

United States District Court  
Middle District of Tennessee  
Nashville Division

Federal Trade Commission, and

State of Tennessee, *ex rel.*  
Robert E. Cooper, Jr., Attorney General and  
Reporter,

Plaintiffs,

v.

United States Benefits, LLC, a limited liability  
company, also d/b/a United States Health, United  
Benefits of America, LLC, UBA, United Benefits,  
United Health Benefits, Health Care America, HCA,  
National Benefits of America, Insurance Specialty  
Group, and Adova Health,

Timothy Thomas, individually and as an officer of  
United States Benefits, LLC, also d/b/a United States  
Health, United Benefits of America, LLC, UBA,  
United Benefits, United Health Benefits, Health  
Care America, HCA, National Benefits of America,  
Insurance Specialty Group, and Adova Health, and

Kennan Dozier, also d/b/a Kennan Dozier Thomas,  
Accentuate Designs, and Accentuate Your Home,  
LLC, individually and as an officer of United States  
Benefits, LLC, also d/b/a United States Health,  
United Benefits of America, LLC, UBA, United  
Benefits, United Health Benefits, Health Care  
America, HCA, National Benefits of America,  
Insurance Specialty Group, and Adova Health,

Defendants.

**Case No. 3:10-0733**

**Nixon Bryant**

**Amended Complaint for  
Permanent Injunction and Other  
Equitable Relief**

Plaintiffs, the Federal Trade Commission (“FTC”) and the State of Tennessee, 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. §§ 6101-6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, 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 the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

2. The State of Tennessee brings this action under the Tennessee Consumer Protection Act of 1977 (“TCPA”), Tenn. Code Ann. § 47-18-101, *et seq.*, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement, and other equitable and statutory relief for Defendants’ acts or practices in violation of Tenn. Code Ann. § 47-18-104 of the TCPA.

### **Jurisdiction and Venue**

3. 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), and over the claims of the State of Tennessee under 28 U.S.C. § 1367.

4. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b) and (c).

### **Plaintiffs**

5. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, among other things, 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. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 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 rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 6102(c), and 6105(b).

6. Plaintiff State of Tennessee is one of the fifty sovereign states of the United States. Robert E. Cooper, Jr., is the Attorney General and Reporter of the State of Tennessee (“Attorney General”), and has been duly appointed to serve as Attorney General by the Tennessee Supreme Court. The Attorney General brings this action in his official capacity and at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance (“Director”), under the TCPA, Tenn. Code Ann. § 47-18-101, *et seq.* The Attorney General and the Director have reason to believe that the above-named Defendants have violated and continue to violate the TCPA by engaging in unfair and deceptive marketing and sales in whole or in part in the State of Tennessee, and that this action is in the public interest.

#### **Defendants**

7. Defendant United States Benefits, LLC, also doing business as United States Health, United Benefits of America, LLC, UBA, United Benefits, United Health Benefits, Health Care America, HCA, National Benefits of America, Insurance Specialty Group, and Adova Health (“U.S. Benefits”), is a limited liability company with its principal place of business at 1283 Murfreesboro Road, Suite 420, Nashville, TN 37217. U.S. Benefits is licensed to sell

insurance in Tennessee. In addition, it is a telemarketer that initiates outbound telephone calls to induce consumers to purchase goods or services, and transacts or has transacted business in this District.

8. Defendant Timothy Thomas is an owner and chief executive officer of U.S. Benefits. He resides in this District and, in connection with the matters alleged herein, transacts or 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, had the authority to control, or participated in the acts and practices of U.S. Benefits, including the acts and practices set forth in this complaint. In addition, Thomas is licensed to sell insurance in Tennessee.

9. Defendant Kennan Dozier is an owner, managing officer, and registered agent of U.S. Benefits. She resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of U.S. Benefits, including the acts and practices set forth in this complaint. In addition, Dozier is licensed to sell insurance in Tennessee.

### **Commerce**

10. 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. Defendants have carried out their scheme from business premises in Tennessee.

### **Defendants’ Business Activities**

11. Defendant U.S. Benefits initiates outbound telephone calls to consumers in the United States to induce the purchase of goods or services. U.S. Benefits is a “telemarketer”

engaged in “telemarketing,” as defined by the TSR, 16 C.F.R. § 310.2.

