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UTAH DIVISION OF CONSUMER PROTECTION

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

FEDERAL TRADE COMMISSION, and

UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiffs,

v.

NUDGE, LLC, a Utah limited liability
company,

RESPONSE MARKETING GROUP, LLC,
also doing business as 3 DAY REAL
ESTATE TRAINING, ABUNDANCE
EDU, LLC, AFFLUENCE EDU, LLC,

REDACTED VERSION

Case No.

**FIRST AMENDED COMPLAINT FOR
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF**

AMERICAN MONEY TOUR, CASH FLOW EDU, CLARK EDU, LLC, EDGE 2 REAL ESTATE, EVTECH MEDIA NORTH, FLIP FOR LIFE, FLIPPING FOR LIFE, INCOME EVENTS, INSIDER'S FINANCIAL EDUCATION, LLC, LEADING FINANCIAL EDUCATION, LLC, ONWEALTH, POWER FLIP, PROSPER LIVE, PROPERTY EDUCATION, LLC, RENOVATE TO RENT, SIMPLE REAL ESTATE TRAINING, SMART FLIP, SNAP FLIP, US EDUCATION ADVANCE, VINTAGE FLIP, VISIONARY EVENTS, WEALTH TRIBE, WOMEN'S EMPOWERMENT, YANCEY EVENTS, YANCEY, LLC, and YOUR REAL ESTATE TODAY, a Utah limited liability company,

BUYPD, LLC, a Utah limited liability company,

BRANDON B. LEWIS, individually and as a principal and owner of NUDGE, LLC, RESPONSE MARKETING GROUP, LLC, and BUYPD, LLC,

RYAN C. POELMAN, individually and as a principal and owner of NUDGE, LLC, RESPONSE MARKETING GROUP, LLC, and BUYPD, LLC,

PHILLIP W. SMITH, individually and as a principal and owner of NUDGE, LLC, RESPONSE MARKETING GROUP, LLC, and BUYPD, LLC

SHAWN L. FINNEGAN, individually and as a principal and owner of NUDGE, LLC, RESPONSE MARKETING GROUP, LLC, and BUYPD, LLC,

CLINT R. SANDERSON, individually and as an officer of RESPONSE MARKETING GROUP, LLC and BUYPD, LLC,

DEAN R. GRAZIOSI, individually, and

SCOTT YANCEY, individually,

Defendants.

Plaintiffs, the Federal Trade Commission (“FTC”) and the Utah Division of Consumer Protection (“Division”), 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), 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 in violation of the FTC’s trade regulation rule entitled Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

2. The Division brings this action pursuant to the authority granted by Utah Code §§ 13-2-5(3), 13-11-17, 13-15-6, 13-26-8, and the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The Division seeks temporary, preliminary, and permanent injunctive relief, rescission of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, civil penalties, fines, and other equitable relief for Defendants’ acts, omissions, or practices that violated the Utah Consumer Sales Practices Act (“UCSPA”), Utah Code § 13-11-1 *et seq.*, the Business Opportunity Disclosure Act (“BODA”), Utah Code § 13-15-1 *et seq.*, the Telephone Fraud Prevention Act (“TFPA”), Utah Code § 13-26-1 *et seq.*, and the TSR, 16 C.F.R. Part 310.

SUMMARY OF THE CASE

3. From as early as 2012 and continuing through the present, the Nudge Defendants¹

¹ The Nudge Defendants are Nudge, LLC, Response Marketing Group, LLC, BuyPD, LLC, Brandon Lewis, Ryan Poelman, Phillip Smith, Shawn Finnegan, and Clint Sanderson.

have misrepresented to consumers that they will be taught a proven formula on how to make substantial money from investing in real estate. The Nudge Defendants entice consumers to enroll in a series of increasingly expensive training programs through false claims that: the Nudge Defendants' system will enable consumers to find properties at deeply-discounted prices; the Nudge Defendants will make funding available to consumers so they do not have to put their own money down; and the Nudge Defendants will show consumers how to gain access to individual investors who will purchase the properties from them. The Nudge Defendants have taken in over \$400 million from consumers across the country and overseas through their deceptive scheme.

4. The Nudge Defendants use TV personalities, including Dean Graziosi who has appeared in infomercials promoting real estate investment books, Scott Yancey from A&E's "Flipping Vegas," Doug Clark from Spike TV's "Flip Men," Drew Levin and Danny Perkins from HGTV's "Renovate to Rent," and Josh Altman from Bravo's "Million Dollar Listing Los Angeles," to attract consumers to free ninety-minute events (referred to as the "Preview Events") that are held primarily in hotel conference rooms throughout the United States. The Nudge Defendants advertise their Preview Events primarily through infomercials and direct mailings, which falsely promise to show consumers during these events how to find properties at below market prices and get access to financing without using their own money or credit. Since January 2015, over 750,000 individuals have attended one of the Nudge Defendants' Preview Events.

5. The Preview Events, however, do not teach students anything of value, but instead entice consumers to purchase additional training and tools at a paid three-day workshop

(referred to as “Workshops”). The Nudge Defendants typically charge consumers \$1,147 to attend a Workshop. At the Preview Events, the Nudge Defendants promise consumers that if they sign-up for one of the Workshops, they will get access to a proven system that has helped thousands of consumers become successful real estate investors, and that the Nudge Defendants will provide all the training and support the consumers need to establish their own real estate businesses and make money.

6. The Nudge Defendants primarily use the Workshops not to educate, but to sell consumers additional, more expensive products and services (referred to as “Advanced Training”), typically for tens of thousands of dollars. Under the guise of raising funds for real estate deals, the Nudge Defendants ask consumers to fill out profiles detailing their personal finances, and encourage consumers to increase their existing credit card limits. The Nudge Defendants also encourage consumers to obtain “funding” through a third-party. However, instead of providing funding, the third-party simply applies for a half-dozen or more personal credit cards on the consumer’s behalf. The Nudge Defendants then try to convince consumers to purchase one of the Nudge Defendants’ Advanced Training packages using their newly-available credit and other finances.

7. The Nudge Defendants continue to target consumers for additional sales even after the consumers purchase an Advanced Training package. From at least 2012 to 2016, as part of their Advanced Training packages, the Nudge Defendants also promised consumers access to “exclusive” events called Buying Summits or Investor Expos where they could buy “turnkey” rental properties at below market value prices. However, the Nudge Defendants were actually the ones selling or brokering these properties, and did so after marking up the price as much as

20% or more for their own profit. The Nudge Defendants concealed their markups from consumers and, at times, even provided consumers with bogus sales comparables to convince consumers to purchase the properties at inflated prices.

8. During and after the Advanced Training, the Nudge Defendants also target consumers with telemarketing calls to induce additional sales, including access to a purported “Inner Circle” personalized real estate coaching program for tens of thousands of dollars more.

9. The vast majority of consumers who purchase the Nudge Defendants’ products and services do not become successful real estate investors and do not make any money from the Nudge Defendants’ system, or even recover the cost of the Workshop or Advanced Training. Many consumers end up heavily in debt and, in numerous instances, consumers have lost their life savings.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

11. This Court has supplemental jurisdiction over the Division’s claims under 28 U.S.C. § 1367.

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

PLAINTIFFS

13. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces 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 FTC also

enforces the Telemarketing Act. 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.

14. 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), 57b, and 6105(b).

15. The Division is an agency of the State of Utah created by statute. Utah Code § 13-2-1(1). The Division administers and enforces the UCSPA, which prohibits deceptive acts and practices in connection with consumer transactions. It administers and enforces the BODA, which requires sellers of assisted marketing plans to provide disclosures to the Division and to prospective purchasers. It also administers and enforces the TFPA, which prohibits deceptive practices in connection with telephone solicitations.

16. The Division is authorized to take legal action against persons who violate the UCSPA, the BODA, and the TFPA to enjoin violations of the acts, seek other equitable relief, and to obtain damages, fines, civil penalties, fees, and costs. Utah Code §§ 13-2-5(3); 13-11-17(1)(a)-(d); 13-15-6(3); 13-26-8(2).

17. The Division is authorized to take legal action against persons who violate the Telemarketing Act and TSR, and to obtain damages, restitution, and other relief. 15 U.S.C. §§ 6103(f)(2); 16 C.F.R. § 310.7.

DEFENDANTS

18. Defendant Nudge, LLC (“Nudge”), formerly known as Internet Experts, LLC, is a Utah limited liability company with its principal place of business at 380 S Technology Court, Lindon, Utah 84042. Nudge transacts or has transacted business in this District and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Nudge has advertised, marketed, distributed, or sold the real estate investment seminars and related services and products at issue in this Complaint to consumers throughout the United States.

19. Defendant Response Marketing Group, LLC (“Response”), formerly known as Evtech Media, LLC (“Evtech Media”), is a Utah limited liability company with its principal place of business at 380 S Technology Court, Lindon, Utah 84042. Response also does business as 3 Day Real Estate Training, Abundance Edu, LLC, Affluence Edu, LLC, American Money Tour, Cash Flow Edu, Clark Edu, LLC, Edge 2 Real Estate, Evtech Media North, Flip for Life, Flipping For Life, Income Events, Insider’s Financial Education, LLC, Leading Financial Education, LLC, OnWealth, Power Flip, Property Education, LLC, Prosper Live, Renovate to Rent, Simple Real Property Training, Smart Flip, Snap Flip, US Education Advance, Vintage Flip, Visionary Events, Wealth Tribe, Women’s Empowerment, Yancey Events, Yancey, LLC, and Your Real Estate Today. Response transacts or has transacted business in this District and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Response has advertised, marketed, distributed, or sold the real estate investment seminars and related services and products at issue in this Complaint to consumers throughout the United States.

20. Defendant BuyPD, LLC (“BuyPD”), formerly known as Base Camp Ops, LLC and Media Excess Solutions LLC, is a Utah limited liability company with its principal place of business at 380 S Technology Court, Lindon, Utah 84042, and a secondary office address at 10421 South Jordan Gateway, South Jordan, Utah 84095. BuyPD transacts or has transacted business in this District and throughout the United States. At times material to this Complaint, acting alone or in concert with others, BuyPD has advertised, marketed, distributed, or sold the real estate related services and products at issue in this Complaint to consumers throughout the United States.

21. Nudge, Response, and BuyPD are collectively referred to herein as the “Corporate Defendants” or the “Nudge Enterprise.”

22. Defendant Brandon B. Lewis (“Lewis”) is one of the principal owners of the Corporate Defendants. At 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 set forth in this Complaint. Defendant Lewis resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

23. Defendant Ryan C. Poelman (“Poelman”) is one of the principal owners of the Corporate Defendants and is the managing member of Nudge, the Chief Executive Officer of BuyPD, and was the Director of Operations of Response. At 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 set forth in this Complaint. Defendant Poelman resides in this District and, in connection with the matters alleged herein, transacts or

has transacted business in this District and throughout the United States.

24. Defendant Phillip W. Smith (“Smith”) is one of the principal owners of the Corporate Defendants and the Chief Executive Officer of Response. At 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 set forth in this Complaint. Defendant Smith resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

25. Defendant Shawn L. Finnegan (“Finnegan”) is one of the principal owners of the Corporate Defendants and has been the Chief Executive of Sales and Vice President of Response. At 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 set forth in this Complaint. Defendant Finnegan resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

26. Defendant Clint R. Sanderson (“Sanderson”) has been the President and Chief Operating Officer of Response since May 2015, and was the Chief Sales Officer of BuyPD from 2012 until May 2015. At 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 set forth in this Complaint. Defendant Sanderson resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

27. The Corporate Defendants are closely held companies that have operated as a

common enterprise while engaging in the deceptive acts and practices and other violations of law alleged below. The Corporate Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and office locations. As described below, the Corporate Defendants also co-mingle funds and rely on a shared method to identify potential customers. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Furthermore, Lewis, Poelman, Smith, Finnegan, and Sanderson (the “Nudge Individual Defendants,” and, together with the Corporate Defendants, the “Nudge Defendants”) have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

28. Defendant Dean R. Graziosi (“Graziosi”) is an Arizona resident. He is one of the primary celebrities used by the Nudge Defendants to market real estate investment seminars and related services and products at issue in this Complaint. He is a self-described New York Times best-selling author, entrepreneur, and investor. Defendant Graziosi, in connection with the matters alleged herein, has transacted business in this District and throughout the United States.

29. Defendant Scott E. Yancey (“Yancey”) is a Nevada resident and also lives in this District. He is one of the primary celebrities used by the Nudge Defendants to market real estate investment seminars and related services and products at issue in this Complaint. He is the star of the reality television series “Flipping Vegas” that aired on the A&E television network from June 2011 to September 2014. Defendant Yancey, in connection with the matters alleged herein, has transacted business in this District and throughout the United States.

COMMERCE

30. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

The Nudge Individual Defendants’ Prior Ties

31. Prior to the formation of the Nudge Enterprise in 2011, several of the Nudge Individual Defendants were involved in selling services purportedly designed to help consumers develop an e-commerce business.

32. From 2002 through March 2009, Lewis was President of iMergent, Inc., which, through its wholly-owned subsidiary StoresOnline, Inc. (“StoresOnline”), marketed website training and software to consumers at seminars across the country and in Australia. Sanderson was the Vice President of Sales of StoresOnline. Poelman and Smith were principals of telemarketing floors called Electronic Marketing Services (“EMS”) and Professional Marketing International (“PMI”), respectively, that purchased “leads” (the contact information of potential customers) from StoresOnline and attempted to sell purported personalized coaching services to consumers who had attended StoresOnline’s seminars.

