trustee or by the Grantee of the Secured Indebtedness secured hereby shall be construed as a waiver of a subsequent similar default or any other default by the Grantor.

The singular number may be construed as plural, and the plural as singular, and pronouns occurring herein shall be construed according to their proper gender and number, as the context of this instrument may require.

IN WITNESS WHEREOF, the Grantor has executed, or has caused to be executed, this instrument on the day and year first above written.

[SIGNATURE PAGE FOLLOWS]

ATTACHMENT A

[SIGNATURE PAGE OF THE DEED OF TRUST]

IN WITNESS WHEREOF, GRANTOR HAS CAUSED THIS DEED OF TRUST TO BE EXECUTED ON THE DATE SET FORTH IN THE ACKNOWLEDGMENT BELOW AND TO BE EFFECTIVE AS OF THE DATE FIRST SET FORTH ABOVE.

BORROWER:

Taylor Welch, Co-Trustee of _____,
dated July 23, 2020

_____, Co-Trustee of _____,
dated July 23, 2020

STATE OF TENNESSEE
COUNTY OF DAVIDSON

The undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that TAYLOR WELCH AND _____, as the Co-Trustees of _____ DATED JULY 23, 2020, is personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such Trustees appeared before me this day in person and acknowledged that it signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said _____ dated July 23, 2020, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of November, 2023.

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

ATTACHMENT A

EXHIBIT "A"
LEGAL DESCRIPTION OF THE LAND

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ATTACHMENT A

EXHIBIT "B" PERMITTED ENCUMBRANCES

- a) Deed of Trust executed by Taylor Welch and [REDACTED], as Trustees of [REDACTED] dated 07/23/2020, in favor of PNF Credit Corp., Trustee for Pinnacle Bank, dated August 30, 2023 and recorded September 6, 2023 in Book 9328, Page 387, said Register's Office, in the principal amount of \$2,200,000.00.
- b) Restrictions of record in Book 6689, Page 167, said Register's Office.
- c) Easements of record in Book 6736, Page 753 and Book 8363, Page 705, said Register's Office.
- d) All matters of record in Plat Book P60, Page 96 and Plat Book P61, Page 65, said Register's Office.
- e) Subject to all matters appearing on survey by J. Mark Cantrell, RLS No. 1859, dated 09/04/2012.

ATTACHMENT B

“Williamson County Property” means the following described land situated, lying, and being in Williamson County, Tennessee, which currently has the address of [REDACTED], Franklin, Tennessee 37064:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ATTACHMENT C

Pt. 309, App. A

16 CFR Ch. I (1–1–22 Edition)

PART 310—TELEMARKETING SALES RULE

Sec.

- 310.1 Scope of regulations in this part.
- 310.2 Definitions.
- 310.3 Deceptive telemarketing acts or practices.
- 310.4 Abusive telemarketing acts or practices.
- 310.5 Recordkeeping requirements.
- 310.6 Exemptions.
- 310.7 Actions by states and private persons.
- 310.8 Fee for access to the National Do Not Call Registry.
- 310.9 Severability.

AUTHORITY: 15 U.S.C. 6101–6108.

SOURCE: 75 FR 48516, Aug. 10, 2010, unless otherwise noted.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108, as amended.

§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

ATTACHMENT C

Federal Trade Commission

§ 310.2

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Cash-to-cash money transfer* means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) transfer of the value of cash received from one person to another person in a different location that is sent by a money transfer provider and received in the form of cash. For purposes of this definition, *money transfer provider* means any person or financial institution that provides cash-to-cash money transfers for a person in the normal course of its business, whether or not the person holds an account with such person or financial institution. The term *cash-to-cash money transfer* includes a remittance transfer, as defined in section 919(g)(2) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693a, that is a cash-to-cash transaction; however it does not include any transaction that is:

(1) An electronic fund transfer as defined in section 903 of the EFTA;

(2) Covered by Regulation E, 12 CFR 1005.20, pertaining to gift cards; or

(3) Subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

(g) *Cash reload mechanism* is a device, authorization code, personal identification number, or other security measure that makes it possible for a person to convert cash into an electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) form

that can be used to add funds to a general-use prepaid card, as defined in Regulation E, 12 CFR 1005.2, or an account with a payment intermediary. For purposes of this definition, a cash reload mechanism is not itself a general-use prepaid debit card or a swipe reload process or similar method in which funds are added directly onto a person's own general-use prepaid card or account with a payment intermediary.

(h) *Charitable contribution* means any donation or gift of money or any other thing of value.

(i) *Commission* means the Federal Trade Commission.

(j) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(k) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(l) *Credit card sales draft* means any record or evidence of a credit card transaction.

(m) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(n) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(o) *Debt relief service* means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

(p) *Donor* means any person solicited to make a charitable contribution.