12. Since at least 2007, Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of memberships to benefits associations by use of one or more telephones and which involves more than one interstate telephone call.

**Defendants Call Consumers in Need of Health Insurance.**

13. U.S. Benefits representatives call consumers whose contact information U.S. Benefits has purchased from websites to which the consumers submitted requests for information on major medical health insurance plans. Major medical health insurance generally involves an arrangement between an insurance company and a consumer in which the insurance company agrees to pay a substantial portion of the healthcare expenses that the consumer might incur in exchange for payment from the consumer. U.S. Benefits has purchased consumer contact information, for example, from InsureMe.com. Consumers seeking information on health insurance provided their contact information to this website with the expectation of obtaining information on major health insurance plans. The website fails to clearly and conspicuously disclose: (1) that consumers will receive phone calls in response to their inquiries, (2) how many calls consumers will receive, or (3) what companies will call the consumers.

14. Many of the consumers whom U.S. Benefits calls do not have health insurance because they have lost their jobs or have been diagnosed with pre-existing medical conditions.

**Defendants Make Material Misrepresentations.**

15. During the calls, U.S. Benefits representatives tell consumers that they are calling from U.S. Benefits and state that the call is in response to the consumers’ online requests for health insurance information. They ask the consumers for personal background information, such as: the consumers’ ages and occupations; whether the consumers have health insurance;

and if they do not have insurance, the type of insurance they are looking for.

16. Representatives claim that for a one-time enrollment fee ranging from approximately \$100 to \$500 and a monthly payment ranging from approximately \$300 to \$1,300, U.S. Benefits can provide an affordable insurance plan that provides wide-ranging medical coverage, including prescription drug discounts and dental and vision care. One consumer reported, for example, that a representative gave the following description of the plan:

IAB Standard A Medical Coverage with no deductible and no waiting period except for surgery, which had a 30-day waiting period;

Dental coverage for \$1,000, which included two annual cleanings at no cost, 20% co-pay for other services such as fillings and a 50% co-pay on crowns;

Vision benefits;

Chiropractic services;

Critical illness coverage of \$10,000 for major illnesses;

Accident medical coverage of \$25,000 to pay for emergency room and medical care in case of an accident . . . .

17. On numerous occasions, representatives have referred to the monthly payments consumers must make as “premiums.” In addition, representatives have told consumers that U.S. Benefits sells insurance plans on behalf of insurance companies, such as Blue Cross/Blue Shield, Aegis, and AIG. Representatives state further that the plan is available immediately even to people with pre-existing medical conditions.

18. In numerous instances, representatives tell consumers to purchase the plan immediately because it is available only for a limited time. If consumers ask for written information about the plan before buying it, representatives refuse and state that they are not allowed to provide such information.

19. Once consumers express interest in buying the plan, representatives transfer the call to other U.S. Benefits representatives who arrange for payment for the plan by asking for the consumers' bank account or credit card information. They also guide the consumers through a verification process that consists of a series of recorded yes-or-no questions to confirm that the consumers are interested in purchasing the plan. If consumers do not understand any of the questions, the representatives can stop the recording and provide clarification before resuming the questions.

20. In multiple instances, representatives have instructed consumers to answer "yes" to all of the questions posed during the verification recording. Further, when some consumers have asked during the recording whether they were purchasing something other than health insurance, representatives have assured them that they were in fact purchasing an insurance plan. Following completion of the verification questions, representatives tell consumers that they will receive information about the plan in the mail.

21. After U.S. Benefits obtains the consumers' billing information, the benefits associations charge the consumers' bank accounts or credit cards and send the consumers information about the plan.

22. Only after consumers are charged by the benefits associations and receive written information about the plan do many consumers discover that U.S. Benefits sold them benefits association memberships instead of major medical health insurance. The written materials are replete with statements that the memberships are not health insurance. Moreover, Defendants themselves have admitted to Tennessee insurance regulators that the memberships are not health insurance. Consumers do not receive insurance policies or insurance cards indicating that they have purchased health insurance of any kind. The memberships, in contrast to major medical health insurance, merely purport to provide consumers with access to various pre-negotiated

discounts on healthcare and nonhealthcare-related services and products, death benefits, dismemberment benefits, limited accident benefits, identity theft protection, and legal assistance. The discounts purportedly apply to doctor's office visits and prescription drugs, through a network of providers with whom the associations have contracted.