33. By 2009, StoresOnline had been sued for deceptive sales practices by a number of state Attorneys General and District Attorneys from California, Connecticut, Florida, Illinois, Indiana, North Carolina, Texas, and Washington, as well as the Australian Competition and Consumer Commission (“ACCC”), and had entered into stipulated consent orders with multiple states for injunctive and monetary relief. *See* Complaint, *State of Texas v. iMergent, Inc. et al.*,

No. 2005 CI 02791 (Bexar County Cir. Ct. Feb. 21, 2005); Consent Judgment, *State of Indiana v. iMergent, Inc.*, No. 490070601PL001792 (Marion Super. Ct. Mar. 19, 2007); Complaint, *State of Florida v. iMergent, Inc. et al.*, No. 2007CA1665 (Leon County Cir. Ct. June 26, 2017); Final Judgment of Stipulation, *State of Connecticut v. iMergent, Inc.*, No. CV-08-4036653S (Hartford Super. Ct. Apr. 11, 2008); Final Judgment and Consent Decree, *State of Illinois v. Stores Online, Inc. and Galaxy Mall*, No. 2006-CH-1345 (Madison County Super. Ct. June 12, 2008); Consent Judgment, *State of North Carolina v. iMergent, Inc. and StoresOnline, Inc.*, No. 07-CVS-7381 (Wake County Super. Ct. Aug. 4, 2008); Consent Order, *State of California v. iMergent, Inc., et al.*, No. 56-2007-287557 (Ventura County Super Ct. Mar. 10, 2009); Complaint and Final Judgment and Consent Decree, *State of Washington v. iMergent, Inc., StoresOnline, Inc.*, No. 09-2-29124-1 (King County Super. Ct. Aug. 5, 2009); Judgment, *ACCC v. StoresOnline Int'l Inc., StoresOnline, Inc.*, No. (P)NSD1991/2007 (Federal Court of Australia May 5, 2010).

34. By 2010, Lewis and Poelman joined Finnegan as officers and owners of Evolution Group, LLC (“Evolution Group”), which marketed and sold real estate and stock investment related services and products at seminars across the country. Finnegan was a co-founder and a principal owner of Evolution Group. Smith’s telemarketing floor, PMI, purchased consumer leads from Evolution Group and attempted to sell purported personalized coaching services to consumers who had attended Evolution Group’s seminars.

The Formation of the Nudge Enterprise

35. By the end of 2011, Response’s predecessor, Evtech Media, controlled by Lewis, Poelman, and Finnegan, acquired Evolution Group. Evtech Media (which became Response in January 2016) markets and sells real estate and stock investment related services and products at

the live Preview Events and Workshops across the country.

36. Response induced consumers to pay for Advanced Trainings, in part, by promising them access to discounted properties at “exclusive” Buying Summits. From at least 2012 to mid-2016, BuyPD was the entity used by the Nudge Individual Defendants to market and sell real estate properties to consumers who attended the Buying Summit events. Through its subsidiaries, Insider’s Cash and American Cash Funding, BuyPD provided loans to consumers to purchase these properties, and then sold those loans to other consumers at the Buying Summits. BuyPD also markets and sells purported entity setup and asset protection services to consumers at the Workshops and at Advanced Training events through a subsidiary, Veil Corporate LLC.

37. From at least 2012 to 2014, Smith’s telemarketing floor, PMI, provided telemarketing services for Evtech Media. Specifically, PMI purchased consumer leads from Evtech Media and attempted to sell through telemarketing calls purported personalized real estate coaching services to help consumers do real estate deals.

38. In June 2014, Evtech Media acquired PMI, and Smith became a partner in the Nudge Enterprise.

39. Since acquiring PMI, Evtech Media itself (and later Response) have conducted telemarketing calls to consumers to sell additional products and services, including purported personalized real estate coaching services and tax preparation services.

40. Since 2015, Response and BuyPD have operated out of the same office building in Lindon, Utah (the “Lindon Building”). The exterior signage for the Lindon Building previously bore Nudge’s name, but now bears Response’s name.

41. Nudge served as the holding company for the partners of the Nudge enterprise, namely, Lewis, Poelman, Smith, and Finnegan.

42. The Nudge Individual Defendants have been the principal managers in control of the Nudge Enterprise since mid-2014 (when Smith became a Nudge partner). As the principal managers, the Nudge Individual Defendants oversee the enterprise's operations, including deciding what products and services to sell to consumers and managing relationships with celebrity partners and third-party vendors. For example, as referenced below, the Nudge Individual Defendants discussed strategic and operational matters for Response and BuyPD at bi-annual Nudge retreats.

43. The Nudge Individual Defendants have also participated in weekly company sales meetings, which Smith often led.

The Nudge Defendants' Escalating Sales Funnel

44. Since 2011, the Nudge Defendants have used a variety of deceptive tactics detailed below to sell multiple levels of increasingly expensive seminars, other trainings, and related products, purportedly designed to help consumers become successful real estate investors.

45. The Nudge Defendants initially offer consumers at the free Preview Events access to 3-day live training Workshop events. The Nudge Defendants charged consumers anywhere from \$199 to \$1,997 to enroll in one of their Workshops. Since 2016, the Nudge Defendants typically charge consumers \$1,147 to attend the Workshop. Since January 2015, over 70,000 consumers have purchased one of the Nudge Defendants' Workshops.

46. The Nudge Defendants then offer additional real estate investment products and

services at the Workshops, including additional live training by purported “experts” and “trainers,” real estate investing software branded as “Prop Trend” and “Real Estate Pro,” and more online training videos. The Nudge Defendants bundle these products and services into different Advanced Training package names, such as “Diamond Elite 360,” and charge consumers anywhere from \$19,000 to as much as \$40,000.

47. Through the end of 2017, the Nudge Defendants included in the Advanced Training packages access to supposedly “exclusive” deals for real estate and financial investment related products and services offered at events (referred to as the “Buying Summit” and then “Investor Expo”) held monthly in Las Vegas and, later, at the Lindon Building.

48. Since 2015, the Nudge Defendants have sold Advanced Training packages to over 30,000 consumers.

49. After consumers purchase one of the Advanced Training packages, the Nudge Defendants attempt to induce them through telemarketing calls to spend thousands of dollars, and sometimes tens of thousands of dollars, more on additional products and services, including a purported exclusive “Inner Circle” personalized real estate coaching program.

50. In numerous instances, consumers have lost tens of thousands of dollars from purchasing a series of the Nudge Defendants’ seminars and trainings. In addition, numerous consumers who bought purported “turnkey” and “cash flowing” rental properties from BuyPD at the Buying Summit events discovered the properties were not worth what they paid and did not have paying tenants in place as had been represented. Some consumers have lost their life savings as a result of the Nudge Defendants’ scheme; others have had to file for bankruptcy. Those victimized include consumers on limited fixed incomes and retirees.

Step 1: The “Celebrity” Invitation to the Preview Events

51. The Nudge Defendants conduct Preview Events across the country to entice consumers to purchase their real estate investment products and services.

52. The Nudge Defendants market the Preview Events as exclusive or private events sponsored by a celebrity under a variety of brand names including, among others, Graziosi’s Insider’s Edge, Yancey’s Yancey Events, Josh Altman’s Flip for Life, Doug Clark’s Unlisted Flip, and Drew Levin and Danny Perkins’ Snap Flip. The Nudge Defendants pay the celebrities either a flat fee, a percentage of the marketing costs associated with the event, or a percentage of the consumer payments received from the event.

53. Since at least 2013, through direct mail, email, and online advertisements, the Nudge Defendants claimed, among other things, that consumers (i) did not need experience in real estate investing to get involved; (ii) would be shown at the Preview Events how to find properties at wholesale or deeply discounted prices; (iii) would get access to pre-approved funding to do real estate deals regardless of their own credit scores; and (iv) would learn exclusive “ways to profit.” The Nudge Defendants’ advertisements for the Preview Events typically included the following kinds of representations:

- A. “**Make Money with Income Properties** Purchase real estate at all time low prices before they are bid up by hundreds of investors? Learn how to generate additional cash flow month after month?” (Emphasis in original)
 - B. “**Pre-Approved Funding**: Is there money to do deals? Find out how to get up to \$750,000 in pre-approved real estate funding regardless of credit score.” (Emphasis in original)
 - C. “See ways to profit from real estate available to only the select few.”
54. Figures 1 and 2 are examples of Preview Event invitations consumers received in

2013 and 2014 featuring Graziosi and Yancey, respectively, both of which make representations about having access (“before the public”) to purportedly deeply discounted properties (even “pennies on the dollar” or “all-time low prices”):

Figure 1

Welcome to Private Sales:
Insider's Financial!

Learn How to Buy Properties For As Low As Pennies on the Dollar!
This is a private pre-auction real estate event.

Congratulations! Your VIP reservation to the Insider's Edge pre-auction event has been officially confirmed by the event sponsor. We look forward to seeing you.

When you attend my private pre-auction event I will show you:

- ✓ How to buy property for as low as pennies on the dollar just like to large institutional investors!
- ✓ How to get the best properties before the public has access to them!
- ✓ How to purchase property at rock bottom prices before they are bid up by hundreds of other investors!

To your success..

Dean Graziosi
Author and Millionaire Mentor

P.S. Remember, this event is private but you are allowed to bring one guest.

Dean Graziosi
As Seen On:

FREE! Bonus Disc

WIN \$2,000!
I'm going to give you a digital camera so you can enter my \$2,000 Investor Photo Challenge. (Details at event)

Plus... Receive this FREE Resource Disc! It's packed with two of my books and valuable information that took me years to gather and perfect!

The advertisement features a photograph of Dean Graziosi on the left. On the right, there is a stack of books and two DVD discs. One DVD is titled 'YOUR TOWN YOUR REAL ESTATE PROFITS!' and features a quote: 'I've enclosed two of my best selling books and more on two DVD's'. Below the books is a silver digital camera. The background is white with black and yellow text and graphics.

Figure 2

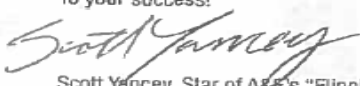
Congratulations! You and your guest's VIP reservation to my Private Income Property Event has been officially confirmed by the event sponsor. We'll see you and your guest at the:

Omni William Penn Hotel
 Saturday, April 19, 2014
 530 William Penn Place, Pittsburgh, PA 15219
 Event Begins Promptly at 9:00 AM (Registration begins at 8:30 AM)

When you and your guest attend my Private Income Property Event, I will show you:

- ✓ How to buy property for wholesale prices just like the institutional investors!
- ✓ How to get the best properties before the public has access to them!
- ✓ How to purchase property at all-time low prices before they are bid up by hundreds of other investors!


To your success!




Scott Yancey, Star of A&E's "Flipping Vegas"

P.S. Remember, as my personal guest, you and your guest will receive FREE admission, my valuable Resource Discs and a digital camera at the event!"


It's True! Properties like exist at my PRIVATE PRE-A Real Estate Event!



3 Bed, 1 Bath
Only \$28,952



4 Bed, 1 Bath
Only \$30,104



4 Bed, 2 Bath
Only \$26,698

55. Figure 3 is another example of a Preview Event invitation featuring Yancey that a consumer received by direct mail in 2015. It makes representations about access to deeply discounted properties (“all-time low prices”), purportedly pre-approved funding (“up to \$750,000”), and generating “additional cash flow month after month after month”, among other things:

Figure 3

Eva,

We cordially invite you and your guest to join us for a very informative **LUNCH OR DINNER** preview conference on how to create income from today's bounce-back real estate market. This educational event is complimentary and your questions are welcomed and will be addressed.

**Real Estate Income Event
"MAKE MONEY WITH INCOME PROPERTIES"**

Now more than ever, wouldn't you like to get the best properties before the public has access to them? Purchase real estate at all-time low prices before they are bid up by hundreds of investors? Learn how to generate additional cash-flow month after month after month?

Topics to be discussed:

- **Beginner & Experienced Opportunities:** How do I get involved even though I've never made money in real estate? What attracts accomplished individuals to this event?
- **Pre-Approved Funding:** Is there money to do deals? Find out how to get up to \$750,000 in pre-approved real estate funding regardless of credit score.
- **Monthly Cash-Flow:** How do I get a hold of pre-market and tax deed auction properties and turn them into cash or hold them for long-term monthly income?
- **Reduced Risk:** Is it possible to avoid the common road blocks and avoid the risks most real estate investors eventually face?
- **Self-Direct IRA/401K:** Do you understand how to use your current retirement funds to build wealth in real estate?
- **Flip for Profit(s):** How can I find income properties I can flip overnight?

This **LUNCH or DINNER** event is Sponsored by Scott Yancey, widely recognized as the star of A&E's hottest show "Flipping Vegas".

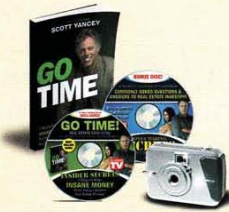
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56. The Nudge Defendants also advertise their Preview Events through targeted television infomercials featuring a sponsoring celebrity in cities throughout the country.

Through these infomercials, the Nudge Defendants claim that consumers will be able to get access to a proven system used by the featured celebrities themselves to make money in real estate, that the consumers do not need to have any previous real estate experience or their own money or credit to use this system to succeed, and that consumers can receive pre-approved real estate funding from the sponsoring celebrity's "money partners."