(q) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the

ATTACHMENT C

§ 310.2

16 CFR Ch. I (1–1–22 Edition)

consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(r) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(s) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(t) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(u) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(v) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(w) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

(x) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(y) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(z) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(aa) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(bb) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(cc) *Remotely created payment order* means any payment instruction or order drawn on a person's account that is created by the payee or the payee's agent and deposited into or cleared through the check clearing system. The term includes, without limitation, a "remotely created check," as defined in Regulation CC, Availability of Funds and Collection of Checks, 12 CFR 229.2(ff), but does not include a payment order cleared through an Automated Clearinghouse (ACH) Network or subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 1026.

(dd) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(ee) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(ff) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(gg) *Telemarketing* means a plan, program, or campaign which is conducted

ATTACHMENT C

Federal Trade Commission

§ 310.3

to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(hh) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77557, Dec. 14, 2015]

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer consents to pay⁶⁵⁹ for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;⁶⁶⁰

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

⁶⁵⁹ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment. In the case of debt relief services, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before the consumer enrolls in an offered program.

⁶⁶⁰ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

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(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643;

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); and

(viii) In the sale of any debt relief service:

(A) the amount of time necessary to achieve the represented results, and to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the time by which the debt relief service provider will make a bona fide settlement offer to each of them;

(B) to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;

(C) to the extent that any aspect of the debt relief service relies upon or results in the customer's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes due to the accrual of fees and interest; and

(D) to the extent that the debt relief service requests or requires the customer to place funds in an account at an insured financial institution, that the customer owns the funds held in

the account, the customer may withdraw from the debt relief service at any time without penalty, and, if the customer withdraws, the customer must receive all funds in the account, other than funds earned by the debt relief service in compliance with § 310.4(a)(5)(i)(A) through (C).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643;

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); or

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(x) Any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a debt relief service is offered or provided by a non-profit entity.

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,⁶⁶¹ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁶⁶² Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;⁶⁶³

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or

donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) An accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought;

(B) The number of debits, charges, or payments (if more than one);

(C) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(D) The amount(s) of the debit(s), charge(s), or payment(s);

(E) The customer's or donor's name;

(F) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(G) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(H) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§ 310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; provided, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

⁶⁶¹ Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

⁶⁶² Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

⁶⁶³ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to

a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77558, Dec. 14, 2015]

§310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not

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apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5)(i) Requesting or receiving payment of any fee or consideration for any debt relief service until and unless:

(A) The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;

(B) The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and

(C) To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:

(1) Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or

(2) Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt.

(ii) Nothing in § 310.4(a)(5)(i) prohibits requesting or requiring the customer to place funds in an account to be used for the debt relief provider's fees and for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt, provided that:

(A) The funds are held in an account at an insured financial institution;

(B) The customer owns the funds held in the account and is paid accrued interest on the account, if any;

(C) The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service;

(D) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service; and

(E) The customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service in compliance with § 310.4(a)(5)(i)(A) through (C), within seven (7) business days of the customer's request.

(6) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; provided, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(7) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(7)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) Obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) Obtain from the customer his or her express agreement to be charged for the goods or services and to be

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charged using the account number pursuant to paragraph (a)(7)(i)(A) of this section; and,

(C) Make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(7)(i) of this section, the seller or telemarketer must:

(A) At a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) Obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(7)(ii)(A) of this section;

(8) 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 in use by a recipient of a telemarketing call; provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours;

(9) Creating or causing to be created, directly or indirectly, a remotely created payment order as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing; or

(10) Accepting from a customer or donor, directly or indirectly, a cash-to-cash money transfer or cash reload mechanism as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller

to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with paragraph (b)(1)(iii)(A) of this section, including, but not limited to, harassing any person who makes such a request; hanging up on that person; failing to honor the request; requiring the person to listen to a sales pitch before accepting the request; assessing a charge or fee for honoring the request; requiring a person to call a different number to submit the request; and requiring the person to identify the seller making the call or on whose behalf the call is made;

(iii) Initiating any outbound telephone call to a person when:

(A) That person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) That person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller or telemarketer:

(1) Can demonstrate that the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature⁶⁶⁴ of that person; or

⁶⁶⁴ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a

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(2) Can demonstrate that the seller has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is “abandoned” under this section 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.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii), unless:

(A) In any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person’s telephone number and signature;⁶⁶⁵ and

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller’s entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) Automatically adds the number called to the seller’s entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) Is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate § 310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or

valid signature under applicable federal law or state contract law.

⁶⁶⁵ For purposes of this Rule, the term “signature” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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maintained by the Commission pursuant to §310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating §310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with §310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to §310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with §310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to §310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating paragraph (b)(1)(ii) or (iii) of this section is the result of error and not of failure to obtain any information necessary to comply with a request pursuant to paragraph (b)(1)(iii)(A) of this section not to receive further calls by or on behalf of a seller or charitable organization.

