

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

Case No. \_\_\_\_\_-CIV-\_\_\_\_\_

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

IRA SMOLEV,

BRUCE TURIANSKY,

RICHARD KAYLOR,

TRIAD DISCOUNT BUYING SERVICE, INC.,  
a Florida corporation,

MEMBER SERVICE OF AMERICA, L.L.C.,  
a Nevada corporation,

ORCHID ASSOCIATES, L.L.C.,  
a Florida corporation,

PREMIER MEMBERSHIP SERVICES, L.L.C.,  
a Delaware corporation,

INTER\*ACT TRAVEL, INC.,  
a Florida corporation,

INTER\*ACT COMMUNICATIONS, INC.,  
a Utah corporation,

CONSUMER DATA DEPOT, L.L.C.,  
a Delaware corporation,

EREVENUE PARTNERS, L.L.C.,  
a Delaware corporation,

FAR SERVICES, L.L.C.,  
a Delaware corporation,

LINDEN INVESTMENTS, L.L.C.,  
a Delaware corporation,

LYNSTROM INFORMATION SERVICE, L.L.C.,  
a Delaware corporation,

PREMIER CLUB SERVICES, L.L.C.,  
a Delaware corporation,

PREMIER MARKETING SERVICES OF AMERICA, L.L.C.,  
a Delaware corporation,

RESIDENTS RESOURCE NETWORK, L.L.C.,  
a Delaware corporation,

REVENUE SOLUTIONS, L.L.C.,  
a Delaware corporation,

SPANISH RIVER INVESTORS, L.L.C.,  
a Delaware corporation,

THE BACKEND COMPANY OF AMERICA, INC.,  
a Florida corporation,

THE SHOPPERS EDGE, L.L.C.,  
a Delaware corporation,

TRIAD MARKETING GROUP, INC,  
a Florida corporation, and

TRITELL OF NEVADA, L.L.C.,  
a Nevada corporation,

Defendants.

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## **COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“Commission”), by its undersigned attorneys, alleges:

1. The Commission 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 permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief against Defendants for engaging in unfair or deceptive acts or practices in violation of Section 5(a) of

the FTC Act, 15 U.S.C. § 45(a), and for engaging in deceptive or abusive telemarketing acts or practices in violation of the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter 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.

3. Venue in the Southern District of Florida is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

### **PLAINTIFF**

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by the FTC Act. 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. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the Telemarketing Sales Rule, and to secure such equitable relief as is appropriate in each case, including restitution for injured consumers and disgorgement. 15 U.S.C. §§ 53(b), 57b and 6105(b).

### **DEFENDANTS**

5. Defendant Ira Smolev is and was the majority stock owner and Chief Executive Officer of Defendants Triad Discount Buying Service, Inc., Member Services of America, L.L.C., Premier Marketing Services of America, L.L.C. and other affiliated companies. He is and was an officer,

manager and/or direct or indirect shareholder of each of the corporate Defendants. 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 the corporate Defendants set forth in this Complaint. Defendant Ira Smolev transacts or has transacted business in this district.

6. Defendant Bruce Turiansky was the Executive Vice-President of Marketing for Defendants Triad Discount Buying Service, Inc., Member Services of America, L.L.C., and other affiliated companies, and the President of Defendant Inter\*Act Travel, Inc. 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 the corporate Defendants set forth in this Complaint. Defendant Bruce Turiansky transacts or has transacted business in this District.

7. Defendant Richard Kaylor was the President and Chief Operating Officer of Defendants Triad Discount Buying Service, Inc., Member Services of America, L.L.C. and other affiliated companies. 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 the corporate Defendants set forth in this Complaint. Defendant Richard Kaylor transacts or has transacted business in this District.

8. Defendant Triad Discount Buying Service, Inc., is a Florida corporation with its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Triad Discount Buying Service, Inc., transacts or has transacted business in this district.

9. Defendant Member Service of America, L.L.C., d.b.a, Best Price USA, is a Nevada limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd.,

Boca Raton, FL 33432. Member Service of America, L.L.C. transacts or has transacted business in this district.

10. Defendant Orchid Associates, L.L.C., is a Florida limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Orchid Associates, L.L.C. transacts or has transacted business in this district.

