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6 ATTORNEYS FOR PLAINTIFF

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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 _____)
FEDERAL TRADE COMMISSION,)

13 Plaintiff,)

14 v.)

15 CONSUMER REPAIR SERVICES,)
16 INC., a Georgia Corporation;)

17 MARK STEINBERG, individually)
and as an officer of)
18 CONSUMER REPAIR SERVICES,)
INC.;)

19 JAMES DEHART, individually)
20 and as an officer of)
CONSUMER REPAIR SERVICES,)
21 INC.; and)

22 FRANK CIARAVINO,)
individually and as an agent)
23 of CONSUMER REPAIR SERVICES,)
INC.,)

24 Defendants.)
25 _____)

Civil Action No.

COMPLAINT FOR INJUNCTION AND
OTHER EQUITABLE RELIEF

26
27 Plaintiff, the Federal Trade Commission ("FTC" or
28 "Commission"), for its complaint alleges:

1 1. The FTC brings this action under Sections 13(b) and 19
2 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.
3 §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and
4 Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et*
5 *seq.*, to obtain permanent injunctive relief, rescission or
6 reformation of contracts, restitution, disgorgement, and other
7 equitable relief for defendants' deceptive acts or practices in
8 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and
9 the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

10
11 **JURISDICTION AND VENUE**

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

15 3. Venue in the Central District of California is proper
16 under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

17
18 **PLAINTIFF**

19 4. Plaintiff, FTC, is an independent agency of the United
20 States Government created by statute. 15 U.S.C. § 41 *et seq.*
21 The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. §
22 45(a), which prohibits unfair or deceptive acts or practices in
23 or affecting commerce. The Commission also enforces the TSR, 16
24 C.F.R. Part 310, which prohibits deceptive or abusive
25 telemarketing acts or practices. The Commission is authorized to
26 initiate federal district court proceedings by its own attorneys
27 to enjoin violations of the FTC Act and the TSR to secure such
28 equitable relief as may be appropriate in each case, and to

1 obtain consumer redress. 15 U.S.C. §§ 53(b), 57b, 6102(c), and
2 6105(b).

3 **DEFENDANTS**

4 5. Defendant Consumer Repair Services, Inc. ("CRS") is a
5 Georgia corporation. CRS transacts or has transacted business in
6 this district.

7 6. Defendant Mark Steinberg ("Steinberg") is or has held
8 himself out to be an officer of CRS. Individually or in concert
9 with others, Steinberg has formulated, directed, controlled or
10 participated in the acts and practices of CRS, including the acts
11 and practices set forth herein. Steinberg transacts or has
12 transacted business in this district.

13 7. Defendant James DeHart ("DeHart") is or has held
14 himself out to be an officer of CRS. Individually or in concert
15 with others, DeHart has formulated, directed, controlled or
16 participated in the acts and practices of CRS, including the acts
17 and practices set forth herein. DeHart transacts or has
18 transacted business in this district.

19 8. Defendant Frank Ciaravino ("Ciaravino") is the manager
20 of a CRS office. Individually or in concert with others,
21 Ciaravino has formulated, directed, controlled or participated in
22 the acts and practices of CRS, including the acts and practices
23 set forth herein. Ciaravino transacts or has transacted business
24 in this district.

25
26 **COMMERCE**

27 9. At all times relevant to this complaint, defendants
28 have maintained a substantial course of trade in the offering for

1 sale and sale, through telemarketing, of credit card loss
2 protection services, in or affecting commerce, as "commerce" is
3 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4

5 **DEFENDANTS' BUSINESS PRACTICES**

6 10. Since at least 1999, defendants have telemarketed
7 credit card loss protection services to consumers throughout the
8 United States including within the Central District of
9 California. Defendants have engaged in these practices under the
10 names Consumer Repair Services, Inc., CRS Inc., and CRS.

11 11. To induce consumers to purchase their credit card loss
12 protection services, defendants have represented, either
13 expressly or by implication, that defendants are calling from
14 VISA International, MasterCard International, or the consumer's
15 credit card issuer.