(4) A seller or telemarketer will not be liable for violating §310.4(b)(1)(iv) if:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-

day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed⁶⁶⁶; and

(iv) The seller or telemarketer, in accordance with §310.5(b)-(d), retains records establishing compliance with §310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested

⁶⁶⁶ This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

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by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; provided, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

[75 FR 48516, Aug. 10, 2010, as amended at 76 FR 58716, Sept. 22, 2011; 80 FR 77559, Dec. 14, 2015]

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;⁶⁶⁷

(4) The name, any fictitious name used, the last known home address and

telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

§ 310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

⁶⁶⁷ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

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(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR part 308, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising," ("Franchise Rule") 16 CFR part 436, and the sale of business opportunities subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities," ("Business Opportunity Rule") 16 CFR part 437, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to:

(i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in §310.3(a)(1)(vi) or §310.4(a)(2) through (4);

(ii) The requirements of §310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1), for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in §310.3(d) for any requested charitable contribution; *provided*, however, that this exemption does not apply to:

(i) Calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or goods or services described in §310.3(a)(1)(vi) or §310.4(a)(2) through (4);

(ii) The requirements of §310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business, except calls to induce the retail sale of nondurable office or cleaning supplies; *provided*, however, that §§310.4(b)(1)(iii)(B) and 310.5 shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77559, Dec. 14, 2015]

§310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to

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the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§ 310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under § 310.4(b)(1)(iii)(B); provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do

Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$69 for each area code of data accessed, up to a maximum of \$19,017; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in paragraph (c) of this section, each person excepted under paragraph (c) of this section from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay \$69 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay \$35 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional

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area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[75 FR 48516, Aug. 10, 2010; 75 FR 51934, Aug. 24, 2010, as amended at 77 FR 51697, Aug. 27, 2012; 78 FR 53643, Aug. 30, 2013; 79 FR 51478, Aug. 29, 2014; 80 FR 77560, Dec. 14, 2016; 81 FR 59845, Aug. 31, 2016; 82 FR 39534, Aug. 21, 2017; 83 FR 46640, Sept. 14, 2018; 84 FR 44687, Aug. 27, 2019; 85 FR 62597, Oct. 5, 2020; 86 FR 48301, Aug. 30, 2021]

§ 310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

- Sec.
- 311.1 Definitions.
- 311.2 Stayed or invalid parts.
- 311.3 Preemption.
- 311.4 Testing.
- 311.5 Labeling.

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311.6 Prohibited acts.

AUTHORITY: 42 U.S.C. 6363(d).

SOURCE: 60 FR 55421, Oct. 31, 1995, unless otherwise noted.

§ 311.1 Definitions.

As used in this part:

(a) *Manufacturer* means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) *New oil* means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil.

(c) *Processed used oil* means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) *Recycled oil* means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) *Used oil* means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a result of such use, has been contaminated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

§ 311.2 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

§ 311.3 Preemption.

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of § 311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil

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Subject: The Sales Mentor, Inbound Closer, Sales Pro Academy, and Traffic and Funnels Settlement of FTC Case

Dear <Customer>:

Because our records show you've been a customer of one of our programs, including the Sales Mentor, Inbound Closer, Sales Pro Academy, and Traffic and Funnels, we're writing to let you know that we settled a lawsuit with the Federal Trade Commission, the nation's consumer protection agency.

What happened?

The FTC said we didn't have sufficient evidence that customers of one of our brands, The Sales Mentor, were likely to earn what we said they could. The settlement resolves the FTC's allegations that claims we made about how much people could earn using the Sales Mentor programs were deceptive.

What we're doing in response

We are committed to complying with the settlement order, which requires that:

- **We won't make claims about earnings without written proof.** If we make claims about how much people can earn, we must have written proof that a typical customer is likely to get that kind of result. We also won't use testimonials that would lead you to believe those experiences are typical unless we have written proof that they are.
- **We won't make claims about the typical experience our customers have without written proof.** That includes what you'd need to participate in our program, like the time commitment and the amount of money or experience required to be successful.

What you should know about money-making offers

Before you pay for any offer that includes claims about how much money you can make as a participant, we and the FTC encourage you to:

- Take your time.
- Avoid high-pressure sales pitches that require you to act now or risk losing out.
- Be skeptical about success stories and testimonials.
- Do your research. Search online for the company's name plus words like "review," "scam," or "complaint."

We are pleased to have reached an agreement with the FTC and are committed to following the requirements of the order.

For more information about The Sales Mentor's settlement with the FTC, visit [FTC URL].

Sincerely,

[signature for Traffic and Funnels, LLC]

Traffic and Funnels, LLC

[signature for WE Capital, LLC]

WE Capital, LLC

[signature for Welch Equities, LLC]

Evans and Welch, Inc.

[signature for Evans and Welch Holdings, LLC]

Evans and Welch Holdings, LLC

[signature for Taylor A. Welch]

Taylor A. Welch

[signature for Christopher A. Evans]

Christopher A. Evans

[signature for Payton Welch]

Payton Welch

[signature for Ashton Shanks]

Ashton Shanks