

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

FEDERAL TRADE COMMISSION

and

**STATE OF NORTH CAROLINA *ex rel.*
MICHAEL F. EASLEY,**

Plaintiffs,

v.

**RESORT SALES GROUP, INC.,
a Georgia Corporation,**

**CRUISE LINK TRAVEL, INC.,
a Georgia Corporation,**

**DESIGN TRAVEL OF ALTAMONTE SPRINGS,
INC.,
a Florida Corporation,**

**CHECK AMERICA CORPORATION,
a Florida Corporation,**

**WILLIE L. BILES, a.k.a. WILLIAM L. BILES,
individually and as an officer of of
Resort Sales Group, Inc., Design
Travel of Altamonte Springs, Inc., and
Check America Corporation,**

Civ.

Case No.

Magistrate

**COMPLAINT FOR
PERMANENT INJUNCTION,
CONSUMER REDRESS, AND
OTHER EQUITABLE RELIEF.**

**MARGARET KATHERINE ALEXANDER,
individually and as a former officer of
Resort Sales Group, Inc.,**

**SETH MILLER, a.k.a. SETH CARRIGAN,
individually and as an officer of Resort
Sales Group, Inc., Design Travel of
Altamonte Springs, Inc., and Check
America Corporation,**

and

**STEVEN BREWER, individually and as an
officer of Resort Sales Group, Inc.,
Design Travel of Altamonte Springs, Inc.,
and Check America Corporation,
Defendants.**

Plaintiffs, the Federal Trade Commission, ("FTC" or "the Commission"), and the State of North Carolina, for their complaint, allege:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.* to secure preliminary and permanent injunctive relief, restitution, rescission or reformation of contracts, disgorgement, and other equitable relief for defendants' unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310.

2. The State of North Carolina brings this action under Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), to secure similar injunctive and equitable relief.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b,

6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

4. Venue in the Western District of North Carolina is proper under 15 U.S.C. §§ 53(b) and 6103(a) and 28 U.S.C. § 1391(b) and (c).

PLAINTIFFS

5. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices, including assisting and facilitating deceptive practices. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and violations of the Telemarketing Sales Rule, in order to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

6. Plaintiff, the State of North Carolina, is one of fifty sovereign states of the United States. Michael Easley is the duly elected Attorney General acting for plaintiff, and brings this action in his official capacity. The State of North Carolina is authorized to initiate federal district court proceedings to enjoin telemarketing that violates the Commission's Telemarketing Sales Rule, and in each such case, to obtain damages, restitution, and other compensation on behalf of residents of the State of North Carolina, and to obtain such further relief as the court may deem appropriate. 15 U.S.C. § 6103(a).

DEFENDANTS

7. Defendant Resort Sales Group, Inc. ("RSG") is a Georgia corporation with its principal place of business at 5801 Executive Center Drive, Suite 219, Charlotte, North Carolina 28212. Its previous address was 4822 Albemarle Road, Charlotte, North Carolina 28205. RSG transacts or has transacted business in the Western District of North Carolina and elsewhere.

8. Defendant Cruise Link Travel, Inc. ("Cruise Link") is a Georgia corporation. Its principal

place of business is or was at 736 Johnson Ferry Road, Suite C-250, Marietta, Georgia 30067. Cruise Link transacts or has transacted business in the Western District of North Carolina and elsewhere.

9. Defendant Design Travel of Altamonte Springs, Inc. ("DT-Altamonte") is a Florida corporation with its principal place of business at 258 East Altamonte Road, Altamonte Springs, Florida 32701. It is a subsidiary of defendant RSG. DT-Altamonte transacts or has transacted business in the Western District of North Carolina and elsewhere.

10. Defendant Check America Corporation ("CAC") is a Florida corporation with its principal place of business at 258 East Altamonte Road, Altamonte Springs, Florida 32701. It is owned by defendant DT-Altamonte. CAC transacts or has transacted business in the Western District of North Carolina and elsewhere.

11. Defendant Willie L. Biles, a.k.a. William L. Biles, resides at 6822 Linkside Court, Charlotte, North Carolina 28277. He is an officer, director, or owner of defendants RSG, DT-Altamonte, and CAC. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of defendants RSG, Cruise Link, DT-Altamonte, and CAC. He transacts or has transacted business in the Western District of North Carolina and elsewhere.

12. Defendant Margaret Katherine Alexander resides at 6822 Linkside Court, Charlotte, North Carolina 28277. Until February 1997, she was an officer, director, or owner of defendant RSG. At all times material to this complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices of defendants RSG, Cruise Link, DT-Altamonte, and CAC. She transacts or has transacted business in the Western District of North Carolina and elsewhere.

13. Defendant Seth Miller, a.k.a. Seth Carrigan, last known address was 77 East Andrews Drive NW, Apartment 379, Atlanta, Georgia 30305. He is an officer, director, or owner of defendants RSG, DT-Altamonte, and CAC. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of defendants RSG, Cruise Link, DT-Altamonte, and CAC. He transacts or has transacted business in the Western District of

North Carolina and elsewhere.