11. Defendant Premier Membership Services, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Premier Membership Services, L.L.C. transacts or has transacted business in this district.

12. Defendant Inter\*Act Travel, Inc., (“Inter\*Act”) is a Florida corporation which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Inter\*Act transacts or has transacted business in this district.

13. Defendant Inter\*Communications, Inc., is a Utah corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Inter\*Communications, Inc., transacts or has transacted business in this district.

14. Defendant Consumer Data Depot, L.L.C. is a Delaware corporation which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Consumer Data Depot, L.L.C. transacts or has transacted business in this district.

15. Defendant ERevenue Partners, L.L.C. is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. ERevenue Partners, L.L.C. transacts or has transacted business in this district.

16. Defendant FAR Services, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. FAR Services, L.L.C. transacts or has transacted business in this district.

17. Defendant Linden Investments, L.L.C. is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Linden Investments, L.L.C. transacts or has transacted business in this district.

18. Defendant Lynstrom Information Service, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Lynstrom Information Service, L.L.C. transacts or has transacted business in this district.

19. Defendant Premier Club Services, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Premier Club Services, L.L.C. transacts or has transacted business in this district.

20. Defendant Premier Marketing Services of America, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Premier Marketing Services of America, L.L.C. transacts or has transacted business in this district.

21. Defendant Residents Resource Network, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Residents Resource Network, L.L.C. transacts or has transacted business in this district.

22. Defendant Revenue Solutions, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Revenue Solutions, L.L.C transacts or has transacted business in this district.

23. Defendant Spanish River Investors, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Spanish River Investors, L.L.C. transacts or has transacted business in this district.

24. Defendant The Backend Company of America, Inc. is a Florida corporation with its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. The Backend Company of America, Inc. transacts or has transacted business in this district.

25. Defendant The Shoppers Edge, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. The Shoppers Edge, L.L.C. transacts or has transacted business in this district.

26. Defendant Triad Marketing Group, Inc. is a Florida corporation with its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Triad Marketing Group, Inc. transacts or has transacted business in this district.

27. Defendant Tritell of Nevada, L.L.C., is a Nevada limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432. Tritell of Nevada, L.L.C. transacts or has transacted business in this district.

### **COMMERCE**

28. At all times relevant to this complaint, Defendants' course of trade is in or affecting commerce within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44.

## **DEFENDANTS' COURSE OF CONDUCT**

29. Since at least 1997, Defendants have been engaged in a common enterprise nationwide to advertise, market, promote, offer to sell, sell and distribute memberships in buying services and other services under various names, including Triad Discount Buying Service, Best Price USA, America's Advantage, Discounts USA, FUNdamentals and



others. To promote the memberships, Defendants have engaged in a telemarketing campaign directly or through contracts with third parties who telemarket their own products. Defendants have provided scripts and training on how the third party telemarketers should market the memberships.

30. The third party telemarketers have been engaged in telemarketing campaigns through inbound calls in response to catalogues, general media advertising (including infomercials), and direct mail solicitations (including postcards promoting sweepstakes or prize promotions) to sell goods or services, such as foods, dietary supplements, gadgets or magazine subscriptions. Defendants and their third party telemarketers have also sold the memberships through “outbound” telemarketing calls, *i.e.*, calls initiated by Defendants or the third party telemarketers.

31. The catalogues, advertising and direct mail solicitations used by the third party telemarketers to solicit inbound calls provided information about the telemarketers’ goods or services, but generally did not disclose that the consumers calling to order the telemarketers’ goods or services also would receive a sales pitch for additional goods or services.

32. Generally, when consumers called the telemarketers to order the goods or services advertised by the telemarketers, consumers were asked to provide billing information, such as a credit card or bank account number, to pay for the telemarketers’ goods or services. At the time that the telemarketers asked for the consumers’ billing information, the telemarketers did not disclose that the consumers’ billing information might be turned over to a third party or used to pay for other goods or services.

33. After obtaining the billing information to process the initial sales transaction, the third party telemarketers then “upsold” Defendants’ memberships. “Upselling” is a telemarketing technique where

one seller sells its products or services through inbound or outbound telemarketing calls, and then solicits a second seller's goods or services after the consumer has already provided a credit card number to purchase the product or service initially offered by the telemarketer.