57. For example, in February 2016, one of the Nudge Defendants' infomercials featuring Yancey aired in Denver, Colorado. The Nudge Defendants represented, among other things, that (i) at the Preview Event, consumers with no previous real estate experience would learn Yancey's proven method of how to profit in real estate; (ii) consumers would be able to do real estate deals with Yancey's "money partners" putting up "100% of the money"; and (iii) consumers using the program were exceptionally successful. The infomercial included the following representations:

- A. "You don't need any previous real estate experience or your own money to invest to profit in real estate the Yancey Way. Scott Yancey's free lunch and dinner events bring you all the live local training you need to succeed in real estate and his money partners will put up to 100% of the money you need to do your deals. It's simple. You find the properties to flip. They put up the money and you each get a piece of the profits." (Voiceover speaker)
- B. "This isn't a theory, this isn't something we're trying. This is something that works and we are doing it right now all over the country." (Yancey speaking)
- C. "I've got to tell you I have never seen a way to profit in real estate like the Yancey Way. Because it requires no previous real estate experience or money to invest, anyone can do it. In fact, Scott has received literally thousands of success story videos from people who have changed their lives with what they've learned at one of his free events." (Rachel Reenstra, a HGTV television personality, speaking)
- D. Reenstra interviews Yancey. A transcription of this interview appears below in relevant part:

Yancey: “. . . my money partners put up the money so my students don’t have to use their own . . . I already have the money in place. . . .”

Reenstra: “What’s the catch? . . . How much of the profits are your money partners keeping, like 50%, 25%?”

Yancey: “No, try less than 5% . . . and that only comes out of your profit after each deal is done, not upfront out of your pocket.”

Reenstra: “Your money partners only make money once your students have made money?”

Yancey: “That’s exactly right. . . . My money partners have already funded thousands of real estate deals for my attendees.”

58. Similarly, in August 2017, the Nudge Defendants aired an infomercial featuring Doug Clark in Norfolk, Virginia, which falsely represented, among other things, that consumers would learn at the Preview Event Clark’s proven “formula for success” to buy properties “that few people know exist” at deeply discounted prices, using funds from Clark’s “money partners,” and “flip[] them for amazing profits.” The infomercial included the following representations:

- A. “[Doug Clark] profits from a unique group of unlisted properties that few people know exist, properties that are not publicly advertised for sale but for reasons you’ll learn at this event must be sold immediately, so he gets them for 25% off, 50% off or more off their full market price and flips them for amazing profits, and now at his free Unlisted Flip events, he is going to show you how to do it too, using little or none of your own cash or credit, because Doug’s money partners are going to put up the money for you, up to one million dollars per flip.” (Voiceover speaker)
- B. “I don’t have to use any of my own money or credit on these flips, not a single penny, and you won’t either because when you come to my event and learn how to find unlisted properties this far under market value, my money partners will put up the money for you in exchange for a little piece of the profits after the property is flipped . . . You pay them nothing upfront yet you walk away with the lion’s share of the profits.” (Doug Clark speaking)
- C. “I have created a formula for success that can be duplicated. My family and friends have proven that and now I am excited to share it with others.” (Doug Clark speaking)

59. Likewise, in February 2018, the Nudge Defendants aired an infomercial featuring

Josh Altman in Oklahoma City, Oklahoma, which falsely represented, among other things, that consumers would (i) receive a proven “roadmap” to “find, fund, and flip for profit”; (ii) be given a “hand-picked list of the top properties”; and (iii) receive funding for their deals from Altman’s “partners.” The infomercial included the following representations:

- A. “You don’t need any previous experience or even good credit in order to profit. When you attend one of my live Flip for Life events, you will be introduced to my team who will show you how to find it, how to fund it, and how to flip it for profit. Just like I do. (Altman speaking)
- B. “This isn’t a theory, this isn’t something I am just testing out. It’s a roadmap that my team and I use day in and day out and right now for the very first time, I am revealing my insider’s edge and I am going to introduce you to my team who will show you how to find, fund, and flip for profits.” (Altman speaking)
- C. “When you come to my free event, we are going to give you a hand-picked list of the top properties and introduce you to my partners who will fund up to 100% of your deals so you can profit from my program.” (Altman speaking)
- D. “At our events . . . we are giving away information that has been proven time and time again, that has been tested time and time again, and it really allows you to get to a place in your life that you have always wanted to get to.” (Altman speaking)

60. In addition, the Nudge Defendants’ infomercials contain video testimonials from consumers who claim they were able to do a number of real estate deals within months after having attended one of the Nudge Defendants’ events and receiving their training.

61. The Nudge Defendants sometimes display written disclaimers during these video testimonials. For example, during the 2016 infomercial featuring Yancey, a purported “Free Event Attendee” appears in a video and states, “before I went to your free event I just filed bankruptcy . . . after I attended your event and learned how to invest in real estate without using any of my own money or credit . . . and here I am now at age 70 years old, I flipped over 20

properties.” Below a graphic stating “Flipped More Than 20 Properties,” a disclaimer in much smaller font size states: “Results not typical. Most people who attend Scott’s events do not apply the strategies they learn and make little to no money. Results vary based on education, financial condition, experience, and effort. Investing in real estate involves risk, and you could lose money.”

62. The Nudge Defendants also display general disclaimers at the beginning of the infomercials. One such disclaimer that appeared at the beginning of the February 2018 infomercial featuring Altman stated in part:

The Company does not sell a get rich quick program, guaranteed system, or business opportunity. The Company and its trainers are not licensed financial consultants, tax accountants, real estate brokers, dealer brokers, or attorneys – they do not offer financial, tax, or legal advice and highly recommend individuals work with these licensed professionals in concert with the training. Investing of any kind carries risk, and its possible to lose some or all of your money.

Effective training requires active participation by the student. Most attendees of the free introductory event do not purchase additional education and their use of the free education materials is unknown. Testimonials are from individuals who purchased additional education. Your experience will vary and results will require effort, time, and an ability to apply the training and take action.

Josh Altman has had extraordinary success in real estate. You should not view his experience and results as common. Due to his production schedule Josh will not attend the free introductory event.

63. The Nudge Defendants’ disclaimers do not negate or meaningfully alter the net impression consumers are left with from the repeated and specific representations the Nudge Defendants make during the infomercials that the sponsoring celebrities have developed a proven and tested system to make money in real estate investing and that consumers can obtain financing from the sponsoring celebrity’s “money partners” to do real estate deals.

Step 2: The Preview Events

64. The Nudge Defendants hold the Preview Events in hotel ballrooms across the country. The Preview Events typically last approximately ninety minutes to two hours and start with motivational videos.

65. The speakers typically ask at the beginning of the Preview Events how many attendees are new or just getting started in real estate investing. The vast majority typically do not have experience in real estate investing.

66. The speakers do not provide consumers with any substantive training or access to funding or discounted properties at the Preview Events.

67. Instead, the Nudge Defendants use the Preview Events to convince consumers to enroll in their three-day paid Workshop. The Nudge Defendants' speakers typically tell the attendees that there is not enough time at the Preview Event to go into adequate detail to teach the attendees how to do actual real estate deals, but the company offers three-day hands-on training that can be tailored or customized to each individual's needs and goals.

68. During the course of the Preview Events, the Nudge Defendants typically portray themselves as a "private funding partner" for consumers where they both profit together from the real estate deals the consumers do. In doing so, the Nudge Defendants represent that their interests align with the consumers in order to develop the consumers' trust and reinforce the representations about the nature of the services consumers will receive if they sign up for the Workshop. As detailed below, these representations are false.

Misrepresentations about the Nature of the Services Included in the Workshop

69. In numerous instances, the Nudge Defendants mislead consumers about the nature

of the services they offer if consumers enroll in the Workshop.

70. In numerous instances, the Nudge Defendants tell consumers that they will get everything they need to do real estate deals within months after completing the Workshop, including access to “experts” who will walk them through completing the deals step-by-step.

71. The Nudge Defendants’ representatives typically claim that students who enroll in their Workshops will be able to: (a) use the Nudge Defendants’ funds to do real estate deals without putting any of their own money down; (b) find properties at below market value; and (c) access a list of “cash buyers” to purchase the consumers’ investment properties.

72. For example, on August 31, 2017, speakers at a “Snap Flip” Preview Event sponsored by Drew Levin and Danny Perkins held in Twin Falls, Idaho, claimed that consumers who signed up for the Workshop would get access to the same funding that the Nudge Defendants themselves use to do real estate deals as well as to the Nudge Defendants’ “buyer system,” that would enable consumers to find purchasers for the properties. The speakers also represented that consumers could get access to funding without using “a dime” of their own money and receive personalized real estate transaction assistance, as part of a business model in which “the more money we make, the more money you make.” Their representations included the following:

- A. “We have a funding partner that funds our deals for us. We’ve been doing so for years and years. Students who do our training or our classes with us, they get to use our funding partner to fund those transactions. It’s really cool. I’ll talk about that here today. How many of you would love to have access to funding that you can use to do real estate deals? It has nothing to do with your credit or income. . . . By the time that I am done here today with my portion, I will be very detailed, very specific and talking step by step on how each one of you here has the opportunity to do multiple real estate transactions without using a dime of your personal money, without accessing your credit to do it. Still control the deal, get the deal, profit from it without using your money or credit.”

- B. “So they pay for the training. We show them how to find their first deal. . . . we show them how to find their first deal, locate it, get the offer, get it under contract. . . . They still need a buyer. So they use our buyer system to get the buyer in place, which is very valuable to them.”
- C. “Number two, they get to use our funding partner under the same – under the same rate and everything that we use. So we facilitate funding on the deal. We get it funded for them so they don’t lose the deal. . . . Just an example. So you’re sitting there – here’s my purpose of this example. You’ve got that money right in front of you. How many of you truly believe with a little bit of direction with that money right in front of you that you could do at least one or two real estate deals.”
- D. “If we’re showing you how to find them and we’ve got the funding already in place, and we show you how to get a buyer and you’re calling us 10 times a day every day, why don’t we just go get that one on our own? Why don’t we just go do that deal? . . . The problem is, we cannot be in every state, every county, every day, every neighborhood, all the time doing all of them. I love them. Together with you we can do more. So a couple years ago our business strategy became this. We said, hey, we’re going to do as many deals as we can handle, and we’ll make money on those. But at the same time, we want to get a handful of you up and running. We want to show you how to do the exact same thing and give you access to the exact same tools. We just want to make a little bit of money on each one of those deals we help you with and fund them. How many of you agree that’s a genius business strategy? It’s awesome. Because it’s win-win. The more deals you do, the more money we make, the more money you make.”
- E. “The tuition for the training again is \$1,147. . . .The cool thing is when you get registered here today, the \$1,147 gets you everything you need right now. . . . And then number three is the buyer’s system. You get access to that included. . . . The very first thing we show you at that training, especially for the newbies, is we show you how to use our buyer’s system to locate and find 5 to 15 buyers in the market you want to invest in and know where they bought property and how much they want to pay for it. We show you how to get the buyers first and then we show you how to get the deals. ”

73. Similarly, on December 27, 2017, the Nudge Defendants’ speakers at another Preview Event held in Tucson, Arizona, claimed, among other things, that consumers who signed up for the Workshop would (i) be able to use the Nudge Defendants’ funding to do real estate deals (“without using a dollar” of their own money or credit); (ii) receive special access to

properties directly from banks at deeply discounted prices using the Nudge Defendants' relationships with the banks; and (iii) be able to connect to cash buyers actively looking to buy properties. The Nudge Defendants' speakers reinforced these false representations by claiming that the Nudge Defendants (i) give consumers' access to their resources, including personalized assistance from "investors, experts;" and (ii) "plug" them into their "system" so that they both can share in the profits from all the real estate deals the consumers will do once they enroll in the Nudge Defendants' Workshop ("there is a lot of money in this to be made together"). The speakers' representations included the following:

- A. "We've got a step by step process. We've seen thousands of students take part in throughout the country to do deals quickly and effectively where they live. . . . The company that we represent, Visionary Events . . . has put in place the funding for you to do your real estate deals. In fact, we have funded for our students nearly a billion dollars worth of real estate transactions. . . . How many of you would say I would do real estate if you show me how to do deals without using a dollar of your own money or any of your credit? Lets see those hands."
- B. "In real estate you got to have a lot of money to make it happen. So what Drew and Danny said was this. They said look, we are not going to come out and just talk about real estate. We are not just going to put on informative events. What we need to do is put a system in place. But more importantly, back it up with the money. Now we have done that. And I'll tell you our company, we walk the walk, we do about 200 real estate deals a month as a company independent of our students. Two hundred properties we buy and sell throughout the country. In order to do that each month, you can imagine we had to put some things in place. First off, we had to come up with a strategy to find all these properties. Then we had to come up with the money to fund them all. Then the other things you don't think of along the way, property management teams, insurance teams, legal teams, rehab teams. We had to put that all in place. We have done that and that's what allows us to do as many deals as we do. Now, why does that matter to you. Well listen carefully. For those of you that come to this training, that learn our system and let us plug you into it, we give you access to those teams, we let you use those resources, and most importantly, we let you use our money."
- C. "We have students all throughout the country doing deals where they live. If they choose to use our help, we're going to make a little bit of money each time. Folks, are you all right with me saying this, the more deals you do, the more

money we make. . . . Our goal is to get you doing deals. It does us no good to go out and train a bunch of people and then never do anything with them after. What we are focused on is creating students that are going to be doing deal after deal after deal. We want you to use our resources. We want you to get hooked. And we know if you do, there is a lot of money in this to be made together.”