14. Defendant Steven Brewer resides at 944 Charing Cross Circle West, Lake Mary, Florida 32746. He is an officer, director, or owner of defendants RSG, DT-Altamonte, and CAC. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of defendants RSG, Cruise Link, DT-Altamonte, and CAC. He transacts or has transacted business in the Western District of North Carolina and elsewhere.

COMMERCE

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

DEFENDANTS' COURSE OF CONDUCT

16. Since at least 1995, the defendants have operated a single business enterprise to defraud consumers throughout the United States and abroad through the deceptive telemarketing of vacations. In operating their single business enterprise, defendants share officers, employees, offices, and a common goal to sell their vacations. Defendants telemarket their vacations, which include a Bahamas cruise and several nights of accommodations in Florida under various names, including Design Travel and Cruise Link by Design.

17. Defendants operate their scheme through a network of telemarketing boilerrooms in the United States, Canada, and England. In some instances, defendants telemarket the vacations directly to consumers. In other instances, defendants enter into contracts with other telemarketers, who sell defendants' vacation packages. Under these contracts, defendants provide substantial assistance to their telemarketer clients by creating, printing, and sending direct mail solicitations and faxes to consumers on behalf of the telemarketer; providing the telemarketer the names and telephone numbers of consumers to solicit; creating or approving the sales and verification scripts for the telemarketers to use; processing credit card sales made by the telemarketer; creating bank checks to automatically debit a customer's checking

account; answering consumers' questions; mailing vacation packages with reservation forms to consumers who have purchased the vacation; and making reservations for customers who have paid the required amounts for their travel and accommodations. Defendants' assistance enables their telemarketing clients to sell defendants' vacations to consumers.

18. Defendants and their client telemarketers contact consumers in several ways: 1) "cold calling" i.e., a salesperson from a telemarketing boilerroom calls consumers and tells them they have "won" a vacation; 2) direct mail solicitations inform consumers that they have been selected to receive a "World Class Florida/Caribbean Vacation" including a "luxury" cruise, or a "Spectacular Cruise Vacation" and 3) unsolicited faxes notify consumers that the "Wholesale Travel Department" has only a few Bahamas cruise packages remaining to sell. Regardless of the method of contact, consumers are led to believe they are part of a select group of people specially chosen to receive a vacation bargain.

19. Once defendants or their client telemarketers get a consumer on the telephone, they describe their "fantastic," "world-class" vacation to Florida and the Bahamas. The telemarketers tell consumers that the vacation is worth as much as \$1,500, but that the consumer will pay a much smaller amount to receive it, typically \$498 or \$598. The telemarketers urge consumers to immediately "register for" or "secure" this vacation with a major credit card or with a debit to their checking accounts. The telemarketers represent that the payment will cover the cost of accommodations in both Florida and the Bahamas, as well as the round-trip cruise to the Bahamas. In fact, none of this money goes to cover the cost of the vacation; all of it goes to defendants and their client telemarketers.

20. The telemarketers tell consumers that they must purchase the vacation immediately. The telemarketers respond to consumers who request time to think over the offer, or receive it in writing, with canned rebuttals such as "each confirmation number can only be activated once so you cannot call back and reactivate your number" or "by the time you receive something in the mail, the limited number of vacations would be gone." In fact, there is no limit to the number of vacations for sale.

21. Consumers give their credit card or bank account numbers to the telemarketer to buy the vacation. In the travel certificate industry, this initial payment is known as the "front end" fee. Defendants

arrange for the processing of the "front end" fees through various merchant accounts to which they have access, if consumers make the initial payment by credit card. In the alternative, defendant Check America Corporation creates bank checks with which the defendants debit the consumers' checking accounts.

22. Consumers do not receive a vacation for the money charged to their credit cards or debited from their bank accounts. Instead, defendants send them a confirmation package containing a short video, some advertisements, and "reservation request forms" for the Bahamas Cruise and the central Florida vacation. In order to book the cruise or visit central Florida, consumers learn they must pay \$198 or \$298 to defendants in order to take the vacation for which they thought they had already paid. Consumers send the required additional payment, or the "back end" fee as it is known in the travel certificate industry, to defendants. The reservation forms falsely state that the "back end" fee is for "port charges, reservation fees, service charges and taxes." In fact, the "back end" fee pays for transport to the Bahamas and accommodations in the Bahamas and Florida.

23. Upon discovering that they must pay more to take the vacation they thought they had already purchased, many consumers attempt to cancel their vacation and return their package to defendants.

24. Those consumers who actually take the vacation after paying the unexpected "back end" fee discover that the vacation is not the "World Class" vacation they were promised. Consumers discover that the "luxury" cruise is, in fact, a ferry boat ride to the Bahamas. If consumers wish to stay at the better-known hotels and resorts referred to in defendants' solicitations and sales pitches, they must pay yet more undisclosed "upgrade" fees; otherwise, they must endure the vermin-infested accommodations in the Bahamas provided by defendants.