23. Consumers have been unable to use the memberships like major medical health insurance to pay for their medical expenses, or receive significant discounts or savings on goods or services. For example, U.S. Benefits representatives told one consumer that the consumer's hospital and doctor's office would accept the memberships to pay for the cost of visits and services, such as routine medical check-ups; however, when the consumer tried to use the memberships at the identified providers, the providers did not accept the memberships or offer any benefits to the consumer. When another consumer attempted to use one of the prescription drug discount cards at a local pharmacy, the consumer received a discount that was considerably less than the discount that the U.S. Benefits representatives had previously promised.

24. Ultimately, when consumers have contacted U.S. Benefits to complain, cancel their memberships, and seek refunds, the company has routinely ignored their requests. Some consumers have received refunds only after directly requesting them from the benefits associations or seeking the assistance of the Better Business Bureau or law enforcement agencies. Some of these consumers have received only partial refunds.

#### **Defendants Place Unwanted Phone Calls.**

25. After December 1, 2008, in connection with the marketing of benefits association memberships, U.S. Benefits has also delivered prerecorded messages to consumers, stating that the company is responding to the consumers' online requests for information about healthcare benefits, and prompting consumers to dial a number on their phone keypad if they wish to speak with a representative. The messages do not disclose that the company is calling to sell benefits



association memberships, and they also do not disclose the names of those benefits associations.

26. In addition, after September 1, 2009, Defendants have delivered prerecorded messages to consumers who had not previously provided the benefits associations with an express written agreement authorizing the benefits associations to place prerecorded calls to the consumers.

27. Moreover, since at least 2007, Defendants have placed numerous calls to consumers who have their phone numbers listed on the National Do Not Call Registry.

#### **Defendant Thomas's Role**

28. Defendant Thomas has orchestrated much of the company's business activities, including: establishing telemarketing plans; packaging benefits association memberships; hiring, firing, and training telemarketers; and overseeing sales practices. He has also received payment directly from benefits associations for U.S. Benefits' marketing of memberships.

29. Defendant Thomas is jointly and severally liable for the conduct of Defendant U.S. Benefits because he has the authority to control and direct the company's activities; has participated in those activities; and has had knowledge of the company's misrepresentations and other misconduct.

#### **Defendant Dozier's Role**

30. Defendant Dozier is married to Defendant Thomas. She has participated in U.S. Benefits' business activities, including contracting with benefits associations on behalf of the company and hiring and training U.S. Benefits representatives. She has received millions of dollars in payments from benefits associations for whom U.S. Benefits sold memberships.

31. Defendant Dozier is jointly and severally liable for the conduct of Defendant U.S. Benefits because she has the authority to control and direct the company's activities; has participated in those activities; and has had knowledge of the company's misrepresentations and

other misconduct.

**Violations of Section 5 of the FTC Act**

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

33. Misrepresentations or deceptive omissions of material fact likely to mislead consumers acting reasonably under the circumstances constitute deceptive acts or practices prohibited by Section 5 of the FTC Act.

**Count I**

**Making Misrepresentations of Material Fact**

34. In numerous instances, in connection with the marketing of benefits association memberships, Defendants have represented, directly or indirectly, expressly or by implication, that the memberships are major medical health insurance;

35. In truth and in fact, the memberships are not major medical health insurance.

36. Therefore, Defendants' representation, as set forth in Paragraph 34 of this Complaint, 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).

**Violations of the TSR**

37. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act. The FTC adopted the original TSR in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

38. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services that are the subject of a sales offer. 16

C.F.R. § 310.3(a)(2)(iii).

39. Among other things, the 2003 amendments to the TSR established a do-not-call registry, maintained by the Commission (the “National Do Not Call Registry” or “Registry”), of the phone numbers of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at [donotcall.gov](http://donotcall.gov).

40. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call, or over the Internet at [donotcall.gov](http://donotcall.gov), or otherwise by contacting law enforcement authorities.

41. Under the TSR, an “outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution. 16 C.F.R. § 310.2(u).

42. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to numbers on the Registry in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

43. The TSR requires telemarketers in an outbound telephone call to disclose truthfully, promptly, and in a clear and conspicuous manner the following, among other things:

- A. The identity of the seller; and
- B. The nature of the goods or services.

