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3 Federal Trade Commission
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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **San Francisco Division**

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12
13 **FEDERAL TRADE COMMISSION,**
14 **Plaintiff,**
15 **v.**
16 **ROBERT S. DOLGIN, doing business as**
17 **Design Travel and**
18 **Design Travel of Santa Rosa,**
19 **Defendant.**

Case No. -CIV-

**COMPLAINT FOR
PERMANENT INJUNCTION
AND CONSUMER REDRESS**

20 The Federal Trade Commission (“FTC” or “Commission”) brings this action under Sections 13(b)
21 and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, the
22 Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101
23 *et seq.*, and the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.* The FTC seeks a permanent
24 injunction, restitution, disgorgement, and other equitable relief for Defendant’s violations of Section 5
25 of the FTC Act, Sections 310.3(a)(1)(i) and 310(a)(2)(iii) of the FTC's "Telemarketing Sales Rule",
26 16 C.F.R. Part 310, and Section 226.12(e) of Regulation Z, 12 C.F.R. § 226.12(e), which implements
27 the TILA.

28 Complaint

1 **JURISDICTION AND VENUE**

2 1. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), 57b,
3 1607(c), 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

4 2. Venue in this district is proper under 15 U.S.C. §§ 53(b) and 6103(e) and 28 U.S.C.
5 § 1391(b), (c), and (d).

6 **INTRADISTRICT ASSIGNMENT**

7 3. Assignment to the San Francisco Division is appropriate because a substantial part of the
8 events that give rise to this Complaint occurred in Sonoma County.

9 **THE PARTIES**

10 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States
11 Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission enforces the FTC Act and trade
12 regulation rules promulgated thereunder, including the Telemarketing Sales Rule, 16 C.F.R. Part 310,
13 which prohibits deceptive or abusive telemarketing acts or practices. The Commission also enforces the
14 TILA and its implementing Regulation Z. The Commission may initiate federal district court proceedings
15 to enjoin violations of the FTC Act, the Telemarketing Sales Rule, and the TILA, and to secure such
16 equitable relief as is appropriate in each case, including restitution for injured consumers. 15 U.S.C.
17 §§ 53(b), 57b, 1607(c), and 6105(b).

18 5. Defendant Robert S. Dolgin, a California resident, operates a California sole
19 proprietorship and has done business as Design Travel and Design Travel of Santa Rosa (“Design
20 Travel”) since at least 1995. At all times material to this complaint, acting alone or in concert with
21 others, he has formulated, directed, controlled, participated in and has had knowledge of the acts and
22 practices of Design Travel and its sales agents, including the acts and practices set forth in this complaint.
23 Defendant Dolgin resides at 2152 Mason Street, San Francisco, California 94133, and his business is
24 located at 460 Larkfield Center, Santa Rosa, CA 95403. At all times material to this complaint,
25 Defendant Dolgin has transacted business in this District.

1 COMMERCE

2 6. At all times material to this complaint, the Defendant's course of business, including the
3 acts and practices alleged herein, has been and is in or affecting commerce, as "commerce" is defined in
4 Section 4 of the FTC Act, 15 U.S.C. § 44.

5 DEFENDANT'S BUSINESS PRACTICES

6 7. Since at least 1995, Defendant has engaged in telemarketing, in the United States and
7 elsewhere, vacations that include a Bahamas cruise and several nights of accommodations in Florida.
8 Defendant operates his scheme through a network of telemarketing boilerrooms throughout the country.
9 Defendant purchases the names of his targets, known as "leads." In many instances, Design Travel's
10 leads are gathered through the rental of booths at local fairs or carnivals and posting signs asking people
11 to "register" to win a vacation.

12 8. Defendant's boilerrooms contact the leads in several ways: 1) "cold calling" i.e., a
13 salesperson from a boilerroom directly calling consumers and telling them they have "won" a vacation;
14 2) direct mail solicitations informing consumers that they have been selected to receive a "World Class
15 Florida/Caribbean Vacation" including a "luxury" cruise; and 3) unsolicited faxes notifying consumers
16 that Design Travel's "Wholesale Travel Department" has only a few Bahamas cruise packages remaining
17 to sell. Design Travel also operates a home page on the Internet. Regardless of the method of contact,
18 consumers are led to believe they are part of a select group of people specially chosen to receive this
19 vacation bargain.