34. The third party telemarketers often introduced Defendants' memberships as a "thank you" for the initial sales transaction. The third party telemarketers then read the sales scripts provided by the Defendants. The sales scripts represented that "we" would send the consumer a free, no obligation 30-day trial membership in a buying service providing discount prices. The sales script then stated that if the consumer chose to continue as a member, the service would cost a specified amount per month, "billed annually, in advance." In numerous instances, the telemarketers stated that "I'm going to rush you your free Trial Membership kit" and that "if you don't save at least \$1000 this year, we'll give you a full refund."

35. The Defendants' scripts read by the third party telemarketers did not disclose, in a manner consumers were likely to notice and understand, that: (a) the buying service would charge the consumer's credit card the annual membership fee shortly after the 30-day membership ended, unless the consumer called the buying service within 30 days to cancel the membership; and (b) the buying service would charge the consumer's credit card the annual membership fee every year thereafter, unless the consumer called the buying service to cancel the membership. In many instances, Defendants completely failed to disclose the above facts regarding the terms of the buying service membership.

36. In numerous instances, Defendants, directly or through the third party telemarketer, simply announced that the consumer would receive a 30-day trial membership and a membership kit in the mail, and did not request the consumer's authorization either to send the membership kit or to charge the

consumer's credit card for the membership. Neither a consumer's willingness to receive a membership kit nor the consumer's failure to object when Defendants, directly or through the third party telemarketer, announced that the consumer would receive a membership kit, constituted authorization to charge the consumer's credit card.

37. If consumers agreed to accept a trial membership, and in numerous instances, even if consumers did not agree, the third party telemarketers provided the consumers' names and credit card numbers or other billing information to Defendants for the purpose of enrolling these consumers for trial memberships.

38. Shortly after receiving the consumer's name and billing information, Defendants mailed, by third-class bulk mail, a membership kit to the consumer. The kit disclosed that the consumer had to call to cancel the membership to avoid a credit card charge, and the telephone number that the consumer had to call to cancel the membership. Many consumers, however, did not open these kits because the kits appeared to be unsolicited promotional or sales materials.

39. Within about 45 days after receiving the consumer's name and billing information, Defendants charged each such consumer's credit card, generally using Defendants' merchant account, or debited each such consumer's bank account and also charged the consumer's credit card for "renewal" of the membership in each subsequent year.

40. After obtaining consumers' credit card numbers, directly or from their third party telemarketers, for the purpose of enrolling consumers in a membership service, Defendants routinely retained the consumers' credit card numbers. This fact was not disclosed to consumers by Defendants or the third party telemarketers. Subsequently, in making outbound calls to market additional membership

services to many of these same consumers, Defendants, with the consumers' credit card numbers already in their possession, merely asked the consumer to verify the last four digits and the expiration date of the consumer's credit card. With the updated expiration date, Defendants were able to charge the consumers' credit cards for the additional membership services.

41. In numerous calls by Defendants to consumers, in the course of soliciting consumers to accept membership services, Defendants asked consumers for personal identifying information, such as mother's maiden name and date of birth, ostensibly for the consumer to use as a password in case consumers wanted to contact Defendants about the buying service. Defendants, however, rarely, if ever, asked consumers for their personal identifying information when consumers called with questions.

42. Defendants received a large number of complaints from consumers who stated that they were signed up for 30-day memberships without their authorization or complained that they did not understand that they had to call and cancel the membership to avoid charges to their credit cards. Despite this, Defendants continued to charge consumers' credit cards without taking adequate steps to ensure that its third party telemarketers obtained authorization from consumers for such charges and disclosed the cancellation terms. Furthermore, numerous consumers complained to Defendants that they did not know how Defendants got their billing information and that they had never authorized Defendants to obtain or use their billing information. Despite this, Defendants failed to take adequate steps to ensure that consumers were told that their credit card numbers and other billing information were being turned over by the third party telemarketers to Defendants for the purposes of enrolling consumers in, and charging consumers for, Defendants' membership services.

43. During the course of Defendants' marketing and sale of memberships in buying services and other services, directly and through third party telemarketers, numerous consumers who were signed up by Defendants did not agree to accept 30-day introductory memberships and did not recall receiving necessary information about cancellation and automatic renewals. In some instances, consumers did not receive a sales pitch for the trial memberships, yet Defendants placed charges for the memberships on their credit cards.