- D. “Most of the people that go to that training, they ain’t ever done a deal before. So what we realize is, the 3 Days are awesome, you’ll leave fired up ready to go, but your questions will come up the minute you leave the training. Once you now go out to do deals, that’s when you need us and that’s when this team kicks in play. Now let me be clear. This isn’t typical customer service. These aren’t people paid eight bucks an hour to answer telephones. These are investors, experts, that we have handpicked to walk you through your deals, everything from finding properties, making offers, writing contracts, they’re there to help you along the way.”
- E. “Our organization, we are one of the big boys. We buy properties from these banks on a weekly basis all throughout the country. We know who they are. But more important than that to the equation, they know who we are because of our buying power. Now, here’s where this matters to you. At the training, we are going to walk you through our system of how we have our students deal directly with banks working underneath our umbrella. Piggybacking off these relationships we’ve already created. And here’s these best part, using our cash to close. Now, here’s where this gets really lucrative, often the properties that are most deeply discounted when it comes to working with banks, they are typically cherry-picked long before the auctions ever happen. . . . At the training we are going to show you how to do exactly that. We’re not going to show you how to go to the auction, stand in line with your number and compete with everyone else. We’ll show you how to work directly with banks underneath our umbrella, picking up properties before they even get to that point. Folks, how many of you in the room would love a connection like that?”
- F. “Say I gave you 6 months, 6 months from today and I said, look, we’ll help you find it, we’d fund it, we’d help put a buyer in place. I said look, if we helped you through that whole process and . . . when you have a question along the way, call our support team, they are there to help you through it all step-by-step. If you had all of that in place, I want to see your hands on this, how many of you feel in the next 6 months you could do at least one deal?”

74. Likewise, on January 15, 2018, speakers at another Preview Event held in

Redondo Beach, California made similar claims, including that (i) consumers who sign up for the

Workshop would receive access to funding, properties at “way below market value,” and cash buyers; and (ii) the Nudge Defendants’ “system” has an “incredibly high” success rate. The speakers’ representations included the following:

- A. “Our company actually gives you access to money for your actual real estate deals. How many of you in this room love the sound of that? . . . If you are just starting out, it’s a hot market. . . . We can give you some incredible funding on fix and flips with great rates, we are going to get cash buyers, and obviously we are going to show you properties at way below market value.”
- B. “Our company has a system, I am going to show you here in a second, to where we can provide you education, training, award winning support, man-hours, and money for your actual deals. In the last little while, our company has provided funding for over thirty thousand real estate deals for our clients. It equates to well over a billion dollars we have put forward directly to our students for their actual real estate deals.”
- C. “We are holding a three day real estate retreat, hands-on training, here in the area. . . . We are the largest real estate investment education company in the world. We buy and sell properties daily on a scale that would blow you away. We have an incredibly high success rate with our advanced students.”
- D. “We are going to give you numerous strategies that we are using right now to get properties at way below market value.”

75. The Nudge Defendants’ claims about the consumers’ ability to use funding and access to discounted properties and cash buyers are false and misleading.

76. Virtually none of the consumers obtain the Nudge Defendants’ promised funding to flip properties. Consumers are not eligible for the promised funding to flip properties except in limited circumstances. The Nudge Defendants’ promised funding is only available if the consumer finds a buyer who is willing to first place the funds needed to buy the property in trust with the title company. This limitation, which is not prominently disclosed, if disclosed at all, during the Preview Events, renders the promise of funding without money down largely illusory.

77. Nor are consumers given any specialized access or tools to find properties at below market value or a network of cash buyers once they enroll in one of the Nudge Defendants' Workshops, as promised. The purported real estate training provided at the Workshops covers basic real estate concepts only superficially and the software provided to consumers contains information that is publicly available for free or at a nominal cost.

Misrepresentations about Earnings

78. In numerous instances, the Nudge Defendants encourage consumers to purchase the Workshops by representing that consumers are likely to earn substantial income by using the system the Nudge Defendants would provide during the Workshop.

79. The Nudge Defendants typically share examples or testimonials of purportedly successful purchasers of their system who were able to do a number of real estate deals within weeks or months after having attended the Nudge Defendants' Workshops.

80. In numerous instances, the Nudge Defendants' speakers claim that they have a high success rate of their students doing many real estate deals and making thousands or tens of thousands of dollars. For example, the Nudge Defendants' speakers have made the following representations at Preview Events:

- A. "When Drew [Levin] and Danny [Perkins] started giving their students access to funding, that's the number one challenge that people have investing in real estate. Once we solved that problem, get this. I know this will surprise some of you. Our student success skyrocketed. I mean, now you have access to money. The big problem is this, though. Many of our students as they started going out and doing deals or multiple deals, they didn't realize how much the government was entitled to from their profits." (August 31, 2017 Preview Event in Twin Falls, Idaho)
- B. "Write down those two words you see on the top of the screen, MY WHY. . . . I want you to think along these lines. Maybe you are here tonight for the quick cash. What did I say was the average profit on a quick flip last year? Yeah, it's about sixty thousand. If it were half that. Thirty. If you did a deal in the next

couple months of the year and pocketed . . . thirty grand, what would that allow you to do? . . . You do three or four deals like that, would that make your 2018 different than your 2017 financially. I would think so. A deal or two. Let me ask you this. Maybe you are here for the cash flow. Picture on the first day of every month. You simply had a ten thousand dollar check directly deposited in your bank account. Ten grand like clockwork. What would that allow you to do? How would that benefit you and you and your family?" (December 27, 2017 Preview Event in Tucson, Arizona)

- C. "What we teach, what our system allows you to do, what our training does for you, our support and especially access to our money can be life changing money, the average flip right now is 58 to 70 grand per flip." (January 15, 2018 Preview Event at Redondo Beach, Florida)
- D. "We have an incredibly high success rate. Well here we go, 83 percent of our new students in the last calendar year who had hands-on training . . . done at least one deal. 83 percent. So we can look any investor in the eye and say with this money and our support and help you will do deals." (January 15, 2018 Preview Event at Redondo Beach, Florida)

81. The Nudge Defendants typically make a brief earnings related disclaimer shortly after beginning the Preview Event. For example, one such disclaimer at the September 2017 Preview Event stated in part: "The students featured in this presentation are some of our company's most successful students. They are either not typical or purchased additional training. Most students that attend this introductory preview event do not make money."

82. These brief disclaimers do not change the net impression consumers are left with by the Nudge Defendants' repeated representations throughout the Preview Event that consumers are likely to make money and do profitable real estate deals within weeks or months after enrolling in the Nudge Defendants' system.

83. Contrary to the Nudge Defendants' representations, consumers who purchase the Nudge Defendants' training are unlikely to make money or do real estate deals within months after attending a Workshop. In fact, while the Nudge Defendants offer to reimburse consumers

the amount they pay to attend the Workshop if they complete a profitable (“net cash flow”) transaction within either three or six months of enrolling in the Workshop, the Nudge Defendants’ own records show that for every year from at least 2013 to 2017, only 1% (or fewer) of the consumers who had enrolled in a Workshop had received the tuition reimbursement.

84. The vast majority of consumers who enroll in one of the Nudge Defendants’ Workshops do not make money from using any of the Nudge Defendants’ services or products.

Step 3: The Workshops

85. The Nudge Defendants typically conduct Workshops in the same geographic areas as the Preview Events, a few weeks later.

86. The Workshop speakers cover only at a general level topics related to flipping properties and investing in rental properties.

87. The main thrust of the Workshop is not to educate, but instead to convince consumers to buy the more expensive Advanced Training packages. This is contrary to the expectations of many consumers who understood, based on the Nudge Defendants’ prior representations at the Preview Events, that they would receive the necessary tools and resources to successfully invest in real estate if they enrolled in the Workshop.

88. During the three-day Workshops, the Nudge Defendants make a number of misrepresentations to induce consumers to purchase one of the more expensive Advanced Training packages. First, they mislead consumers into providing their personal financial information to the Nudge Defendants, increasing their credit card limits, and applying for new credit cards purportedly for investment purposes. Second, they misrepresent the nature of the products and services consumers will receive by paying for Advanced Training. Third, they

mislead consumers regarding the amount of money they can expect to make as a result of purchasing the Advanced Training.

Misrepresentations about the Need for Consumers' Personal
Financial Information and the Purpose of Seeking Additional Credit

89. At the start of the Workshop, the Nudge Defendants typically ask consumers to complete an “investor profile” or “investor goal sheet” about their personal finances under the guise that the Nudge Defendants will use this information to advise consumers on funding real estate deals and to help them reach their goals.

90. Each consumer is assigned to a “team mentor” or “personal consultant” who meets privately with the consumer during the Workshop. The “team mentors” and “personal consultants” are in fact salespersons hired by the Nudge Defendants to sell the Advanced Training packages. They use the consumers’ financial information to find out the consumers’ available credit and funds and determine how much consumers can afford to pay for one of the Advanced Training packages.

91. On the Workshop’s first or second day, the speakers typically encourage consumers to increase their limits on their existing personal credit cards, purportedly to provide them more capital to purchase real estate. The Nudge Defendants’ representatives provide scripts for consumers to use when they call their credit card companies. Unbeknownst to consumers, the real purpose of this exercise is to increase the amount of credit consumers have available to purchase one of the Nudge Defendants’ Advanced Training packages.

92. On the Workshop’s second day, since at least March 2016, the speakers typically encourage consumers to use one of a handful of third-party companies to secure additional

“capital” or “funding” to do real estate deals.

93. For example, at a Workshop in South Jordan, Utah in October 2017 (the “South Jordan Workshop”), the speaker, Doug Clark, claimed that consumers should seek this third-party financing to allow consumers to do real estate transactions quickly. In the following excerpts from that Workshop, Clark spoke at length about (i) why consumers purportedly need immediate funding to complete deals (in addition to the Nudge Defendants’ own promised funding, which purportedly may take three weeks); and (ii) how the Nudge Defendants found a third-party company that provides “seed capital” for start-up and household company names to help students obtain such immediate (“zero percent”) financing to do deals:

A. “My preferred method for you to do that is our funding, no surprise. But to be completely transparent with you, some of these deals you should probably fund quicker than it takes to get the money in place. I don’t want you to wait, I want you to do what’s best for you. Now we can fund your deals, but it takes about three weeks, that’s why I told you 21 days, expect that. Here’s why. Because if you look at all the students worldwide, today’s Friday, it’s not even at 1:00, I don’t know, because I’m not near the office, so here’s my assumption . . . is that today is like most all days and there could be, there could be anywhere from 600 to 800 deals that could have come through the office so far today already of students wanting to fund deals, probably like something like that, right. Well they all go in the queue and we have to check them and verify them, which is good for you because then our system goes what is it, let’s verify times, dates, stamp, boom, ba, if something’s wrong, we go something’s wrong. You don’t pay anything for that, we just check it, right. But to fund that many deals in 50 States, I’m teaching you guys nationally, we’re talking about Salt Lake because we’re sitting here. I’m teaching you how to be a national investor, it’s all the same to me, it’s all on the computer. But I don’t want you to wait three weeks, if you’ve got something that’s so good, write a check and do the deal, I don’t know – just do it, fund it, get it done. . . .”

“. . . . But we came up with a solution. Now what’s interesting is I was looking for a way to help my students that maybe like didn’t have as much financial means as some people do, right. . . . so I, I searched for it, I’m thinking how can I help my students that don’t have tons and tons of money when they begin, how can I help them get ahead boost. And what’s interesting is my wealthiest clients actually like the product the most, but it makes sense because it’s other people’s

money. So here's what we did, we found a company that does start-ups and they do household names, the Aldis, the Subways, the Seven Eleven's, all these things there. The company itself is called [the Nevada Company] and they provide seed capital for business. . . .”

“ . . . Now, here's the program. They offer our students anywhere from 50 to 150 grand just based on credit. Our average client in about a five-minute process gets anywhere from 80 to 100 grand standing by, and that's not the best part. The best part is zero percent. Zero percent locked in guaranteed for a certain time frame depending on the person, and the zero percent can be extended.”

- B. “If you, if you have great credit and want to do it, fantastic. If you're on the fence or whatever, it doesn't affect your credit, you can try, it doesn't make any difference to me. But I, I can look you in the eye and tell you this, it has been the single biggest boost to the start of students that I have seen added in years, period. And what's funny is I kind of figured like my mid-level students would use it, and they do, but my wealthiest are like zero percent, where, what, what. They're the first ones on the computers every time.”

94. In fact, the third-party companies referenced by Workshop speakers do not provide financing for real estate transactions. Rather, they simply apply for a half dozen or more credit cards in consumers' names. As with the Nudge Defendants' attempts to encourage consumers to raise their credit limits, the real purpose of encouraging consumers to seek funding through these third-party companies is to increase the amount of credit consumers have available to purchase one of the Nudge Defendants' Advanced Training packages.

95. The Nudge Defendants have primarily referred consumers to a Nevada company (hereinafter, the “Nevada Company”).

96. The Nudge Defendants induced approximately 3,700 consumers to sign up with the Nevada Company from March 2016 to June 2018. The Nevada Company used by the Nudge Defendants typically charged consumers a service fee of at least \$3,000 from the personal credit cards they obtained for the consumer. From at least [REDACTED] the Nevada Company paid the Nudge Defendants a referral fee of [REDACTED] for each consumer they

signed up during the Nudge Defendants' Workshops. The Nevada Company paid the referral fees by issuing checks addressed to a Nudge subsidiary, Box Home Loans, to Sanderson's attention.

97. The Nevada Company presents contracts to the consumers titled "Business Consulting Services Agreements" that refer to the consumer as its "client." The Nevada Company's contracts state that the consumer "retains and hires [the Nevada Company] to provide consulting services and assistance related to establishing financial and credit account on behalf" of the consumer and the consumer's business. Consumers are typically left with the impression that the Nevada Company will act in the consumers' interests and for their benefit. However, the Nudge Defendants and the Nevada Company instead coordinate with each other concerning the use of consumers' credit.

98. Unbeknownst to the consumers, the Nevada Company keeps the Nudge Defendants updated as to the status of the consumers' credit card applications. The Nudge Defendants coordinate their sales pitches to consumers for additional services with the Nevada Company when the consumers obtained new credit cards.

99. For example, in June 2017, a Response employee emailed a principal of the Nevada Company, asking for a breakdown of a consumer's available credit to use for another potential sale of a training package for nearly thirty thousand dollars: "we are going to discuss an investment w/[consumer] this evening after hours the most it would be is \$29,600. Could we get a breakdown of what cards to use? Please don't contact the client about the investment as we have not discussed it with them yet, thanks."

