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**UNITED STATES DISTRICT COURT  
 MIDDLE DISTRICT OF FLORIDA  
 TAMPA DIVISION**

	)	
FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	Case No. <u>8:08 CV 914-T 27 M55</u>
v.	)	
	)	
INTEGRITY FINANCIAL ENTERPRISES, LLC,	)	<b>COMPLAINT FOR PERMANENT</b>
a limited liability company, also d/b/a	)	<b>INJUNCTION AND OTHER</b>
INFINITE FINANCIAL, and	)	<b>EQUITABLE RELIEF</b>
NATIONAL BENEFIT EXCHANGE,	)	
	)	
NATIONAL BENEFIT EXCHANGE, INC.,	)	
a corporation, and	)	
	)	
ROBERT JAMES FISCHBACH, individually	)	
and as an officer of INTEGRITY FINANCIAL	)	
ENTERPRISES, LLC and NATIONAL BENEFIT	)	
EXCHANGE, INC.,	)	
Defendants.	)	
	)	

Plaintiff, the Federal Trade Commission ("FTC") for its complaint alleges:

- 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 - 6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).
3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

### **PLAINTIFF**

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 - 58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC is also charged with enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101 - 6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such equitable relief as may be

appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

### **DEFENDANTS**

5. Defendant Integrity Financial Enterprises, LLC (“IFE”), is a Florida limited liability company, with its principal place of business at 300 South Duncan Avenue, Clearwater, Florida. IFE also uses or has used Post Office Box 240, Clearwater, Florida. IFE transacts or has transacted business in this District. IFE also does business as Infinite Financial, and as National Benefit Exchange.
6. Defendant National Benefit Exchange, Inc. (“NBE”) is a Florida corporation, that lists its principal place of business as 350 Gulf Boulevard, Indian Rocks Beach, Florida. NBE also uses or has used Post Office Box 240, Clearwater, Florida, and Post Office Box 2917, Clearwater, Florida. NBE transacts or has transacted business in this District.
7. Defendant Robert James Fischbach is an officer, director, or managing member of IFE, and an officer, director, or owner of NBE. In connection with the matters alleged herein, he resides and has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts or practices of IFE and NBE (“the Corporate Defendants”), including the acts and practices set forth in this complaint.

### **COMMON ENTERPRISE**

8. Defendants IFE and NBE have operated together as a common enterprise, while engaging in the deceptive acts and practices and other law violations alleged below. Defendants have conducted the business practices described below through an interrelated network of companies with common ownership, officers, and business functions. They have shared officers, phone numbers, and post office boxes. “National Benefit Exchange” is both incorporated as NBE and is registered as a fictitious name for IFE. NBE’s Web site states that it is “an affiliate of Integrity Financial Enterprises, a FL licensed Consumer Finance Company.” Individual Defendant Fischbach has formulated, directed, and/or controlled, or had authority to control, or participated in the acts and practices of the Corporate Defendants that comprise the common enterprise.

### **DEFENDANTS’ BUSINESS ACTIVITIES**

9. Defendants are sellers of goods and services to consumers. Defendants are also telemarketers that initiate outbound telephone calls to consumers in the United States to induce the purchase of IFE’s and NBE’s goods or services.
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10. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call.
11. At all times relevant to this complaint, Defendants have maintained a substantial course of trade or business in the offering for sale and sale of goods or services via

the telephone, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

12. Since at least 2005, and continuing thereafter, Defendants have telemarketed and sold purported general-purpose credit cards for an advance fee to consumers in the United States.
13. Defendants’ telemarketing typically is directed at consumers who have poor credit histories. In most instances, Defendants have placed unsolicited outbound telephone calls to consumers to offer them a purportedly guaranteed or pre-approved general-purpose credit card, such as a MasterCard with credit limits ranging from \$2,500 to \$7,500 and up to \$1,000 cash advance ability. In some instances, IFE solicits consumers using flyers or letters, to which consumers have responded by calling the telephone number that IFE provides.
14. Defendants’ telemarketers tell consumers that they are offering general-purpose credit cards that may be used anywhere, such as at gas stations or supermarkets.
15. Defendants often promise consumers that they will receive vouchers equal to the amount of the advance fee, which they can apply to future balances on their cards.