16 12. Defendants have told consumers that criminals are
17 stealing consumers' credit card numbers off of the Internet and
18 other sources, and that consumers need to purchase defendants'
19 credit card loss protection services because they are not
20 currently protected against fraudulent use of their credit card
21 accounts by such criminals. Defendants have further claimed
22 that, if a consumer's credit card number is fraudulently used,
23 the consumer will be held liable for the full amount of all
24 unauthorized credit card charges.

25 13. Defendants have claimed that purchase of their credit
26 card loss protection services insures consumers against liability
27 for the full amount of all unauthorized credit card charges.

28 14. Defendants have persuaded consumers to divulge their

1 credit card numbers by claiming to be verifying the consumers'
2 identity or account number. Defendants recite four or more of
3 the first digits of consumers' credit card account numbers and
4 then ask the consumers to state the remaining digits of their
5 credit card account numbers.

6 15. Defendants have obtained consumers' credit card account
7 numbers and, without consumers' authorization, have caused
8 charges to be posted on those accounts.

9 16. Defendants have charged consumers fees of \$295 for
10 their services.

11 17. Defendants have represented that they offer an
12 unconditional 30-day money-back guarantee. In many instances,
13 defendants have not honored refund requests from consumers
14 attempting to exercise the money-back guarantee.

15
16 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

17 18. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
18 prohibits unfair or deceptive acts and practices in or affecting
19 commerce.

20 **COUNT I**

21 19. In numerous instances, in connection with the
22 telemarketing of credit card loss protection services to
23 consumers, or in the course of billing, attempting to collect,
24 and collecting money from consumers, defendants have represented,
25 expressly or by implication, that:

- 26 a. Defendants are affiliated with, or are calling
27 from, or on behalf of, the consumer's credit card
28 issuer;

- 1 b. If consumers do not purchase defendants' services,
2 consumers can be held fully liable for any
3 unauthorized charges made to their credit card
4 accounts;
- 5 c. Consumers have purchased or agreed to purchase
6 goods or services from defendants, and therefore
7 owe money to defendants; and
- 8 d. Defendants will refund the purchase price if for
9 any reason a consumer seeks a refund within 30
10 days of receiving the credit card loss protection
11 membership package from CRS.

12 20. In truth and in fact:

- 13 a. Defendants are not affiliated with, or calling
14 from, or on behalf of, the consumer's credit card
15 issuer;
- 16 b. Under Section 226.12(b) of Regulation Z, 12 C.F.R.
17 § 226.12(b), and Section 133 of the Truth in
18 Lending Act, 15 U.S.C. § 1643, a consumer cannot
19 be held liable for more than \$50 for any
20 unauthorized charges to a credit card account;
- 21 c. In numerous instances, consumers did not purchase
22 or agree to purchase goods or services from
23 defendants, and therefore do not owe money to
24 defendants; and
- 25 d. In numerous instances, defendants did not refund
26 the purchase price when consumers sought a refund
27 within 30 days of receiving the credit card loss
28 protection membership package.

1 21. Therefore, defendants' representations, as set forth in
2 paragraph 19, are false and misleading and constitute deceptive
3 acts or practices in violation of Section 5(a) of the FTC Act,
4 15 U.S.C. § 45(a).

5
6 **THE FTC'S TELEMARKETING SALES RULE**

7 22. In the Telemarketing Act, 15 U.S.C. § 6101, *et seq.*,
8 Congress directed the Commission to prescribe rules prohibiting
9 deceptive and abusive telemarketing acts or practices. On August
10 16, 1995, the Commission promulgated the TSR, 16 C.F.R. Part 310.
11 The TSR became effective on December 31, 1995.

12 23. Defendants are "sellers" or "telemarketers" engaged in
13 "telemarketing," as those terms are defined in the TSR, 16 C.F.R.
14 §§ 310.2(r), (t), and (u).