100. The Nevada Company also coordinated closely with the Nudge Defendants to

overcome consumers' concerns about the Nudge Defendants' products and services. For example, in May 2017, an email among several Nevada Company employees stated: "Can you have someone from Nudge reach out to [a consumer] right away? He has some questions and concerns about his training, he feels like he might be getting scammed by them." A Nevada Company principal forwarded the email to a Response employee, stating: "Just passing along exactly what the student is telling us. Looks like he might benefit from a little extra love."

Misrepresentations about the Services and Products Included in the Advanced Trainings

101. The Workshop speakers told consumers that if they purchased the Advanced Training packages, they would receive: (a) specialized, non-public software that would enable consumers to find cash buyers and discounted properties; (b) specialized access to mentors or experts who would answer all their questions and work with them to complete real estate deals; and (c) access to exclusive deals at the Buying Summit events that included "turnkey" or "cash flowing" investment properties that had been fixed up and already had paying tenants in place.

102. These claims are false.

103. Consumers who purchase the Advanced Training do not receive specialized, non-public software that enables them to find discounted properties or cash buyers. Instead, consumers receive a licensed software product that provides information that is widely accessible by the public for minimal cost.

104. Consumers who purchase the Advanced Training do not receive personalized access to experts or mentors as promised to complete real estate deals.

105. In numerous instances, consumers who attended the Buying Summit did not get access to turnkey and "cash flowing" rehabbed rental properties. Instead, as detailed below, in

numerous instances, consumers who bought properties at the Buying Summit incurred, and continue to incur, significant losses because the Nudge Defendants sold the properties at inflated prices and because the properties did not have paying tenants in place and needed significant repairs.

Misrepresentations about Earnings

106. The Nudge Defendants encourage consumers to purchase the Advanced Training packages by representing that consumers are likely to earn substantial income from the Advanced Trainings.

107. The Nudge Defendants' earnings representations take many forms.

108. In numerous instances, the Workshop speakers claim that the Advanced Trainings are part of an exclusive, proven system that has helped the speakers themselves and many students succeed quickly, and that even someone with no real estate experience can do at least one real estate deal a month and make money.

109. For example, at the South Jordan Workshop, the speaker, Doug Clark, made the following representations:

- A. "This is us funding your deals. Whatever you want to call it. I call it transactional funding, and this is my – one of my favorite sections to teach, because this is how we make money together. And if you've never had a massive, extremely powerful, large, national company that makes money when you do, you are going to enjoy the result more than anything you've ever seen."
- B. "So the question is, how many of those do you want to do a month? Start thinking about it. Tomorrow morning I'm going to have you start writing down goals. I'm going to have you write down goals. . . . if someone is new, scared, and never done real estate, has kids, grandkids, loves going to the fair, loves going up the mountains, doesn't really like to do a lot, and really has a fear of real estate, then I'm like do one a month. Start with one a month."
- C. "So the [Diamond Elite] 360 is kind of unique. It's a private invite only club. . . ."

It's a special group, and here's the thing. Is 38,000 a lot of money? It's all relative. . . . So if it was a – if it's a program that never goes away, has software that automates it for you, and here is the coolest part. It comes with a three transaction guarantee. (Inaudible) Three transaction guarantee. Clearly I'm only willing to do that for people that I think I can get through three transactions pretty quickly and pretty efficiently. Now, the thing I always get from people is what happened at three? You get a high-five. It's a lifetime program. It doesn't go away. Like three is what I want to get to quickly, because you know what? People who get to three get to ten. People who get to ten get to – does that make sense.”

- D. “I got stories you wouldn't believe if I told you, who all successfully – know this, all over the world right now . . . He toured I want to say 16 countries, that might have come up, successfully doing this program, successfully doing what Shawn taught over and over and over. Some retired, some retired early. Families working together. All types of stuff. You name it, I got it. The common thread was they joined the system. They got plugged in, they got help. . . . When I train people, like my goal is, is this, okay, there's a path that I know. Now it took me years and years and years to learn this, but I condensed it down. Here's how I condensed it down. I go you know what, for those who want extra help, here's what I know works, it's called let's immediately, as in starting tomorrow, let's get you on the software and you can fire in offers tomorrow, boom, as many as you want, nationwide. . . .”

110. In addition, in numerous instances, the Workshop speakers often discuss real estate deals where they claim to have earned substantial income using the same tools and system that the consumers will be able to access.

111. In numerous instances, the Workshop speakers refer to purported purchasers of the Nudge Defendants' Advanced Training who made substantial income from rental properties purchased at the Buying Summit or from other tools and services included in the Advanced Trainings.

112. In numerous instances, the Workshop speakers go over “hypothetical” real estate transactions to purportedly help calculate various costs where the consumer's profit often equals tens of thousands of dollars or more.

113. In numerous instances, the Nudge Defendants' sales representatives at the Workshop repeat and expand on these earnings claims when they meet privately with consumers during the Workshop by telling consumers they will recoup the purchase price of the Advanced Trainings.

114. In numerous instances, the Nudge Defendants' sales representatives at the Workshop advise consumers that the Advance Trainings provide the consumer with a system to generate significant income, and that the consumer should treat the endeavor as a business.

115. In addition, in numerous instances, once the Nudge Defendants refer consumers during the Workshop to the Nevada Company for funding, the Nevada Company representatives reinforce these earnings claims. For example, the Nevada Company representatives tell consumers during the credit card application process that the consumers could expect to earn thousands of dollars per deal or per month from the Nudge Defendants' system and even as much as one hundred thousand dollars for the following year.

116. In numerous instances, the Nevada Company representatives advised consumers to state on credit card applications that their projected income from their real estate investments would be \$100,000 or more. The Nevada Company documented these projections in "Ability to Pay" worksheets (which in many cases reflected over a 200% increase in the consumers' actual current income).

117. The Nudge Defendants' executives, including Sanderson, had knowledge that the Nevada Company was inflating consumers' income when applying for credit cards. For example, in January 2017, one of the Nudge Defendants' executives emailed Sanderson: "We've heard from students that [Nevada Company] is telling them to state larger incomes than

the student really makes. Just curious if that is their practice?” This practice continued for another year after this exchange and stopped only after the Nudge Defendants learned that they were the subjects of an FTC investigation.

118. The Nudge Defendants typically make an earnings related disclaimer at the beginning of the Workshops, which states in part: “We provide real estate education and training. We do not sell a business opportunity, such as a franchise business. We make no earnings or return on investment claims or guarantees,” and that “[t]he case studies provided are from our presenters and trainers, and may be examples from some of our top students who have shared their success with us. These results may not be typical. Many of our students do not apply the education and strategies and therefore do not make money. Many of these students purchased additional education and training materials.”

119. Despite such brief disclaimers, the Nudge Defendants’ repeated representations over the course of the three-day Workshops leave consumers with the net impression that they are likely to earn substantial income from the Advanced Trainings.

120. The Nudge Defendants’ earnings claims are false. The overwhelming majority of consumers who purchase the Advanced Trainings do not earn substantial income. In most instances, consumers who purchase the Advanced Trainings make no money and do not recoup the cost of the Advanced Trainings.

121. For many consumers, their financial loss is not limited to the purchase amount paid for the Workshop and Advanced Training. The Nudge Defendants continue to target consumers for additional sales even after they paid for the Advanced Training.

Step 4: The Buying Summit

122. From at least 2012 through at least mid-2016, the Nudge Defendants through BuyPD and its many subsidiaries marketed and sold real estate properties at the Buying Summits (later called Investor Expos) to consumers who purchased Advanced Training.

123. The Nudge Defendants acquired these properties from a handful of third-party companies (the “Property Sourcers”). The Property Sourcers typically purchased distressed properties and purportedly provided some degree of repair or renovation, and then sold the properties to one of dozens of BuyPD subsidiaries.

124. In 2016, the Nudge Defendants arranged for the Property Sourcers to sell the properties directly to consumers at the Buying Summit. In this arrangement, the Nudge Defendants received a “commission” from the Property Sourcers that was paid to a Nudge affiliated entity, Nudge Real Estate, LLC.

125. From 2012 through 2016, the Nudge Defendants held the Buying Summits each month in a ballroom at the Luxor Hotel in Las Vegas. Several hundred consumers often attended the Summits as part of the Advanced Training packages they purchased at the Workshops. The Summits often started on a Wednesday for registration and ended on a Saturday evening.

126. When consumers arrived, they had to complete an “investor profile,” which asked for the amount of funds they had available to invest. The Nudge Defendants used these profiles to identify the consumers who had the most funds and placed these consumers in the front of the ballroom during the Summit. The consumers who the Nudge Defendants identified as having less money were placed in the back of the ballroom.

127. The main speaker at the Buying Summit often was Kory Thurston, who acted as

the host. Thurston introduced to the consumers so-called “strategic partners” who were purportedly there to help the consumers accomplish their goals. The “strategic partners” included BuyPD’s “property specialists,” funding “partners,” and real estate lawyers.

128. Consumers were encouraged to commit to buy properties while at the Buying Summit and use the “strategic partners” that were at the Buying Summit to fund and complete those transactions. The Buying Summit speakers told consumers that if they waited to think about a property it would be gone.

129. Consumers received appointment cards indicating when they would meet with a purported property specialist. BuyPD encouraged the property specialists to sell the rental properties at the Buying Summit. Sanderson oversaw the property specialists from 2012 to 2015, and he often led weekly meetings on sales techniques. These techniques included finding the consumers’ “pain points” and overcoming their “objections” to buying, such as, that the property was not located near the consumer or was out of the consumer’s price range.

130. The Buying Summit speakers encouraged consumers to use “leverage” or financing to purchase more than one property so they could benefit from the supposed appreciation in the properties’ values.

131. The Buying Summit speakers also encouraged consumers to use the financing offered by BuyPD’s “strategic partners,” American Cash Funding and Insider’s Cash, which are actually subsidiaries of BuyPD. BuyPD’s funding “partners” offered consumers two and three-year interest only loans where consumers had to repay the entire principal amount in one “balloon” payment at the end of the loan term. The Nudge Defendants typically charged consumers an upfront “origination” fee of several thousand dollars equal to ten percent or more

of the loan amount.

132. The Buying Summit speakers told consumers that the funding partners normally funded only up to 50% of the property sale but would provide funding up to 66% or 75% of the consumers' purchase price of properties sold at the Buying Summit.

133. The Buying Summit speakers claimed that consumers could use these loans as "bridge loans" where they could pay off the monthly interest payments with the supposed rental payment income from the properties and then refinance the loans with a bank.

134. The Buying Summit speakers also encouraged consumers to transfer their savings into self-directed Individual Retirement Accounts ("self-directed IRAs") that could be used to buy the rental properties. Beginning in April 2013, the Nudge Defendants primarily steered consumers to a Nevada entity that set up consumers' self-directed IRAs during the Buying Summit. This Nevada entity split the fees it charged consumers with the Nudge Defendants, and has paid the Nudge Defendants more than [REDACTED] since April 2013.

135. Most consumers funded their property purchases from the Nudge Defendants by either taking out a loan from BuyPD or by making payments from a self-directed IRA account they opened at the Buying Summit.

136. Consumers met with the BuyPD property specialists at the Buying Summit in a side room next to the main ballroom. Other "strategic partners," including the self-directed IRA custodians, sat in the same side room.

137. The BuyPD property specialists each had a computer terminal screen and showed consumers the properties for sale on their screens. In at least 2013, the BuyPD property specialists referred consumers to a "Ready Prop" website at the domain readyprop.com, which

provided photos as well as a “Suggested Retail Price” and a “Price” for the rental properties. The “Suggested Retail Price” was higher than the “Price” amount, which was the price offered to the consumer. The BuyPD property specialists were directed to tell consumers that the higher “Suggested Retail Price” was based on sales comparables.

138. By 2015, the BuyPD property specialists referred consumers to an “Income Property USA” website at the domain buy.incomepropertyusa.com, which represented that the rental properties were “Cash flowing,” “Projected to appreciate dramatically,” and “Majority are already tenanted (with term contract).” These statements are consistent with what BuyPD property specialists were instructed to tell consumers about the rental properties.

139. At times in 2015, BuyPD property specialists provided consumers with a “Property Analysis Report” on offered rental properties during the sale process. These reports were prepared by BuyPD’s acquisitions group and included a “Comparable Market Analysis” that purported to list sales that were similar or comparable to the property in order to help establish a price range and value for the property.

140. The comparables that BuyPD provided consumers were cherry-picked to justify BuyPD’s price. They omitted property sales that were closer and in the same neighborhoods as the subject properties. The property sales that BuyPD omitted had substantially lower sales prices than the purported “comparable” sales that BuyPD included in the reports to support BuyPD’s higher offer price to the consumer. The purported “comparable” sales that BuyPD listed included properties that were more than one mile away from the subject property (even though BuyPD’s reports given to consumers claimed that the listed “comps are within 1 mile of property”).

141. Unbeknownst to consumers, the Nudge Defendants often marketed and sold properties to consumers at prices marked up as much as 20% more than what the Nudge Defendants would pay for them. In many instances, the Nudge Defendants sold the properties to consumers at significant markups within days after they had executed agreements to buy the properties themselves, and did so, before their own purchases had closed.

142. Consumers selected properties shown to them on the BuyPD property specialist's computer screen by clicking on a "Buy Now" button before time on a countdown clock expired. The Nudge Defendants' "sales support" team then prepared a sales contract for the consumer to sign before they left the Buying Summit.