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16. During the initial telephone calls with consumers, Defendants request bank account information, including bank routing information and bank account numbers. They also request consumers’ permission to debit their bank accounts for advance fees ranging from \$200 to \$300.

17. Following the initial sales pitch, Defendants begin the “verification” process, mostly using a computer-generated voice. Defendants record the verification, including the consumer’s answers to questions, but the initial sales pitch is not recorded.

Defendants use this verification process to introduce vague “qualifications” to the representations made earlier in their pitch. These qualifications are made in a rapid, computer-generated voice, using long, complicated sentences or phrases that are often difficult to comprehend.

18. Defendants make the following qualifications, among others, during this verification process:

A. whereas the initial pitch represents that the consumer will receive a general-purpose credit card to charge purchases such as gasoline or groceries, the verification says the consumer will receive a “merchant catalogue finance account” or a “benefit merchant finance account,” with cash advance capability; and

B. whereas no additional fees are disclosed during the initial pitch, the verification message rapidly recites a list of additional fees to be debited from the consumer’s bank account, including a \$35 “early termination fee,” and, in some instances, a quarterly “inactivity fee.”

19. Defendants tell consumers that they will receive a written agreement to sign and return to Defendants, and that they will receive a copy of the terms and conditions of their credit card account. Defendants also arrange debiting dates and amounts with

consumers, and ask that the consumer send a cancelled check with the signed agreement to facilitate debit processing.

20. Shortly after the verification process, Defendants debit the consumer's bank account for an advance fee ranging from \$200 to \$300. Defendants either debit the consumer's account for the entire amount, or debit the consumer's account on two different dates, each time for half of the advance fee.
21. During the initial sales pitch, Defendants tell some consumers that they may cancel or change the sale within 72 hours of the debit. Defendants tell other consumers that they may cancel the sale prior to the pre-arranged debit date. However, in numerous instances, Defendants debit the consumer's bank account even when the consumer attempts to cancel within hours or days of the sale to avoid the debit. Furthermore, consumers who attempt to call "customer service" within the designated periods to cancel their purchases and prevent further debits frequently are unable to do so. Many consumers leave numerous voicemail messages, but cannot reach a live representative, and their calls are not returned. In numerous instances, when consumers do reach a live representative, their cancellation requests are rejected or deferred.
22. In some instances, when consumers reach a live representative, Defendants tell them that their cancellation was effective, and by providing a cancellation number, imply that the consumers' bank accounts will not be debited. Despite their assurances that

cancellation was effective, in numerous instances, Defendants still debit the bank accounts of these consumers.

23. Even when consumers succeed in cancelling remaining debits for the advance fee, Defendants sometimes continue to debit consumers' bank accounts for other fees, such as "inactivity fees."
24. Often, after debiting consumers' bank accounts, Defendant IFE sends consumers a "Guaranteed Acceptance Certificate" to sign and return. Similarly, Defendant NBE sends consumers a letter congratulating them for being approved for a \$6,000 National Benefit Exchange Credit Line, and asking them to sign and return the bottom portion of the letter.
25. Consumers do not receive a general-purpose credit card, such as a MasterCard credit card. At most, consumers receive a catalogue card that can be used only to purchase merchandise from a paper or online catalogue. Some consumers receive nothing at all.
26. Consumers who receive a copy of Defendants' merchant catalogues or view Defendants' online catalogues notice the small selection of products offered for purchase, and the high prices of those products. Further, consumers who attempt to purchase merchandise from Defendants' catalogues learn that each such purchase carries large shipping and handling fees, sometimes exceeding the value of the product purchased.

27. Many consumers have complained to Defendants that their solicitation and representations are deceptive and misleading, and for those reasons, among others, the consumers have demanded refunds. However, Defendants frequently rebuff or ignore such refund requests from complaining consumers.
28. Only after contacting a law enforcement agency or the Better Business Bureau are some consumers able to cancel their order and obtain a refund of their advance fee from Defendants. In those instances, Defendants typically still deduct a \$35 “early termination fee” from the consumers’ refunds.