20 9. Once Defendant's telemarketers get a consumer on the telephone, they describe their
21 "fantastic," "world-class" vacation to Florida and the Bahamas. The telemarketers tell consumers the
22 vacation is worth as much as \$1,500, but that the consumer will pay a much smaller amount to receive
23 it, typically \$398, \$498, or \$598. The amount Design Travel charges for its vacation has varied during
24 the course of its operation. The telemarketers urge consumers to immediately "register for" or "secure"
25 this vacation with a major credit card. Design Travel represents that the payment will cover the cost of
26 their accommodations in both Florida and the Bahamas, as well as the round-trip cruise to the Bahamas.

27 10. Defendant's telemarketers tell consumers that they must purchase the vacation

1 immediately. The telemarketers respond to consumers who request time to think over the offer, or
2 receive it in writing, with canned rebuttals such as “each confirmation number can only be activated once
3 so you cannot call back and reactivate your number” or “by the time you receive something in the mail,
4 the limited number of vacations would be gone.” In fact, there is no limit to the number of vacations for
5 sale.

6 11. Consumers give their credit card numbers to the telemarketer, who charges their credit
7 cards. In the travel certificate industry, this payment is known as the "front end" fee. The "front end"
8 fees are funneled through Defendant’s merchant account at the Exchange Bank in Santa Rosa, California.
9 The charges appear on consumers’ credit card statements as Design Travel in Santa Rosa. In the course
10 of its operation, Design Travel also has used other merchant accounts in addition to Defendant’s account
11 at Exchange Bank.

12 12. Consumers do not receive a vacation for the money charged to their credit card accounts.
13 Instead, they receive a package containing a short video, some advertisements, and “reservation request
14 forms” for the Bahamas Cruise and the central Florida vacation. In order to book the cruise or visit
15 central Florida, consumers learn they must pay more money to Defendant or his affiliate. The required
16 additional payment, or the “back end” fee as it is known in the travel certificate industry, generally is at
17 least \$198 to \$298. The reservation forms falsely state that the "back end" fee is for “port charges,
18 reservation fees, service charges and taxes.” In fact, the “back end” fee pays for the consumers’ cruise
19 to the Bahamas and accommodations.

20 13. Upon discovering that they must pay more to take the vacation they thought they had
21 already purchased, many consumers attempt to cancel their vacation and return their package to
22 Defendant. In numerous instances, Design Travel fails to credit consumers’ accounts within seven days
23 of receiving the package or forgiving the debt, as required by the TILA and Regulation Z. In fact, in
24 some cases, Defendant delays several months before crediting consumers’ accounts.

25 14. Those consumers who actually take the vacation after paying the extra “back end" fee
26 discover that the vacation was not the "World Class" vacation they were promised. Consumers discover
27 that the "luxury" cruise is, in fact, a ferry ride to the Bahamas. If consumers wish to stay at the better-

28 Complaint

1 known hotels and resorts referred to in Defendant's solicitations they must pay yet more undisclosed
2 "upgrade" fees; otherwise they must endure the vermin-infested accommodations in the Bahamas
3 provided by Design Travel.

4 **THE FEDERAL TRADE COMMISSION ACT**

5 15. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts
6 or practices in or affecting commerce are hereby declared unlawful."

7 **VIOLATIONS OF THE FTC ACT**

8 **COUNT I**

9 16. Paragraphs 1 through 15 are incorporated herein by reference.

10 17. Since at least 1995, in connection with the telemarketing of vacations, Defendant, in
11 numerous instances, has represented, or has caused his telemarketers or other agents to represent, directly
12 or by implication, that consumers who pay Design Travel the amount specified in the initial solicitation
13 or the initial sales call will receive a vacation.

14 18. In truth and fact, in numerous instances, consumers who pay Design Travel the amount
15 specified in the initial solicitation or initial sales call do not receive a vacation. All the consumer receives
16 for the payment is the option to purchase a vacation. In order to receive the vacation, the consumer must
17 pay an additional amount to Design Travel or its affiliate.

18 19. Therefore, Defendant's representation as set forth in Paragraph 17 is false and misleading,
19 and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

20 **THE FTC TELEMARKETING SALES RULE**

21 20. Defendant is a "seller" or "telemarketer" engaged in "telemarketing," as those terms are
22 defined in the Telemarketing Sales Rule, 16 C.F.R. §§ 310.2(r), (t) and (u).