143. In numerous instances, the Nudge Defendants prepared and encouraged consumers to sign a "Limited Power of Attorney" form designating a purported law firm located in Nevada, American Legal & Escrow, LLC ("American Legal"), as the consumer's attorney relating to the property. American Legal had no employees in Nevada and no physical office there. It was formed in December 2013 by a Utah attorney who: (i) represents the Nudge Defendants in consumer disputes, among other matters; (ii) whose office is in the Lindon Building, and (iii) who is Lewis's brother-in-law. One of the American Legal individuals designated as the consumer's attorney on the "Limited Power of Attorney" forms worked at BuyPD and is one of Poelman's sisters.

144. The Buying Summit speakers typically repeated and expanded on claims made earlier at the Workshop that the rental properties at the Buying Summit are: (1) "turnkey" properties that are "cash flowing" with renters and property managers in place; and (2) are available at "wholesale" or below market value prices.

145. The Buying Summit speakers made other representations about the condition of the properties sold at the Buying Summit, including that all properties for sale at the Buying Summit had been “rental rehabbed” and vetted by BuyPD to ensure that the properties were not something different from how they were represented.

146. BuyPD also marketed and sold at the Buying Summit the loans that BuyPD, through its subsidiaries, provided consumers to purchase the properties. In this way, the Nudge Defendants transferred the default risk from loans they issued to consumers to other consumers at the Buying Summit. Consumers who purchased these loans (which BuyPD referred to as “trust deeds”) were assigned BuyPD’s rights and interests in the loan agreements, including the right to all remaining payments due on the loans.

147. The Buying Summit speakers claimed that the trust deeds sold at the Summit were safe and “low risk” investments and that the Nudge Defendants would buy them back if the debtor defaulted for whatever reason.

148. These representations about the properties and trust deeds were false.

149. In numerous instances, consumers who purchased properties at the Buying Summit discovered that the properties were not worth what they paid, did not have paying tenants in place, and were not “rental rehabbed” or otherwise in the condition the Nudge Defendants represented. In addition, consumers incurred expenses and costs that far exceeded whatever rents were collected.

150. In numerous instances, consumers discovered they could not refinance the loans they obtained at the Buying Summit because the loan amounts exceeded the properties’ value based on independent appraisals.

151. In numerous instances, consumers defaulted on the loans they obtained at the Buying Summits to purchase the properties. For example, 20% of the 510 loans BuyPD made to consumers from March 2015 through December 2015 defaulted. (The Nudge Defendants' loan default rate is almost double the highest residential loan delinquency rate of 11.36% reported by the Federal Reserve during the Great Recession in early 2010. See Federal Reserve website, www.federalreserve.gov/releases/chargeoff/delallnsa.htm.)

152. In numerous instances, consumers had to sell the properties for substantially less than they had paid for the properties at the Buying Summits.

153. In some instances, the Nudge Defendants offered to "refinance" consumers' loans just before the balloon payment became due and charged them another fee of at least a thousand dollars to extend the loan and delay the balloon repayment obligation. In some instances, in 2016 and 2017, the Nudge Defendants then sold the "refinanced" loans through another affiliated entity, Sterling Capital, LLC, to other consumers. In at least several instances, consumers who purchased the "refinanced" loans discovered after the loans defaulted that the loan amounts far exceeded the market values of the properties securing the loans.

154. By 2015, several BuyPD sales representatives told Sanderson and another manager about concerns that BuyPD sold properties at the Buying Summit for more than their appraised values.

155. In the summer of 2015, BuyPD sales representatives also conveyed their concerns to their managers and Poelman that consumers were given "comp reports" that included BuyPD sales to other consumers. The BuyPD sales representatives were concerned that by using other BuyPD sales as comparables, they were "giving legitimacy" to inflated sale prices.

Step 5: The Inner Circle

156. Even consumers who purchase Advanced Training are targeted for additional sales. The Nudge Defendants target these consumers with telemarketing calls pitching additional products, including purported personalized coaching services under the brand name “The Inner Circle.”

157. The Nudge Defendants tell consumers that they will get access to a mentor and insider tips to help them do profitable real estate deals if they pay for the Inner Circle coaching program.

158. The Nudge Defendants’ telemarketers were instructed to maximize the sale amount they could get from each consumer.

159. The Nudge Defendants kept track of how much their telemarketers sold to each consumer by tracking each telemarketer’s “dollar per lead” (“DPL”) amount, which was the sum of all sales made to a set number of consumer leads divided by the number of leads. The telemarketers discussed their DPLs and acceptable DPL levels with Smith.

160. The Nudge Defendants’ telemarketers had access to the forms that consumers filled out at the Workshops detailing their personal finances. The Nudge Defendants’ telemarketers also used scripts that instructed them to ask about the consumers’ personal financial situation, including their credit card limits and savings.

161. In numerous instances, the Nudge Defendants’ telemarketers tell consumers that they will use this personal financial information to assess whether the consumer would be an appropriate candidate for the program.

162. The Nudge Defendants’ representations about how they use consumers’ financial

information are false.

163. The Nudge Defendants' telemarketers do not use this information to assess a consumer's qualifications for the program. Instead, the Nudge Defendants use this information to decide how much to charge consumers for the one-on-one coaching program. The Nudge Defendants charge consumers several thousand dollars, and as much as \$20,000, to enroll in this program. The Nudge Defendants' telemarketers had discretion to set the cost of the program based in part on what the consumers had available in terms of credit and assets.

164. In numerous instances, the Nudge Defendants' telemarketers encouraged consumers to purchase the coaching program by representing that consumers who purchase the program are likely to earn substantial income from future real estate deals.

165. The Nudge Defendants' earnings representations lead consumers to believe that they will be able to recoup the cost of their purchases of the coaching program and earn several thousand dollars a month from future real estate deals.

166. For example, the Nudge Defendants' telemarketers typically tell consumers about consumers who made money after purchasing the coaching program.

167. In addition, the scripts used by the Nudge Defendants' telemarketers instruct them to tell consumers that: "typically our clients average 6 to 12 months to complete their 1st couple of transactions. While we cannot offer any guarantees, and your results may vary, generally students are able to complete their first real estate transaction within the first few months of starting the education."

168. The Nudge Defendants' earnings claims are false.

169. The overwhelming majority of students who purchase the coaching program do

not earn substantial income and do not complete a real estate transaction within months of starting the purported one-on-one coaching.

The Nudge Individual Defendants Directed and Profited from this Scheme

170. From at least 2015 through at least 2017, Nudge held company bi-annual retreats in April and November. At these retreats, the Nudge Individual Defendants and several other executives discussed strategic and operational matters for Response and BuyPD, including: using online marketing strategies to improve the brand image, adding “credibility” to Workshop speakers, collecting and distributing consumer data profiles obtained at the Workshops, implementing new policies on BuyPD’s asset sales at the Buying Summits, selling additional services and products to consumers, and responding to consumer concerns.

171. For example, in April 2015, the Nudge retreat agenda listed [REDACTED]
[REDACTED]
[REDACTED]

172. In November 2016, the Nudge retreat agenda referenced [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

173. In the Fall of 2017, the Nudge retreat agenda listed [REDACTED]
[REDACTED]
[REDACTED]

174. The Nudge Individual Defendants also opened several merchant accounts used by the Nudge Enterprise to conduct business. A “merchant account” is a type of account that allows

a business to receive payments from customers by credit and debit card. A merchant account is linked to a routine depository bank account. When a consumer makes a purchase and pays by credit or debit card, that purchase transaction is processed through the seller's merchant account, and then the sale proceeds are deposited into the seller's depository bank account.

175. From 2011 to 2015, Finnegan signed applications for merchant accounts in the name of Evtech Media on behalf of the Nudge Enterprise.

176. From 2012 to 2015, Poelman's brother signed applications for merchant accounts in the name of BuyPD and its affiliated entities, Veil Corporate, Insider's Cash, and Income Property USA, LLC, on behalf of the Nudge Enterprise.

177. In 2014 and 2015, Smith signed applications for merchant accounts in the name of Response's affiliated entities, Response North, LLC, Constat Medium, LLC, and Constat Primum, LLC, on behalf of the Nudge Enterprise.

178. In July and November 2015, over twenty merchant accounts opened in the names of Evtech Media, Response North, and Veil Corporate on behalf of the Nudge Enterprise were closed by American Express for "excessive fraud" and "violation of standards."

179. The Nudge Individual Defendants also opened and maintained multiple commercial bank accounts to receive, redistribute, and withdraw funds from the credit and debit card sales transactions generated by the Nudge Enterprise.

180. Beginning in 2014, funds from operating bank accounts for Response and BuyPD (in the names of Evtech Media, LLC, Response North, LLC, and BuyPD, LLC) were transferred into bank accounts in the name of Building One, LLC and, later, 415NG, LLC, which were used to fund construction related expenses for the Lindon Building and the use of a private airplane

for the Nudge Enterprise.

181. From at least 2015 through 2016, millions of dollars were also transferred from the operating bank accounts for Response and BuyPD into a Nudge bank account. Poelman and his sister are the only signatories on this Nudge bank account, which was used to disburse these funds as profit distributions to the Nudge Individual Defendants and several other executives.

182. Since 2015, the Nudge Individual Defendants collectively received over \$30 million dollars from the following bank accounts used by the Nudge Defendants to receive and redistribute consumer payments: Nudge, LLC, BuyPD, LLC, Response North, LLC, Response Live, LLC, Evtech Media, LLC, and Acumen Advantage, LLC.

183. Poelman and Lewis each received over \$10 million through various entities each controls (KBBP, LLC, Net Media, LLC, Eddie Steve, LLC, OneExtreme, LLC, and Black Drive, LLC for Lewis, and All Source Marketing, 4145 Associates, Distant Path, LLC, Strange Range, LLC, and LC Lake, LLC for Poelman). Smith received more than \$5 million through entities he controls (Smith Business Enterprises and KTSE Real Estate LLC). Finnegan received more than \$4 million through entities he controls (Thermalday, LLC and Media Buzz, LLC).

184. Based on the facts and violations of law alleged in this Complaint, the FTC and the Division have reason to believe that Nudge Defendants are violating or are about to violate laws enforced by the Commission and the Division.

Graziosi and Yancey Assisted and Facilitated the Nudge Defendants' Deceptive Telemarketing Practices

185. Graziosi and Yancey are the primary celebrities that the Nudge Defendants used to market and provide credibility to their real estate training programs from 2012 until this

lawsuit was filed in November 2019. By the end of 2013, Graziosi temporarily stopped serving as a celebrity draw for the Nudge Defendants due in part to concerns he had about the impact of negative customer feedback on his own brand and reputation. However, Graziosi continued to assist the Nudge Defendants' marketing efforts by advising on marketing materials for other celebrity draws (including Yancey) and by 2017, he was again serving as a celebrity draw for the Nudge Defendants.

Graziosi and Yancey Provided Substantial Assistance to the Nudge Defendants by Helping Draw Consumers into the Sales Funnel

186. Over the course of eight years, and as described in Paragraphs 52-61, Graziosi and Yancey were integral to drawing consumers into the Nudge Defendants' sales funnel that targeted them with deceptive telemarketing calls for purported personalized coaching services.

187. Graziosi and Yancey appeared in infomercials and direct mailings (as referenced in Paragraphs 54, 55, and 57) that the Nudge Defendants used to attract consumers to their events. Graziosi and Yancey also promoted the Nudge Defendants' events on their own social media accounts and websites. In addition, Graziosi and Yancey appeared in pre-recorded videos and, at times, in person at the Nudge Defendants' events where they told consumers that they could achieve financial security from real estate investing and stressed the need to obtain training.

188. In text messages with Lewis, Graziosi explained that he understood his role for at least some of the Nudge Defendants' events was to "put the [consumers] in the mindset to buy" and "[t]hen the sales guys come in to slay it."

189. Graziosi and Yancey frequently communicated directly with the Nudge Individual

Defendants and made suggestions on sales and marketing efforts. For example, Graziosi suggested to Lewis ways for the Nudge Defendants to attract more consumers to their sales funnel, including by expanding online marketing efforts.

190. In text messages with Finnegan, Yancey provided feedback on other speakers' sales presentations, proposed market research, and made suggestions for how to introduce the Nudge Defendants' stock training pitch that followed the real estate portion of the Preview Events. Even though Yancey had little to no involvement in the stock training, Yancey told Finnegan that changes to how the stock pitch was introduced would help make the entire Preview Event look like a Yancey program.

191. Graziosi and Yancey each received over ten million dollars from the Nudge Defendants since 2012. Graziosi and Yancey received a percentage of most or all of the Nudge Defendants' sales to consumers who attended the Preview Events they sponsored, including sales of additional training or coaching services that the Nudge Defendants sold to consumers through telemarketing.

Graziosi and Yancey Knew or Consciously Avoided Knowing About the Nudge Defendants' Deceptive Sales Practices

192. During the time period Graziosi and Yancey worked with the Nudge Defendants, they knew about numerous consumer complaints they each received or that were posted online indicating how the Nudge Defendants misled consumers, through a series of deceptive sales pitches, into purchasing additional training and coaching programs costing tens of thousands of dollars that did not provide anything near the promised results and left consumers heavily in debt. Despite their knowledge of these complaints, Graziosi and Yancey continued to serve for

years as celebrity draws and receive millions from the Nudge Defendants' deceptive sales practices.

193. For example, in September 2015, Graziosi received an email from a trainer and friend he worked with who described situations that made her "physically sick" and "disgusted" concerning two consumers who had purchased a number of trainings from the Nudge Defendants. According to the email, one consumer "was called by marketing to join the Inner Circle" and then:

"They asked her how much money she has available, including on her credit cards and sold her a package for the amount she had which was \$6500. This wom[a]n, also elderly, has 3 credit cards maxed out already and is saying this will 'empty her bank account'. She can only see her way financially through the next 3 months. . . . She can't even use a computer, or implement what she was already taught, let alone be bombarded with more. The tactic used in these calls is that they select only the chosen few students who show potential. I know this is simply not true."