### **THE FEDERAL TRADE COMMISSION ACT**

44. 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."

### **VIOLATIONS OF SECTION 5(a) OF THE FTC ACT**

#### **COUNT I**

45. Since at least 1997, in numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale, or distribution of buying service memberships and other memberships, Defendants, directly or through their third party telemarketers, have represented, expressly or by implication, that consumers who agree to the offer of a thirty-day trial membership incur no obligation to take any action to avoid having their credit cards charged for the membership.

46. In truth and in fact, consumers who agree to the trial membership offer must call a toll-free telephone number within thirty days to cancel to avoid having their credit cards charged an annual fee for the membership.

47. Therefore, the representations set forth in paragraph 45 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## COUNT II

48. Since at least 1997, in numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale, or distribution of buying service memberships and other memberships, Defendants, directly or through their third party telemarketers, have represented, expressly or by implication, that consumers who agree to the offer of the membership will receive a “no obligation” or “risk-free” trial membership.

49. Defendants have failed to disclose or to disclose adequately to consumers:

a. That a consumer who fails to contact Defendants within 30 days and cancel the trial membership is automatically enrolled as a member and the consumer’s credit card is charged an annual fee; and

b. That a member’s credit card is charged a renewal fee each subsequent year unless the member cancels the membership.

These facts would be material to consumers in their decision to accept a trial membership offer or purchase a membership.

50. In light of the representations set forth in paragraph 48, the failure to disclose or to disclose adequately the material information set forth in paragraph 49 is a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## COUNT III

51. In numerous instances, in connection with the advertising promotion, marketing, offering for sale, sale, or distribution of buying service memberships and other memberships, Defendants, directly or through their third party telemarketers, have represented, directly or by implication, through, *inter alia*,

mailings, credit card charges or checking account debits, that consumers agreed to accept the trial memberships, or agreed to purchase the memberships, for which Defendants charged them.

52. In truth and in fact, in numerous instances, consumers did not agree to accept the trial memberships, or did not agree to purchase the memberships, for which Defendants charged them.

53. Therefore, the representations set forth in paragraph 51 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.

§ 45(a).

#### **COUNT IV**

54. Since at least 1997, in numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale, or distribution of various products, buying service memberships and other memberships, Defendants, directly or through their third party telemarketers, have represented, expressly or by implication, that only the cost of the products purchased from Defendants' third party telemarketers will be charged to the consumers' credit card accounts and no other charges to the consumers' credit card accounts will be made without the consumers' further express authorization.

55. In truth and in fact, in numerous instances, in addition to being charged for the cost of products purchased from Defendants' third party telemarketers, consumers' credit card accounts were charged for the annual cost of memberships in buying services or other membership services without the consumers' further express authorization.

56. Therefore, the representations set forth in paragraph 54 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **COUNT V**

57. Since at least 1997, in numerous instances, in connection with the advertising, promotion, marketing, offering for sale, or distribution of various products, Defendants, directly or through their third party telemarketers, have represented, expressly or by implication, that Defendants' third party telemarketers are collecting consumers' financial information, such as credit card numbers, to pay for the products ordered from the third party telemarketers.

58. Defendants, directly and through their third party telemarketers, have failed to disclose to consumers that the consumer's financial information is turned over to Defendants which charges the consumer's credit card for a buying service membership or other membership. These facts would be material to consumers in their decision to purchase Defendants' third party telemarketers' products.

59. In light of the representations set forth in paragraph 57, the failure to disclose the material information set forth in paragraph 58 was, and is, 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**

60. 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 ("TSR"), 16 C.F.R. Part 310, with a Statement of Basis and Purpose, 60 Fed. Reg. 43842 (Aug. 23, 1995). The TSR became effective on December 31, 1995, and since then has remained in full force and effect.

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



62. The TSR prohibits sellers and telemarketers “[b]efore a customer pays for goods or services offered ... from failing to disclose, in a clear and conspicuous manner ... [a]ll material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer.” 16 C.F.R. § 310.3(a)(1)(ii).