23 21. In the Telemarketing Act, Congress directed the FTC to prescribe rules prohibiting
24 deceptive or abusive telemarketing acts or practices, including the following:

25 A requirement that any person engaged in telemarketing for the sale of
26 goods or services shall promptly and clearly disclose to the person
27 receiving the call that the purpose of the call is to sell goods or services
and make such other disclosures as the Commission deems appropriate.

1 15 U.S.C. § 6102(a)(3)(C). On August 16, 1995, the FTC promulgated the Telemarketing Sales Rule,
2 16 C.F.R. Part 310. The Rule became effective on December 31, 1995.

3 22. The Telemarketing Sales Rule requires a telemarketer "[b]efore a customer pays for goods
4 or services offered . . . to disclose, in a clear and conspicuous manner . . . [t]he total costs to purchase,
5 receive, or use, and the quantity of, any goods or services that are the subject of the sales offer. . . ." 16
6 C.F.R. § 310.3(a)(1)(i).

7 23. The Telemarketing Sales Rule also prohibits a telemarketer from "[m]isrepresenting,
8 directly or by implication, . . . [a]ny material aspect of the performance, efficacy, nature, or central
9 characteristics of goods or services that are the subject of the sales offer" 16 C.F.R.
10 § 310.3(a)(2)(iii).

11 24. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section
12 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales Rule constitute
13 unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC
14 Act, 15 U.S.C. § 45(a).

15 **VIOLATIONS OF THE FTC TELEMARKETING SALES RULE**

16 **COUNT II**

17 25. Paragraphs 1 through 24 are incorporated herein by reference.

18 26. In the course of telemarketing, in numerous instances since December 31, 1995,
19 Defendant has failed to disclose, or failed to ensure that his telemarketers or other agents disclose, in a
20 clear and conspicuous manner before a customer pays, the total costs of the vacation, in violation of
21 Section 310.3(a)(1)(i) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(i).

22 **COUNT III**

23 27. Paragraphs 1 through 26 are incorporated herein by reference.

24 28. In the course of telemarketing, in numerous instances since December 31, 1995, defendant
25 has represented, or has caused his telemarketers or other agents to represent, directly or by implication,
26 that consumers would receive a vacation worth much more than they were paying. In truth and
27 fact, in numerous instances since December 31, 1995, consumers did not receive a vacation worth much

28 Complaint

1 more than they were paying, and actually received a vacation worth much less than they paid.

2 29. Therefore, defendant has misrepresented, directly or by implication, material aspects of
3 the performance, efficacy, nature or central characteristics of the offered vacations in violation of Section
4 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

5 **THE TRUTH IN LENDING ACT**

6 30. Section 166 of the TILA, 15 U.S.C. § 1666e, requires creditors to promptly credit a
7 consumer's credit card account upon acceptance of the return of goods or forgiveness of the debt for
8 services. Section 226.12(e) of Regulation Z, which implements Section 166 of the TILA, requires
9 creditors to credit a consumer's credit card account within seven business days from accepting the return
10 of property or forgiving a debt for services. 12 C.F.R. § 226.12(e).

11 **VIOLATIONS OF THE TRUTH IN LENDING ACT**

12 **COUNT IV**

13 31. Paragraphs 1 through 31 are incorporated herein by reference.

14 32. Design Travel is a creditor as that term is defined in Section 103(f) of the TILA, 15
15 U.S.C. § 1602(f), and Section 226.2(a)(17)(ii) of Regulation Z, 12 C.F.R. § 226.2(a)(17)(ii).

16 33. In numerous instances, Defendant Design Travel fails to credit promptly consumers' credit
17 card accounts within seven business days from accepting the return of property or forgiving a debt for
18 services and, therefore, violates Section 166 of the TILA, 15 U.S.C. § 1666e, and Section 226.12(e) of
19 Regulation Z, 12 C.F.R. § 226.12(e).

20 **CONSUMER INJURY**

21 34. Consumers throughout the United States have suffered substantial monetary loss as a
22 result of Defendant's unlawful acts or practices described in Counts I through IV above. Absent
23 injunctive relief, defendant is likely to continue to injure consumers.

24
25 **THIS COURT'S POWER TO GRANT RELIEF**

26 35. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive
27 and other ancillary relief, including consumer redress, disgorgement, and restitution to prevent and

28 Complaint

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202-326-3338 (Ms. Guerard)
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Complaint