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

18 25. Pursuant to Section 3(c) of the Telemarketing Act,
19 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act,
20 15 U.S.C. § 57a(d)(3), violations of the TSR constitute unfair or
21 deceptive acts or practices in or affecting commerce, in
22 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

23
24 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

25 **COUNT II**

26 26. In numerous instances, in connection with the
27 telemarketing of credit card loss protection services, or in the
28 course of billing, attempting to collect, and collecting money

1 from consumers, defendants have represented, expressly or by
2 implication, that:

- 3 a. Defendants are affiliated with, or are calling
4 from, or on behalf of, the consumer's credit card
5 issuer;
- 6 b. If consumers do not purchase defendants' services,
7 consumers can be held fully liable for any
8 unauthorized charges made to their credit card
9 accounts;
- 10 c. Consumers purchased or agreed to purchase goods or
11 services from defendants, and therefore owe money
12 to defendants; and
- 13 d. Defendants will refund the purchase price if for
14 any reason a consumer seeks a refund within 30
15 days of receiving the credit card loss protection
16 membership package from CRS.

17 27. In truth and in fact:

- 18 a. Defendants are not affiliated with, or calling
19 from, or on behalf of, the consumer's credit card
20 issuer;
- 21 b. Under Section 226.12(b) of Regulation Z, 12 C.F.R.
22 § 226.12(b), and Section 133 of the Truth in
23 Lending Act, 15 U.S.C. § 1643, a consumer cannot
24 be held liable for more than \$50 for any
25 unauthorized charges to a credit card account;
- 26 c. In numerous instances, consumers did not purchase
27 or agree to purchase goods or services from
28 defendants, and therefore do not owe money to

1 defendants; and

2 d. In numerous instances, defendants did not refund
3 the purchase price when consumers sought a refund
4 within 30 days of receiving the credit card loss
5 protection membership package.

6 28. Therefore, defendants' representations, as alleged in
7 paragraph 26, constitute false or misleading statements to induce
8 a person to pay for goods or services, and are deceptive
9 telemarketing acts or practices in violation of
10 Section 310.3(a)(4) of the TSR, 16 C.F.R. § 310.3(a)(4).

11
12 **CONSUMER INJURY**

13 29. Consumers in many areas of the United States have
14 suffered substantial monetary loss as a result of defendants'
15 unlawful acts or practices. Absent injunctive relief by this
16 Court, defendants are likely to continue to injure consumers and
17 harm the public interest.

18
19 **THIS COURT'S POWER TO GRANT RELIEF**

20 30. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
21 empowers this Court to grant injunctive and other ancillary
22 relief, including consumer redress, disgorgement and restitution,
23 to prevent and remedy any violations of any provision of law
24 enforced by the Commission.

25 31. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section
26 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize
27 this Court to issue a permanent injunction and grant such relief
28 as the Court finds appropriate to halt and redress injury

1 resulting from defendants' violations of the Telemarketing Sales
2 Rule, including the rescission and reformation of contracts, and
3 the refund of money.

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

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, plaintiff requests this Court, pursuant to
10 Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b,
11 and Section 6(b) of the Telemarketing Act, 15 U.S.C.
12 § 6105(b), and pursuant to its own equitable powers:

- 13 1. Award plaintiff such temporary and preliminary
14 injunctive and ancillary relief as may be necessary to
15 avert the likelihood of consumer injury during the
16 pendency of this action and to preserve the possibility
17 of effective final relief;
- 18 2. Permanently enjoin defendants from violating the FTC
19 Act and the TSR as alleged herein;
- 20 3. Award such relief as the Court finds necessary to
21 redress injury to consumers resulting from defendants'
22 violations of the FTC Act and the TSR, including but
23 not limited to, rescission or reformation of contracts,
24 restitution, the refund of monies paid, and the
25 disgorgement of ill-gotten monies; and

26 ///

27 ///

28 ///

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

5 Respectfully submitted,
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7 DEBRA A. VALENTINE
8 GENERAL COUNSEL

9 DATED: _____, 2000

10 _____
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