194. By 2016, Yancey was personally named as a defendant in two lawsuits brought by consumers claiming they had been defrauded by the Nudge Defendants into purchasing additional trainings and mentorships. Yancey reviewed the lawsuits before forwarding them to the Nudge Defendants.

195. In addition, Graziosi and Yancey knew about serious consumer complaints about the Nudge Defendants' training that appeared on consumer review websites such as Yelp, Consumer Affairs, and Trustpilot, and discussed with the Nudge Defendants efforts to send positive reviews to those sites in order to counteract the negative reviews.

196. For example, in September 2019, Graziosi and Finnegan discussed in text messages negative posts about the Nudge Defendants' events appearing under Graziosi's name

on the Trustpilot website. Graziosi asked Finnegan to “make it an absolute priority that it stays clean.” Finnegan replied: “We know how to do that. Within the past 4 hours I sent Dean four 5-star reviews,” indicating he sent positive reviews to Graziosi’s page on Trustpilot. Graziosi also discussed with Finnegan an earlier request to focus on sending reviews to the Consumer Affairs website because of consumer complaints appearing there and the need to monitor consumer review sites.

197. Consumer complaints about the Nudge Defendants’ training that appeared on the Consumer Affairs website under Graziosi’s company, Dean Enterprises, included:

- [September 26, 2013 post] “I tried to come up with the 39,000 to pay for the advanced training. . . . I couldn’t come up with all the money. They said ‘how much could you get?’ I said 9K. They said ‘can you do more.’ I said I have one more card that will not increase my limit and only has 300. They said ‘Here is what we can do . . . We will give you training every week on the phone, an online school and we will still give you access to the transitional funding.’

“I thought I was being given a deal of a lifetime. Getting special treatment. I was so excited. Then all I got was an extension of the book. ‘Look on Craigslist, call landlords, and make a buyers list.’ The phone calls were rushed and was more or less. ‘Ok so let’s look at Craigslist together’, ‘that a good one, you should call on that one’ or ‘so what are you working on, Ok good, keep it up.’ When I tried to use their ‘transitional funding’ money, I was sent to another lender. Everyone had upfront fees and expected me to pay for appraisals. I HAD NOTHING LEFT. They made sure of it. He wasn’t investing in me. They just wanted every penny out of me they could get. . . .”
- [May 13, 2014 post] “. . . Lessons do NOT reveal any ‘secrets’, but instead present conflicting information. Numerous promises & assurances with NO follow-thru, including that of mentoring until we’ve paid for their VERY expensive education. Coaching/mentoring can NEVER occur due to unanswered phone calls, unreturned msgs, & ignored emails. ‘Indispensable software’ does NOT work as demonstrated & costs a FRACTION of what I was told. An endless stream of expensive offers I apparently can’t live without They used every ‘trick in the book’ to get my money! . . . It is because of I.F.’s [Insider’s Financial, one of the Nudge Defendants’ brands featuring Graziosi] manipulative and misleading sales presentations that I was led to believe that they COULD and

WOULD help me become more financially secure - but instead, I ended up with an inferior product, poor service, and major debt. They not only used my dreams against me (to one day own rental property), they also leveraged my DISABILITY status by amplifying my growing concerns about whether Social Security will continue to cover my very modest living expenses. . . .”

- [October 13, 2014 post] “I was another victim of high sales pressure from Dean Graziosi team. They are more concerned about getting money from people than making them succeed in real estate business. It is a system to squeeze as much money from their victims as possible tuned to perfection. Be aware of it.”
- [January 10, 2015 post] “This experience was devastating for me as it put me in further debt than I already was. I feel that I was swindled; pressured and tricked into buying products and urged to put the money on credit cards as I didn’t have the money already. I was told Dean was willing to make a special deal for me for some products only to find out later that’s what the products actually cost. I walked away feeling stupid and ashamed of my decisions. The guide I was assigned was of little help. I was told she would give me answers to questions I didn’t even know to ask but this was far from the truth as she basically just reiterated the information I already was given. . . . I lost so much money and have been in debt for the past couple of years, living minimally and depending on my parents while I try to pay off this hefty debt. . . . I invested more than \$16,000 in the company.”
- [January 24, 2018 post] “I attended the Dean Graziosi Millionaire Success Habits seminar @ the Sheraton in Brooklyn, NY on Jan 23rd 2018 @ 12 noon (yesterday). This was a switch and bait scam and Dean does NOT attend these seminars! Unfortunately I fell for it and paid \$997 + tax for a 3 day workshop with Steven ** which I had to do on the spot to get their rebate program that supposedly refunds you all the money. I went home to make sure it wasn’t too good to be true. I found numerous reviews online stating that they were duped by these people, asking them to invest \$20k in future workshops and that the info they promise to give they don’t actually give at this workshop. They give a very hard time refunding, and I can’t afford that as I spent the last of my money to try and learn how to make more. . . .”

198. Similarly, by October 2014, Yancey knew about negative complaints about the Yancey sponsored events that appeared on Yelp’s website, which Yancey referred to as the “Yancey slaughter site.” As recently as July and August 2019, Yancey discussed with Lewis and

Poelman, among others, efforts to send positive reviews to Yelp to improve Yancey's brand image. Yancey suggested that the Nudge Defendants direct attendees at the Preview Events to post reviews while they eat lunch in order to "push" the consumer complaints appearing on the review platforms "down the chain."

199. Consumer complaints about the Nudge Defendants' training that appeared on Yelp under "Scott Yancey" included:

- [February 10, 2017 post] ". . . I kept receiving an email and post on Facebook from Scott & Am[ie] Yan[c]ey to join them for a free dinner . . . I am legally blind so when we got there we registered and we sat down they explain how \$1,275.00 would be the best investment ever so we can learn all the tricks and ins & outs to flip houses we signed up because they used a disabled man to tell his miraculous story . . . We took 3 days from our busy schedules to go listen to countless hours of trying to get us to fork over \$40K to get more info after the 3 days . . . The whole thing was first presented as one thing then it turned out completely different."
- [January 30, 2018 post] "Total con, scam, fraud, and ripoff. A complete waste of time and money. A fraudulent 'get rich quick' real estate flipping scheme, promoted by slick, modern day hucksters, who get rich quick by upselling desperate, naive, gullible suckers their worthless \$38,000+ 'training seminars' . . ."
- [April 14, 2018 post] ". . . This is a rip off and they don't deliver on the promise they make when they sell you their system/education. They are as high pressured at selling you and taking your money as a timeshare presentation. I am over \$16k in debt from their so called training from experts and successful[] students. . . They will tell you to beg, borrow or steal, drain your 401, cash in your pensions, max out your credit cards, use your equity line on your home's anything to get your money for this useless course. . ."
- [April 25, 2018 post] ". . . Below is my opinion on the Yanc[e]y program and I did purchase their Diamond Package. Scott Yanc[e]y was not involved in any training that I was a part of. His wife made a brief appearance at the event in Vegas. . . I admit I got SOLD into the big program and spent a lot of money. . . This is WAY overpriced, they way over promise and under deliver. I hope this review keeps as many people as possible from the hard core sales pitches and relentless upsells. Don't even attend the free event. It is a relentless hard core sales pitch and in my opinion should be illegal. Every event starting with the free event they tell you that you need to pay more to learn enough to be

successful. Even after spending 5 figures on the Diamond package. They tell you to purchase their mentoring program which is a joke. It was sad watching endless people spend money on their credit cards that they don't have. Even teaching folks how to increase their limit. Claiming it is to leverage real estate but really to purchase the higher price programs. Every event no matter how much you spend is another sales pitch. They try to sell you everything from land, to turn key rentals, to health supplements to stock trading systems. Yes, they do teach you the basics. However, you can learn this same stuff from online forums, local REI groups, partnering with a mentor for FAR, FAR Less Money. They make you think there is a magic pill to transform you into a successful real estate investor all the while sucking money from you that you could be using to purchase real estate. . . .”

200. In September 2019, in response to consumer YouTube videos describing the Nudge Defendants' sales practices as a scam, Yancey and Response's Chief Marketing Officer discussed the need to create a video of Yancey talking about common real estate scams based on bullet points prepared by the Nudge Defendants so that they could counter the videos that consumers had posted warning others about their negative experiences. In October 2019, a video of Yancey talking about various scams was uploaded on YouTube. The six-and-a-half minute video, in which Yancey uses a variant of the word “scam” over twenty times, is the top result in YouTube searches for “Yancey” and “scam.”

VIOLATIONS OF THE FTC ACT

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

202. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

203. As set forth below, the Nudge Defendants are engaging in violations of Section 5(a) of the FTC Act in connection with the marketing and sale of their real estate investment related products and services.

COUNT ONE – MISREPRESENTATION (EARNINGS)
(By Plaintiff Federal Trade Commission Against All Nudge Defendants)

204. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their real estate investment related products and services, the Nudge Defendants have represented, directly or indirectly, expressly or by implication, that consumers who purchase and use their products and services are likely to earn substantial income. Such representations include that consumers who purchase the Workshops or the Advanced Trainings are likely to earn several thousand dollars monthly.

205. In truth and in fact, in numerous instances in which the Nudge Defendants have made the representations set forth in Paragraph 204, consumers who purchased the Nudge Defendants' products and services did not earn substantial income.

206. The Nudge Defendants' representations as set forth in Paragraph 200 are false or misleading or were not substantiated at the time the representations were made, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO – MISREPRESENTATION (PRODUCTS AND SERVICES PROVIDED)

(By Plaintiff Federal Trade Commission Against All Nudge Defendants)

207. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their real estate investment related products and services, the Nudge Defendants have represented, directly or indirectly, expressly or by implication, that they will provide tools and/or access to one or more of the following:

- (a) funding to do real estate deals without having the consumers put any of their own money down;

- (b) properties at discounted or wholesale prices;
- (c) “cash buyers;”
- (d) personalized assistance from experts or mentors who will walk consumers through completing real estate deals;
- (d) “turnkey” or “cash flowing” properties at the Buying Summit;
- (e) properties in “rental rehabbed” condition, or free of certain defects, at the Buying Summit or
- (f) “low risk” trust deeds at the Buying Summit.

208. In truth and in fact, in numerous instances in which the Nudge Defendants have made the representations set forth in Paragraph 207, the Nudge Defendants did not provide the products and services they represented they would provide.

209. Therefore, the Nudge Defendants’ representations as set forth in Paragraph 203 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 THREE – MISREPRESENTATION (NEED FOR
FINANCIAL INFORMATION AND
PURPOSE OF SEEKING ADDITIONAL CREDIT)**

(By Plaintiff Federal Trade Commission Against All Nudge Defendants)

210. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their real estate investment related products and services, the Nudge Defendants have represented, directly or indirectly, expressly or by implication, that they need consumers’ financial information to advise consumers on funding real estate deals or to determine whether consumers are qualified for one of their programs.

211. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their real estate investment related products and services, the Nudge Defendants have represented, directly or indirectly, expressly or by implication, that consumers should increase their existing credit card limits and apply for additional financing to do real estate deals.

212. In truth and in fact, in numerous instances in which the Nudge Defendants have made the representations set forth in Paragraph 210, the Nudge Defendants do not use consumers' financial information as they represented. Instead, the Nudge Defendants use consumers' financial information to decide how much to charge them for one of their Advanced Training packages and Inner Circle program.

213. In truth and in fact, in numerous instances in which the Nudge Defendants have made the representations set forth in Paragraph 211, the Nudge Defendants encourage consumers to increase their existing credit card limits and apply for additional financing not to fund real estate deals, but to convince consumers to purchase the Nudge Defendants' Advanced Training packages with their newly-available credit.

214. Therefore, the Nudge Defendants' representations as set forth in Paragraphs 210 and 211 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

215. In 1994, 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. The FTC adopted the TSR in 1995, extensively amended it in 2003, and amended certain

sections thereafter.

216. The Nudge Defendants are “sellers” or “telemarketers” engaged in “telemarketing” as defined by the TSR, 16 C.F.R. §§ 310.2(dd), (ff), and (gg).

217. The TSR prohibits sellers and telemarketers from “[m]isrepresenting, directly or by implication, in the sale of goods and services . . . [a]ny 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).

218. The TSR prohibits sellers and telemarketers from “[m]aking a false or misleading statement to induce any person to pay for goods or services. . . .” 16 C.F.R. § 310.3(a)(4).

219. The TSR also prohibits a person from providing substantial assistance or support to any seller or telemarketer when the person “knows or consciously avoids knowing” that the seller or telemarketer is engaged in acts or practices that violate Section 301.3(a). 16 C.F.R. § 310.3(b).

220. 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). Pursuant to Section 4 of the Telemarketing Act, 15 U.S.C. § 6103(f)(2), the Division is authorized to bring civil actions to enforce the TSR.

COUNT FOUR – MISREPRESENTATION (PERFORMANCE, EFFICACY, NATURE, ESSENTIAL CHARACTERISTICS)

(By Plaintiffs Federal Trade Commission and Utah Division of Consumer Protection Against All Nudge Defendants)

221. In numerous instances, in connection with telemarketing offers to sell the Inner Circle program, the Nudge Defendants have misrepresented, directly or indirectly, expressly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of the Inner Circle one-on-one coaching services, such as that consumers who purchase the Inner Circle program are likely to earn substantial income.

222. The Nudge Defendants' acts or practices, as set forth in Paragraph 221, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iii) and (a)(4).

COUNT FIVE – ASSISTING AND FACILITATING DECEPTIVE TELEMARKETING ACTS

(By Plaintiff Federal Trade Commission Against Graziosi and Yancey)

223. In numerous instances, Graziosi and Yancey provided substantial assistance or support to the Nudge Defendants when each knew, or consciously avoided knowing, that the Nudge Defendants were engaged in acts or practices that violated Section 310.3(a)(2) of the TSR, as described in Paragraphs 185 through 200 above.

