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15 UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF NEVADA

17 FEDERAL TRADE COMMISSION,

18 Plaintiff,

19 CV-S-97- 00515-LDG (RLH)

20 v.

21 WOOFTER INVESTMENT CORPORATION,
22 PATSY M. BARBOUR a.k.a. PATSY
23 BARBOUR-WOOFTER, WILLIAM L.
24 WOOFTER, KONRAD KING, and KONRAD
25 KING, INC.,

26 Defendants.

27 **FIRST AMENDED COMPLAINT**

28 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its First Amended
Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade
Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer
Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 *et seq.*, to secure a
permanent injunction, rescission of contracts, restitution, disgorgement, and other equitable relief

1 for defendants' deceptive acts or practices in violation of the FTC's Trade Regulation Rule
2 entitled "Telemarketing Sales Rule" ("the Rule"), 16 C.F.R. Part 310.

3 **JURISDICTION AND VENUE**

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5 2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a),
6 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

7 3. Venue in the District of Nevada is proper under 15 U.S.C. § 53(b), as amended by
8 the Federal Trade Commission Act Amendments of 1994, Pub. L. No. 103-312, 108 Stat. 1691,
9 and 28 U.S.C. § 1391(b), (c), and (d).

10
11 **THE PARTIES**

12 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United
13 States Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission enforces the FTC
14 Act and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive
15 telemarketing acts or practices, including assisting and facilitating deceptive practices, and credit
16 card laundering. The Commission may initiate federal district court proceedings to enjoin
17 violations of the FTC Act and the Telemarketing Sales Rule and to secure such equitable relief as
18 is appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b,
19 and 6105(b).

20 5. Woofter Investment Corporation d/b/a A.T.M.S. ("Woofter"), is incorporated in
21 Nevada. Its office and principal place of business is 1500 East Tropicana Avenue, #216, Las
22 Vegas, Nevada. Woofter is also known as W.I.C. and Woofter & Associates, and does business
23 as A.T.M.S. Woofter transacts business in the District of Nevada.

24 6. Patsy M. Barbour, a.k.a. Patsy Barbour-Woofter ("Barbour"), is president and sole
25 shareholder of Woofter. At all times relevant to this complaint, acting alone or in concert with
26 others, she has formulated, directed, controlled, or participated in the acts and practices of
27 defendant Woofter, including the acts and practices set forth in this complaint. She resides and
28 transacts business in the District of Nevada.

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2 7. William L. Woofter is the director of Woofter. At all times relevant to this
3 complaint, acting alone or in concert with others, he has formulated, directed, controlled, or
4 participated in the acts and practices of defendant Woofter, including the acts and practices set
5 forth in this complaint. He resides and transacts business in the District of Nevada.

6 8. Konrad King ("King") is office manager of Woofter. At all times relevant to this
7 complaint, acting alone or in concert with others, he has formulated, directed, controlled, or
8 participated in the acts and practices of defendant Woofter, including the acts and practices set
9 forth in this complaint. He resides and transacts business in the District of Nevada.

10 9. Konrad King, Inc., is incorporated in Nevada. Its office and principal place of
11 business is 765 E. Eldorado Lane, Las Vegas, Nevada. Konrad King, Inc., transacts business in
12 the District of Nevada.

13 **COMMERCE**

14 10. At all times relevant to this complaint, defendants' course of business, including the
15 acts and practices alleged herein, has been and is in or affecting commerce, as "commerce" is
16 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

17 **DEFENDANTS' BUSINESS PRACTICES**

18 11. Woofter provides credit card processing, the purchase of foreign lottery tickets,
19 and customer service on behalf of numerous telemarketing boilerrooms that are deceptively and
20 illegally telemarketing chances and interests in foreign lottery tickets to United States residents.
21 In some instances, Woofter deceptively and illegally telemarkets or sells chances or interests in
22 foreign lottery tickets to United States residents itself.

23 12. Among the telemarketing clients for whom Woofter provides credit card
24 processing, customer service, and foreign lottery ticket purchases are the Legato Group, and
25 Lexus, which were the subjects of U.S. and Canadian criminal law enforcement proceedings last
26 year for the unlawful sale of lottery tickets to U.S. residents.