63. The TSR requires telemarketers in outbound telephone calls to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following:

- a. The identity of the seller;
- b. That the purpose of the call is to sell goods and services; and
- c. The nature of the goods or services.

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

64. The TSR’s Statement of Basis and Purpose explains that, in the case of “multiple purpose” outbound telephone calls, “where the seller or telemarketer plans, in at least some of those calls, to sell goods or services, the disclosures required by this section of the rule [§310.4(d)] must be made ‘promptly,’ during the first part of the call, before the non-sales portion of the call takes place.” 60 Fed. Reg. at 43856.

65. The TSR 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 TSR, 16 C.F.R. § 310.3(b).

66. 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 TSR 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 TELEMARKETING SALES RULE

### COUNT VI

67. Since at least 1997, in numerous instances, in connection with the telemarketing of buying service memberships and other memberships, Defendants, directly or through their third party telemarketers, have failed to disclose, in a clear and conspicuous manner, before consumers pay for the memberships, all material restrictions, limitations or conditions to purchase, receive or use the goods or services that are the subject of the offers, including, but not limited to:

- a. That a consumer who fails to contact Defendants within 30 days and cancel the trial membership is automatically enrolled as a member and the consumer's credit card is charged an annual fee; and
- b. That a member's credit card is charged each subsequent year unless the member cancels the membership.

68. Therefore, Defendants' acts and practices as set forth in paragraph 67 violate Section 310.3(a)(1)(ii) of the TSR, 16 C.F.R. § 310.3(a)(1)(ii).

### COUNT VII

69. Since at least 1997, in numerous instances, in connection with the telemarketing of buying service memberships and other memberships, Defendants, directly or through their third party telemarketers, in "outbound telephone calls," as that term is defined in the TSR, 16 C.F.R. § 310.2 (n), have failed to disclose promptly and in a clear and conspicuous manner to the person receiving the call:

- a. The identity of the seller;
- b. That the purpose of the call is to sell goods or services; and

c. The nature of the goods or services.

70. Therefore, Defendants' acts and practices as set forth in paragraph 69 violate Sections 310.4(d)(1), (2) and (3) of the TSR, 16 C.F.R. §§ 310.4(d)(1), (2), and (3).

### **COUNT VIII**

71. Since at least 1997, in numerous instances, in connection with the telemarketing of buying service memberships and other memberships, Defendants' third party telemarketers:

a. Have failed to disclose, in a clear and conspicuous manner, before consumers pay for the memberships, all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offers, thereby violating Section 310.3(a)(1)(ii) of the TSR, 16 C.F.R § 310.3 (a)(1)(ii); and

b. In "outbound telephone calls," as that term is defined in the TSR, 16 C.F.R. §§ 310.2(n), have failed to disclose promptly and in a clear and conspicuous manner to the person receiving the call the identity of the seller, and that the purpose of the call is to sell goods or services, thereby violating Section 310.4(d)(1) and (2) of the TSR, 16 C.F.R. §§ 310.4(d)(1) and (2).

72. Knowing, or consciously avoiding knowing, that the contracted telemarketers have been engaged in acts or practices that violate the TSR as set forth in paragraph 71 above, Defendants have provided various services to their third party telemarketers, including, but not limited to, creating and providing scripts to be used in the telemarketing of memberships, providing training to the telemarketers on how to promote the memberships, processing charges to consumers for the memberships using Defendants' merchant account, and providing customer service. Defendants have thereby provided

substantial assistance or support to their third party telemarketers, thereby violating Section 310.3(b) of the TSR, 16 C.F.R. § 310.3(b).

### **CONSUMER INJURY**

73. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

### **THIS COURT'S POWER TO GRANT RELIEF**

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

75. 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 this Court to grant 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 or reformation of contracts, and the refund of money.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and pursuant to its own equitable powers:

1. Permanently enjoin and restrain Defendants from engaging or assisting others in engaging in violations of the FTC Act and the TSR;

2. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to, rescission of contracts and restitution, other forms of redress, and the disgorgement of ill-gotten monies; and

3. Award Plaintiff the costs of bringing this action, as well as such additional equitable relief as the Court may determine to be just and proper.

Dated: \_\_\_\_\_, 2001

Respectfully submitted,

WILLIAM E. KOVACIC  
General Counsel

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