16 C.F.R. § 310.4(d)(1) and (3). Amendments to the TSR that became effective on December 1, 2008, also specify that a seller or telemarketer that initiates any outbound telephone call to deliver a prerecorded message must, among other requirements, promptly make these disclosures in the prerecorded message. 16 C.F.R. § 310.4(b)(1)(v)(B)(ii).

44. As amended, effective September 1, 2009, the TSR prohibits initiating a

telephone call that delivers a prerecorded message to induce the purchase of any good or service unless the seller has obtained from the recipient of the call an express agreement, in writing, that evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller. The express agreement must include the recipient's telephone number and signature, must be obtained after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person, and must be obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service. 16 C.F.R. § 310.4(b)(1)(v)(A).

45. 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 II**

### **Misrepresenting Material Information**

46. In numerous instances, in the course of telemarketing benefits association memberships, Defendants have misrepresented, directly or by implication, that the memberships are major medical health insurance.

47. Defendants' acts and practices, as described in Paragraph 46 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

## **Count III**

### **Violating the National Do Not Call Registry**

48. In numerous instances, in connection with the telemarketing of benefits association memberships, Defendants have engaged in, or caused others to engage in, initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry

in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

#### **Count IV**

##### **Failing to Make Required Oral Disclosures**

49. In numerous instances, in the course of telemarketing benefits association memberships, Defendants have made, or have caused a telemarketer to make, outbound telephone calls, including, on or after December 1, 2008, outbound telephone calls to deliver prerecorded messages, in which the telemarketer or message failed to disclose promptly and in a clear and conspicuous manner to the person receiving the call:

- A. The identity of the seller; or
- B. The nature of the goods or services.

50. The Defendants' practices as alleged in Paragraph 49 are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(d) and 16 C.F.R. § 310.4(b)(1)(v)(B)(ii).

#### **Count V**

##### **Initiating Unlawful Prerecorded Messages on or After September 1, 2009**

51. In numerous instances on or after September 1, 2009, in the course of telemarketing benefits association memberships, Defendants have initiated, or caused a telemarketer to initiate, outbound telephone calls that delivered prerecorded messages when the persons to whom these telephone calls were made had not expressly agreed, in writing, to authorize the seller to place prerecorded calls to such person.

52. Defendants' acts or practices, as described in Paragraph 51 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(b)(1)(v)(A).

##### **Violations of the TCPA**

53. Tenn. Code Ann. § 47-18-104(a) prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce.

54. Tenn. Code Ann. § 47-18-104(b)(1) prohibits falsely passing off goods or services as those of another.

55. Tenn. Code Ann. § 47-18-104(b)(2) prohibits causing a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services.

56. Tenn. Code Ann. § 47-18-104(b)(3) prohibits causing a likelihood of confusion as to affiliation, connection or association with, or certification by, another.

57. Tenn. Code Ann. § 47-18-104(b)(5) prohibits representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have, or that a person has a sponsorship approval, status, affiliation or connection that the person does not have.

58. Tenn. Code Ann. § 47-18-104(b)(7) prohibits representing that goods or services are of a particular standard, quality or grade, if they are of another.

59. Tenn. Code Ann. § 47-18-104(b)(12) prohibits representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law.

60. Tenn. Code Ann. § 47-18-104(b)(14) prohibits causing confusion or misunderstanding with respect to the authority of a salesperson, representative or agent to negotiate the final terms of a consumer transaction.

61. Tenn. Code Ann. § 47-18-104(b)(19) prohibits representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve.

62. Tenn. Code Ann. § 47-18-104(b)(22) prohibits using any advertisement containing an offer to sell goods or services when the offer is not a bona fide effort to sell the advertised goods or services.

63. Tenn. Code Ann. § 47-18-104(b)(27) prohibits engaging in any other act or

practice which is deceptive to the consumer or to any other person.