27 13. The various lottery telemarketing clients of defendants, and in some instances
28 defendants Woofter, Barbour, William L. Woofter, and King, operate in a similar fashion. They
target United States residents, particularly the elderly, contacting them by telephone and mail to

1 solicit them to participate in foreign lotteries (*e.g.*, Australia and Spain) by purchasing chances
2 and interests in lottery tickets. Purchases may be for individual chances, but more often are for
3 pooled chances in which the consumer purchases a share in a group purchase.
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5 14. During telephone solicitations or in direct mail pieces, defendants' telemarketing
6 clients, and in some instances defendants Woofter, Barbour, William L. Woofter, and King, make
7 false and misleading representations to induce the purchase of chances or interests in lottery
8 tickets. Defendants and their telemarketing clients represent through a variety of statements that
9 the consumer cannot lose, or is guaranteed to win some large amount of money, that the odds of
10 winning are very good, that the telemarketers' lottery program increases the chance of the
11 consumer winning, or that the winnings are tax free. Consumers have been told for example that:

- 12 a. the consumer has been selected as one of four finalists to share equally in a
13 large jackpot;
- 14 b. the consumer is a guaranteed winner, or is "the" winner of or has won a
15 large jackpot;
- 16 c. the consumer's odds of winning a large jackpot are one in six, or otherwise
17 very good;
- 18 d. the consumer will acquire 100,000 or some other large number of chances;
19 and
- 20 e. hundreds of U.S. citizens win every week using the telemarketer's special
21 winning system.

22 15. The statements set forth in Paragraph 14 are not true. Contrary to the
23 representations made by defendants Woofter, Barbour, William L. Woofter, and King and their
24 telemarketing clients, neither defendants nor their telemarketing clients improve a consumer's
25 odds of winning, and consumers do not win large sums of money. The odds of winning anything
26 in the foreign lotteries are small, and the odds are not disclosed. In most instances any actual
27 consumer winnings are for small amounts of money, generally far less than the consumer has paid
28 to purchase lottery tickets, chances or interests. Additionally, the amount that consumers are
induced to pay for the lottery tickets greatly exceeds the actual cost of the tickets.

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2 16. Consumers are not told that the telemarketers' or defendants' policy is to deny
3 cancellation of purchases or refunds of money paid for lottery chances. Consumers who have
4 attempted to cancel their purchases or obtain refunds or credits have been denied until either a
5 family member or attorney puts pressure on the company, and even then refunds or credits are
6 often only partial.

7 17. The sale and trafficking in foreign lotteries is a crime in both the United States and
8 Canada. Neither defendants Woofter, Barbour, William L. Woofter, and King nor their
9 telemarketing clients disclose to consumers that by participating in the foreign lotteries,
10 consumers are participating in violations of federal criminal law, including laws prohibiting the
11 importing and transmitting of lottery materials by mail and otherwise, 18 U.S.C. §§ 1301 and
12 1302, and anti-racketeering laws relating to gambling, 18 U.S.C. §§ 1952, 1953, and 1084.

13 18. The services provided by defendants make it possible for their telemarketing clients
14 to conduct this scheme. Defendants purchase lottery tickets on behalf of their telemarketing
15 clients for the Australian lottery. Defendants claim to be the sole registered U.S. agent for
16 Tattersall's lottery, one of the largest in Australia. The lottery tickets purchased by defendants
17 are not sent back to consumers, but are retained by the Tattersall's sales agent in Australia. The
18 consumer receives from defendants or their telemarketing client only a confirmation package
19 containing a listing of the combinations of numbers on their tickets.

20 19. The confirmation package sent to the consumer usually contains a letter that
21 carries the name of A.T.M.S. (the d/b/a for Woofter), or the names of both the telemarketer and
22 A.T.M.S. Frequently A.T.M.S. is described in the confirmation materials as "U.S. Customer
23 Service," and an 800 number is provided for the consumer to contact A.T.M.S. with questions
24 concerning credit card billing. The confirmation package also frequently includes a credit card
25 "authorization" slip for the consumer to sign and return. (Defendants have often already charged
26 the consumer's credit card for the purchase.) This authorization has been used by defendants to
27 persuade dissatisfied consumers not to seek a chargeback from their credit card company.
28

20. Defendants provide assistance concerning the underlying transaction as well.
Barbour has represented that Woofter monitors its telemarketing clients; answers questions for

1 consumers who call the 800 number concerning purchases, winning numbers or rules of the
2 lotteries; and makes sure customers get what they purchased. When consumers have a problem,
3 according to Barbour, Woofter intercedes on their behalf with the telemarketer.
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5 21. Many of the lottery tickets, chances or interests sold to consumers by defendants'
6 telemarketing clients are purchased through charges to the consumer's VISA or MasterCard.
7 Defendants have at least two merchant accounts in the name of its d/b/a A.T.M.S. Woofter
8 makes its merchant accounts available to its telemarketing clients for processing credit card
9 transactions for a 15% processing fee. Defendants' use of these merchant accounts to process
10 credit card transactions for their telemarketing clients is not authorized by VISA or MasterCard.

11 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

12 22. In the Telemarketing and Consumer Fraud and Abuse Prevention Act
13 ("Telemarketing Act"), 15 U.S.C. § 6101, *et seq.*, Congress directed the FTC to prescribe rules
14 prohibiting deceptive telemarketing acts or practices. On August 16, 1995, the Commission
15 promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310, with a Statement of Basis and
16 Purpose, 60 Fed. Reg. 43842 (Aug. 23, 1995). The Rule became effective December 31, 1995.