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

29. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

**Count I - Misrepresenting Type of Card**

30. In numerous instances, in connection with the marketing of advance-fee credit cards, Defendants represent, directly or indirectly, expressly or by implication, that after paying a fee, consumers will or are likely to receive a general-purpose credit card, such as a MasterCard.
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31. In truth and in fact, in numerous instances in which Defendants have made the representation above, after paying a fee, consumers do not receive a general-purpose credit card, such as a MasterCard.

32. Therefore, Defendants' representation as set forth in Paragraph 30 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).

**Count II - Misrepresenting Terms of Cancellation Policy**

33. In numerous instances, in connection with the marketing of advance-fee credit cards, Defendants represent, directly or indirectly, expressly or by implication, that:

- A. Defendants provide a cancellation period during which time the consumers can cancel or change the sale, and avoid the debiting of their bank accounts; and
- B. Defendants will honor consumers' requests to cancel their participation in Defendants' advance-fee credit card offer.

34. In truth and in fact, in numerous instances in which Defendants have made the representations above:

- A. Defendants do not provide a cancellation period during which time the consumers can cancel or change the sale, and avoid the debiting of their bank accounts; and
- B. Defendants do not honor consumers' requests to cancel their participation in Defendants' advance-fee credit card offer.

35. Therefore, Defendants' representations as set forth in Paragraph 33 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).

**VIOLATIONS OF THE TELEMARKETING SALES RULE**

36. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101 - 6108, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the Original TSR by issuing a Statement of Basis and Purpose and the final amended Telemarketing Sales Rule (the "TSR"). 68 Fed. Reg. 4580, 4669.
37. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).
38. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any of the following material information:
- A. Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer.  
16 C.F.R.  
§ 310.3(a)(2)(iii);
  - B. Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv).
39. It is an abusive telemarketing act or practice and a violation of the TSR for any seller or telemarketer to request or receive 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. 16 C.F.R. § 310.4(a)(4).

40. 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), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### **Count III - Misrepresenting Central Characteristics of Goods and Services Offered**

41. In numerous instances, in the course of telemarketing advance-fee credit cards, Defendants have misrepresented, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of the credit cards they sell, including that, the credit card is a general-purpose credit card, such as a MasterCard, rather than a card that can be used to purchase items only from Defendants' catalogue.
42. Defendants' practice as alleged in Paragraph 41 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).
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### **Count IV - Misrepresenting Terms of Cancellation Policy**

43. In numerous instances, in the course of telemarketing advance-fee credit cards, Defendants have misrepresented, directly or by implication, a material aspect of the nature or terms of their cancellation policy, including that:

- A. consumers will have a designated period of time in which to review and to cancel or change the advance-fee credit card order before incurring any charges; and
  - B. Defendants will honor consumers' requests to cancel their participation in Defendants' advance-fee credit card offer.
44. Defendants' practice as alleged in Paragraph 43 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

#### **Count V - Telemarketing Advance-Fee Credit Cards**

45. In numerous instances, in connection with the telemarketing of advance-fee credit cards, Defendants have requested or received payment of a fee or consideration in advance of consumers obtaining a credit card when the Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging the acquisition of a credit card for such consumers.
46. Defendants' practice as alleged in Paragraph 45 is an abusive telemarketing practice that violates Section 310.4(a)(4) of the TSR, 16 C.F.R. § 310.4(a)(4).

#### **CONSUMER INJURY**

47. Consumers in the United States have suffered and will continue to suffer injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

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

48. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission of contracts and restitution, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.
49. 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 resulting from Defendants' violations of the TSR, including the rescission and reformation of contracts and the refund of money.

**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, and Section 6(b) of the Telemarketing Act, 15 U.S.C.

§ 6105(b), and the Court's own equitable powers, requests that the Court:

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- A. Award Plaintiff such temporary and 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, an order freezing assets, and immediate access to Defendants' business premises;

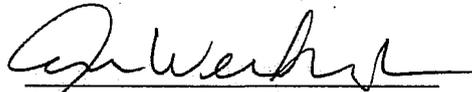
- B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;
- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- D. Award Plaintiff 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

WILLIAM BLUMENTHAL  
General Counsel

LEONARD L. GORDON  
Director, Northeast Region

Dated: 5-9-08



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