224. Therefore, Graziosi's and Yancey's acts or practices as set forth in Paragraph 219 violate the TSR, 16 C.F.R. § 310.3(b).

VIOLATIONS OF THE UCSPA

225. The UCSPA prohibits suppliers from committing deceptive and unconscionable acts or practices in connection with a consumer transaction, whether the act occurs before, during, or after the transaction. Utah Code §§ 13-11-4(1); 13-11-5(1).

226. The Nudge Defendants engage in “consumer transaction[s]” by marketing and selling to “person[s]” products and services that are primarily for personal, family, or household purposes, or for purposes that relate to a business opportunity. Utah Code §§ 13-11-3(2), (5).

227. Each Nudge Defendant is a “supplier” because they regularly solicit, engage in, or enforce consumer transactions, whether or not they deal directly with consumers. Utah Code § 13-11-3(6).

228. As set forth below, the Nudge Defendants have violated the UCSPA by engaging in deceptive and unconscionable acts and practices in connection with the marketing and sale of their real estate investment related products and services.

COUNT SIX – DECEPTIVE ACTS OR PRACTICES (EARNINGS CLAIMS)

(By Plaintiff Utah Division of Consumer Protection Against All Nudge Defendants)

229. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their real estate investment related products and services, the Nudge Defendants have represented, directly or indirectly, expressly or by implication, that consumers who purchase and use their products and services are likely to earn substantial income. Such representations include that consumers who purchase the Workshops or the Advanced Trainings are likely to earn several thousand dollars monthly.

230. In truth and in fact, in numerous instances in which the Nudge Defendants have

made the representations set forth in Paragraph 229, consumers who purchased the Nudge Defendants' products and services did not earn substantial income.

231. The Nudge Defendants' representations as set forth in Paragraph 229 are false or misleading or were not substantiated at the time the representations were made, and constitute a deceptive act or practice in violation of the UCSPA, Utah Code § 13-11-4(1).

COUNT SEVEN – DECEPTIVE ACTS OR PRACTICES (PRODUCTS AND SERVICES PROVIDED)

(By Plaintiff Utah Division of Consumer Protection Against All Nudge Defendants)

232. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their real estate investment related products and services, the Nudge Defendants have represented, directly or indirectly, expressly or by implication, that they will provide tools and/or access to one or more of the following:

- (a) funding to do real estate deals without having the consumers put any of their own money down;
- (b) properties at discounted or wholesale prices;
- (c) “cash buyers;”
- (d) personalized assistance from experts or mentors who will walk consumers through completing real estate deals;
- (d) “turnkey” or “cash flowing” properties at the Buying Summit;
- (e) properties in “rental rehabbed” condition, or free of certain defects, at the Buying Summit; or
- (f) “low risk” trust deeds at the Buying Summit.

233. In truth and in fact, in numerous instances in which the Nudge Defendants have

made the representations set forth in Paragraph 232, the Nudge Defendants did not provide the products and services they represented they would provide.

234. Therefore, the Nudge Defendants' representations as set forth in Paragraph 232 are false and misleading and constitute deceptive acts or practices in violation of the UCSPA, Utah Code § 13-11-4(1).

COUNT EIGHT – DECEPTIVE ACTS OR PRACTICES (NEED FOR FINANCIAL INFORMATION AND PURPOSE OF SEEKING ADDITIONAL CREDIT)

(By Plaintiff Utah Division of Consumer Protection Against All Nudge Defendants)

235. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their real estate investment related products and services, the Nudge Defendants have represented, directly or indirectly, expressly or by implication, that they need consumers' financial information to advise consumers on funding real estate deals or to determine whether consumers are qualified for one of their programs.

236. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their real estate investment related products and services, the Nudge Defendants have represented, directly or indirectly, expressly or by implication, that consumers should increase their existing credit card limits and apply for additional financing to do real estate deals.

237. In truth and in fact, in numerous instances in which the Nudge Defendants have made the representations set forth in Paragraph 235, the Nudge Defendants do not use consumers' financial information as they represented. Instead, the Nudge Defendants use consumers' financial information to decide how much to charge them for one of their Advanced Training packages and Inner Circle programs.

238. In truth and in fact, in numerous instances in which the Nudge Defendants have made the representations set forth in Paragraph 236, the Nudge Defendants encourage consumers to increase their existing credit card limits and apply for additional financing not to fund real estate deals, but to convince consumers to purchase the Nudge Defendants' Advanced Training packages with their newly-available credit.

239. Therefore, the Nudge Defendants' representations as set forth in Paragraphs 235 and 236 are false and misleading and constitute a deceptive act or practice in violation of the UCSPA, Utah Code § 13-11-4(1).

COUNT NINE – UNCONSCIONABLE ACTS OR PRACTICES (EXPLOITING CONSUMERS' PERSONAL FINANCIAL INFORMATION TO ENCOURAGE CONSUMERS TO INCUR DEBT OR OTHER FINANCIAL OBLIGATIONS THE NUDGE DEFENDANTS KNEW OR SHOULD HAVE KNOWN THE CONSUMER COULD NOT REASONABLY REPAY OR AFFORD)

(By Plaintiff Utah Division of Consumer Protection Against All Nudge Defendants)

240. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their real estate investment related products and services, the Nudge Defendants represented to consumers that by purchasing the Nudge Defendants' products and services, consumers would be able to generate substantial income and that high rates of consumers who previously purchased the Nudge Defendants' products and services were successful.

241. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their real estate investment related products and services, the Nudge Defendants received from consumers detailed personal financial information, including the consumers' income, savings, and credit availability.

242. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their real estate investment related products and services, the Nudge Defendants together and in concert with others used consumers' personal financial information to encourage consumers to increase their existing credit card limits to apply for and open new credit cards, and to use savings and retirement funds purportedly to help launch consumers' real estate investment ventures.

243. In truth and in fact, the Nudge Defendants together and in concert with others sought to use the consumers' newly-available credit, savings, and retirement funds to pay for the Nudge Defendants' products or services that cost thousands or tens of thousands of dollars.

244. The Nudge Defendants knew or should have known that their representations about earnings potential and success rates were false, misleading, and deceptive.

245. The Nudge Defendants knew or should have known the financial condition of consumers whom they encouraged to increase existing credit card limits, open new credit cards, or to use savings and retirement funds.

246. The Nudge Defendants knew or should have known that consumers would not reasonably be able to repay the significant cost of the Nudge Defendants' products or services, particularly because the Nudge Defendants knew or should have known that their representations about earnings potential and prior consumers' success were false, misleading, and deceptive.

247. The Nudge Defendants' acts and practices were unconscionable because the Nudge Defendants exploited consumers' financial information to sell products and services that the Nudge Defendants knew or should have known would not enable consumers to generate significant income and be successful.

248. The Nudge Defendants' acts and practices were unconscionable because the Nudge Defendants encouraged consumers to incur significant debt and spend savings or retirement funds that the Nudge Defendants, through their knowledge of consumers' financial information and through their knowledge of their own false representations, knew or should have known consumers would be unable to repay or recover.

249. The Nudge Defendants seek to induce consumers to assume risks, including the obligation to repay tens of thousands of dollars of credit card debit, which materially exceed the benefits to the consumers of their transactions with the Nudge Defendants.

250. Therefore, the Nudge Defendants' acts and practices set forth in Paragraphs 240 to 249 constitute unconscionable acts and practices in violation of the UCSPA, Utah Code § 13-11-5(1).

VIOLATIONS OF THE BODA

251. The BODA requires sellers of "assisted marketing plans" to annually file certain information with the Division. Utah Code § 13-15-4.

252. The BODA also requires sellers of assisted marketing plans to provide to prospective purchasers of the assisted marketing plans written disclosures at least ten days prior to execution of a purchase agreement or payment by the purchaser. Utah Code §§ 13-15-4; 13-15-5.

253. The Nudge Defendants' Workshop, Advanced Training, and Inner Circle products are "assisted marketing plans" as defined by Utah Code § 13-15-2(1)(a)(iv).

254. The Nudge Defendants are "sellers" of assisted marketing plans as defined by Utah Code § 13-15-2(8).

255. As set forth below, the Nudge Defendants have violated the BODA by failing to file required information with the Division, and by failing to provide required disclosures to prospective purchasers of the Nudge Defendants' assisted marketing plans.

**COUNT TEN – FAILURE TO FILE REQUIRED INFORMATION
WITH THE DIVISION**

(By Plaintiff Utah Division of Consumer Protection Against All Nudge Defendants)

256. During the five years preceding this action, the Nudge Defendants have offered and sold multiple different assisted marketing plans through a variety of corporate entities.

257. For each assisted marketing plan offered and sold by the Nudge Defendants, the Nudge Defendants were required to file annually with the Division the information described by Utah Code § 13-15-4.

258. During the five years preceding this action, the Nudge Defendants have failed to file with the Division the information required by Utah Code § 13-15-4 with respect to any of the assisted marketing plans the Nudge Defendants offered, sold, and continue to offer and sell.

259. As described in Paragraphs 256 to 258, the Nudge Defendants violated the BODA by failing to file with the Division the information required by Utah Code § 13-15-4 for each assisted marketing plan the Nudge Defendants offered, and for each year the Nudge Defendants failed to file the required information while offering a given assisted marketing plan.

**COUNT ELEVEN - FAILURE TO PROVIDE REQUIRED
DISCLOSURES TO PROSPECTIVE PURCHASERS**

(By Plaintiff Utah Division of Consumer Protection Against All Nudge Defendants)

260. During the five years preceding this action, the Nudge Defendants have sold thousands of assisted marketing plans to consumers.

261. The Nudge Defendants were required to provide certain disclosures to prospective purchasers of its assisted marketing plans in a single disclosure statement or prospectus at least ten business days prior to the execution of a consumer's agreement to purchase one of the Nudge Defendants' plans, or ten business days prior to payment by the consumer of any consideration in exchange for the assisted marketing plan. Utah Code § 13-15-5.

262. The Nudge Defendants did not provide the required disclosure statement or prospectus to any of the thousands of consumers who purchased one of the Nudge Defendants' assisted marketing plans.

263. As described in Paragraphs 260 to 262, the Nudge Defendants violated the BODA each time they sold an assisted marketing plan to a consumer without providing the required disclosure statement or prospectus.

VIOLATIONS OF THE TFPA

264. The TFPA prohibits telephone soliciting businesses and solicitors from making or causing to be made any untrue material statements, or failing to disclose material facts necessary to make a statement not misleading. Utah Code § 13-26-11(1)(c).

265. The TFPA also prohibits any telephone soliciting business from causing or permitting any solicitor to violate the TFPA. Utah Code § 13-26-11(2)(a).

266. The Nudge Defendants operate a telephone soliciting business as defined by Utah Code §13-26-2(8).

267. The Nudge Defendants are solicitors because they make telephone solicitations, and cause telephone solicitations to be made. Utah Code §§ 13-26-2(9)(a), (b).

COUNT TWELVE – UNTRUE MATERIAL STATEMENTS OR FAILURE TO DISCLOSE MATERIAL FACTS

(By Plaintiff Utah Division of Consumer Protection Against All Nudge Defendants)

268. In numerous instances, in connection with telephone solicitations to sell the Inner Circle program, the Nudge Defendants have misrepresented, directly or indirectly, expressly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of the Inner Circle one-on-one coaching services, such as by representing that consumers who purchase the Inner Circle program are likely to earn substantial income.

269. The Nudge Defendants' acts or practices, as described in Paragraph 268 above, are unlawful practices that violate the TFPA. Utah Code §§ 13-26-11(1)(c); 13-26-11(2)(a).

CONSUMER INJURY

270. Consumers are suffering, have suffered, and will continue to suffer substantial injury as a result of the Nudge Defendants' violations of the FTC Act, the TSR, the UCSPA, the BODA, and the TFPA. In addition, the Nudge Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, the Nudge Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

271. 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.

272. 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 or reformation of contracts and the refund of money.

273. The UCSPA authorizes this Court to enter a declaratory judgment that the Nudge Defendants' acts or practices violate the UCSPA, to enjoin, in accordance with the principles of equity, any person who has violated, is violating, or is otherwise likely to violate the UCSPA, to award damages or relief on behalf of consumers for the Nudge Defendants' violations of the UCSPA, to award a fine against the Nudge Defendants for violations of the UCSPA in an amount determined by the Court, and to award the Division reasonable attorney's fees, court costs, and costs of investigation. Utah Code §§ 13-11-17(1)(a)-(d); 13-11-17.5.

274. The BODA authorizes this Court, in addition to any other relief granted by the Court, to grant judgment and injunctive relief in favor of the Division, and to award the Division reasonable attorney's fees, costs of court, and investigative fees for the Nudge Defendants' violations of the BODA. Utah Code § 13-15-6(3).

275. The TFPA authorizes this Court to impose a civil penalty not exceeding \$2,500 against the Nudge Defendants for each of the Nudge Defendants' transactions that violated the TFPA. Utah Code § 13-26-8(2).

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C.

§§ 53(b), 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and Plaintiff Utah Division of Consumer Protection, pursuant to the UCSPA, the BODA, the TFPA, and the TSR, and as authorized by the Court's own equitable powers, request that the Court:

A. Award Plaintiffs such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including temporary and preliminary injunctions, an order freezing assets and immediate access;

B. Enter a permanent injunction to prevent future violations of the FTC Act, the TSR, the UCSPA, the BODA, and the TFPA by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, the TSR, the UCSPA, the BODA, and the TFPA, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

D. Award civil penalties in an amount up to \$2,500 for each violation of the UCSPA, the BODA, and the TFPA; and

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

Respectfully submitted,

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Dated: _____

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