25. Other consumers who have paid both the "front end" and "back end" fees and attempt to take their vacation discover that they cannot because defendants have not paid for the consumers' cruise or accommodations. In fact, defendants have absconded with consumers' money instead of paying travel providers, such as cruise lines and hotels, for the consumers' vacations. Consumers who arrive in Florida and the Bahamas are stranded at the last minute unless they agree to pay the cruise lines and hotels for

travel and accommodations for which they have already paid the defendants.

THE FEDERAL TRADE COMMISSION ACT

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

VIOLATION OF SECTION 5 THE FTC ACT

COUNT I

(By Plaintiff Federal Trade Commission)

27. In numerous instances since at least 1995, in connection with the telemarketing of vacations, defendants, have represented, expressly or by implication, that consumers who pay defendants the amount specified in the initial sales call will receive a vacation.

28. In truth and fact, in numerous instances, consumers who pay defendants the amount specified in the initial sales call do not receive a vacation. All consumers receive for the payment is the option to purchase a vacation. In order to receive the vacation, the consumer must pay an additional amount to defendants.

29. Therefore, defendants' representation as set forth in Paragraph 27 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE TELEMARKETING SALES RULE

30. In the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices. On August 16, 1995, the Commission promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310. The Rule became effective on December 31, 1995.

31. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the Telemarketing Sales Rule, 16 C.F.R. §§ 310.2(r), (t) and (u).

32. The Telemarketing Sales Rule requires sellers and telemarketers "[b]efore a customer pays for goods or services offered . . . to disclose, in a clear and conspicuous manner . . . [t]he total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer. .

. ." 16 C.F.R. § 310.3(a)(1)(i).

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

34. The Telemarketing Sales Rules also prohibits any person from providing 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 in violation of the Telemarketing Sales Rule, such as the acts or practices described in Paragraphs 32-33. 16 C.F.R. § 310(b).

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

VIOLATIONS OF THE FTC TELEMARKETING SALES RULE

COUNT II

(By Plaintiffs Federal Trade Commission and State of North Carolina)

36. In numerous instances, in connection with telemarketing vacations to the Bahamas and Florida, defendants have failed to disclose in a clear and conspicuous manner, before a customer pays, the total costs of the telemarketed vacation, in violation of Section 310.3(a)(1)(i) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(i).

COUNT III

(By Plaintiffs Federal Trade Commission and State of North Carolina)

37. In numerous instances, in connection with telemarketing vacations to the Bahamas and Florida, defendants have represented, directly or by implication, that consumers would receive a vacation worth much more than they were paying. In fact, in numerous instances, consumers did not receive a

vacation worth much more than they were paying, and actually received a vacation worth much less than they paid, or did not receive a vacation at all.

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

COUNT IV

(By Plaintiffs Federal Trade Commission and State of North Carolina)

39. In numerous instances, in connection with telemarketing vacations to the Bahamas and Florida, defendants' telemarketing clients: 1) have failed to disclose, in a clear and conspicuous manner before the customer pays, the total costs of the vacation; and 2) have misrepresented that consumers will receive a vacation worth much more than they are paying. Defendants' telemarketing clients have thereby violated Sections 310.3(a)(1)(i) and 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a)(1)(i) and 310.3(a)(2)(iii).

40. In numerous instances, in connection with providing various services to their telemarketing clients, including creating and sending direct mail solicitations and faxes, providing names and telephone numbers of potential customers, creating and providing scripts to be used in the telemarketing of vacations, mailing vacation confirmation packages, processing credit card charge sales, creating checks to debit customers' checking accounts, making travel reservations, and providing customer service, defendants provide substantial assistance or support to their telemarketing clients knowing, or consciously avoiding knowing, that their telemarketing clients are engaged in acts or practices that violate Section 310.3(a) of the Telemarketing Sales Rule as set forth in paragraph 39 above. Defendants have thereby violated Section 310.3(b) of the Telemarketing Sales Rule, 16 C.F.R. §310.3(b).

CONSUMER INJURY

41. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of defendants' unlawful acts or practices. In addition, defendants have been

unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

42. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to grant to the FTC injunctive and other equitable relief, including consumer redress, rescission of contracts, restitution, and disgorgement, to prevent and remedy any violations of any provision of law enforced by the Commission.

43. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize the Court to grant to the FTC such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of money.

44. Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), authorizes the Court to grant to the State of North Carolina, on behalf of its residents, injunctive and other equitable relief, including damages, restitution, other compensation, and such further and other relief the Court deems appropriate.

45. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(h) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, and plaintiff State of North Carolina pursuant to Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and the Court's own equitable powers, request that the Court:

1. Award plaintiffs such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, temporary and preliminary injunctions, appointment of a receiver, and an order freezing each defendants' assets;

2. Permanently enjoin the defendants from violating the FTC Act and the Telemarketing Sales

Rule, as alleged herein;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the FTC Act and the Telemarketing Sales Rule including, but not limited to, rescission or reformation of contracts, restitution, refund of monies paid, and disgorgement of ill-gotten monies; and

4. Award plaintiffs the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

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