## **Count VI**

### **Making Misrepresentations of Material Fact**

64. In numerous instances, in connection with the marketing of benefits association memberships, Defendants have represented, directly or indirectly, expressly or by implication, that the memberships are major medical health insurance;

65. In truth and in fact, the memberships are not major medical health insurance;

66. Therefore, Defendants' representation, as set forth in Paragraph 64 of this Complaint, is false and misleading and constitutes a deceptive act or practice in violation of Tenn. Code Ann. § 47-18-104(a), (b)(1), (b)(2), (b)(3), (b)(5), (b)(7), (b)(12), (b)(14), (b)(19), (b)(22), and (b)(27).

### **Consumer Injury**

67. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act, TSR, and TCPA. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or 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**

68. 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 any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

69. 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 TSR, including the rescission and reformation of contracts, and the refund of money.

70. Tenn. Code Ann. § 47-18-108(a) and (b) empower this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the TCPA. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission of contracts and restitution, and the disgorgement of monies, to prevent and remedy any violation of any provision of law enforced by the Attorney General.

#### **Prayer for Relief**

Therefore, Plaintiffs, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b; Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b); Tenn. Code Ann. § 47-18-108(a) and (b); and the Court's own equitable powers, request that the Court:

#### **Prayer by Both Plaintiffs**

A. Enter judgment against Defendants and in favor of Plaintiffs for each violation alleged in this Complaint;

#### **Prayer by Plaintiff FTC**

B. Award Plaintiff FTC 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, an order freezing assets, a financial accounting, immediate access to business premises, and the appointment of a receiver;

C. Enter a permanent injunction to prevent future violations of the FTC Act and TSR



by Defendants;

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

**Prayer by Plaintiff State of Tennessee**

E. Award Plaintiff State of Tennessee 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, an order freezing assets, a financial accounting, immediate access to documents, and the appointment of a receiver, and that such orders and injunctions be issued without bond pursuant to Tenn. Code Ann. § 47-18-108(4);

F. Enter a permanent injunction to prevent future violations of the TCPA by Defendants;

G. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TCPA, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

H. That this Court adjudge and decree that the Defendants have each engaged in the aforementioned acts or practices which violate the TCPA;

I. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. § 47-18-116;

J. That this Court adjudge and decree that the Defendants were each placed on notice that their aforesaid conduct was in violation of the TCPA, and that their continuing

violations of the law have been knowing and persistent;

K. That this Court enter an order temporarily or permanently revoking Defendants' business license, as well as any other certificate or document authorizing Defendants to engage in the aforesaid marketing and sales practices within the borders of the State of Tennessee.

L. That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses, including statutory and pre-judgment interest, suffered by reason of the alleged violations of the TCPA, and requiring that Defendants be taxed with the cost of distributing and administering the same, pursuant to Tenn. Code Ann. § 47-18-108(b)(1);

M. That this Court enter judgment against Defendants and in favor of the State of Tennessee for the reasonable costs and expenses of the investigation and prosecution of Defendants' actions, including attorney fees, expert and other witness fees, as provided by Tenn. Code Ann. §§ 47-18-108(a)(5) and (b)(4);

N. That this Court adjudge and decree that each Defendant separately pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State of Tennessee for each and every violation of the TCPA as provided by Tenn. Code Ann. § 47-18-108(b)(3);

O. That all costs in this case be taxed against Defendants;

P. Award Plaintiff State of Tennessee the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

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Date: December 1, 2010

Respectfully submitted,

Willard K. Tom  
General Counsel

/s/Arturo DeCastro

Arturo A. DeCastro, DC Bar #992023  
Kelly Horne, CA Bar #242675  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, H-286  
Washington, DC 20580  
(202) 326-2747 (DeCastro)  
(202) 326-3031 (Horne)  
(202) 326-3395 (Fax)  
adecastro@ftc.gov  
khorne@ftc.gov

Attorneys for Plaintiff  
Federal Trade Commission

/s/Robert E. Cooper, Jr.

Robert E. Cooper, Jr.  
Attorney General and Reporter

/s/Jeff Hill

Olha N.M. Rybakoff, TN Bar # 24254  
Jeff Hill, TN Bar #016731  
Assistant Attorneys General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
425 Fifth Avenue North, 3rd Floor  
Nashville, TN 37243  
Phone: (615) 532-2590 (Rybakoff)  
(615) 741-2614 (Hill)  
Fax: (615) 532-2910  
olha.rybakoff@ag.tn.gov  
jeff.hill@ag.tn.gov

Attorneys for Plaintiff  
State of Tennessee