17 23. Defendants Patsy M. Barbour, William L. Woofter, Konrad King, and Woofter
18 Investment Corporation d/b/a A.T.M.S., and their telemarketing clients, are "telemarketers" or
19 "sellers" engaged in "telemarketing" as those terms are defined in the Rule, 16 C.F.R. § 310.2(r),
20 (t) and (u).

21 24. Defendants Patsy M. Barbour, William L. Woofter, Konrad King, Woofter
22 Investment Corporation d/b/a A.T.M.S., and Konrad King, Inc., are "merchants," as that term is
23 defined in the Rule, 16 C.F.R. § 310.2(l).

24 25. The Rule requires sellers and telemarketers to disclose material restrictions,
25 limitations or conditions regarding the goods or services that are the subject of a sales offer, and
26 to disclose if the seller has a policy of not making refunds. 16 C.F.R. § 310.3(a)(1)(ii) and (iii).

27 26. The Rule prohibits any seller or telemarketer from misrepresenting any material
28 aspect of the performance, efficacy, nature or central characteristics of goods or services that are
the subject of the sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

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2 27. The Rule also prohibits telemarketers and sellers from making a false or misleading
3 statement to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

4 28. Except as expressly permitted by the applicable credit card system, it is a violation
5 of the Rule for a merchant to present or deposit into, or to cause another to deposit into, the
6 credit card system for payment, a credit card sales draft generated by a telemarketing credit card
7 transaction that is not the result of a telemarketing credit card transaction between the cardholder
8 and the merchant. 16 C.F.R. § 310.3(c)(1).

9 29. It is a violation of the Rule for any person to provide substantial assistance or
10 support to any seller or telemarketer when that person knows or consciously avoids knowing that
11 the seller or telemarketer is engaged in any practice that violates § 310.3(a) or (c) of the Rule. 16
12 C.F.R. § 310.3(b).

13 30. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102 (c), and
14 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales
15 Rule constitute deceptive acts or practices in or affecting commerce, in violation of Section 5(a)
16 of the FTC Act, 15 U.S.C. § 45(a).

17 **COUNT ONE**

18 31. In numerous instances, in connection with telemarketing foreign lottery tickets,
19 chances, or interests, defendants Woofter, Barbour, William L. Woofter, and King fail to disclose
20 that the sale and trafficking in foreign lotteries is a crime in both the United States and Canada,
21 and fail to disclose their policy of not making refunds or cancellations. Defendants have thereby
22 violated Section 310.3(a)(1)(ii) and (iii) of the Rule. 16 C.F.R. § 310.3(a)(1)(ii) and (iii).

23 **COUNT TWO**

24 32. In numerous instances, in connection with telemarketing foreign lottery tickets,
25 chances, or interests, and to induce the purchase of lottery tickets, chances or interests,
26 defendants Woofter, Barbour, William L. Woofter, and King have made false or misleading
27 representations that consumers have won a large jackpot, or are guaranteed to win a large
28 jackpot, or that odds of winning are very good, that telemarketing clients have special programs
that increase the consumers' chances of winning, or that winnings are tax free. Defendants have

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2 thereby violated Section 310.3(a)(2)(iii) and (a)(4) of the Rule. 16 C.F.R. § 310.3(a)(2)(iii) and
3 (a)(4).

4 5 **COUNT THREE**

6 33. In numerous instances, in connection with telemarketing foreign lottery tickets,
7 chances, or interests, defendants' telemarketing clients fail to disclose that the sale and trafficking
8 in foreign lotteries is a crime in both the United States and Canada, and fail to disclose their policy
9 of not making refunds or cancellations. Defendants' telemarketing clients have thereby violated
10 Section 310.3(a)(1)(ii) and (iii) of the Rule. 16 C.F.R. § 310.3(a)(1)(ii) and (iii).

11 34. In numerous instances, in connection with telemarketing foreign lottery tickets,
12 chances, or interests, defendants' telemarketing clients have made false or misleading
13 representations that consumers have won a large jackpot, or are guaranteed to win a large
14 jackpot, or that odds of winning are very good, that telemarketing clients have special programs
15 that increase consumers' chances of winning, or that winnings are tax free. Defendants'
16 telemarketing clients have thereby violated Section 310.3(a)(2)(iii) and (a)(4) of the Rule. 16
17 C.F.R. § 310.3(a)(2)(iii) and (a)(4).

18 35. In connection with providing credit card processing, customer service, and
19 registration of ticket purchases for their telemarketing clients, defendants provide substantial
20 assistance or support to their telemarketing clients, knowing or consciously avoiding knowing that
21 their telemarketing clients are engaged in acts or practices that violate § 310.3(a), as set forth in
22 Paragraphs 33 and 34 above. Defendants have thereby violated Section 310.3(b) of the Rule, 16
23 C.F.R. § 310.3(b).

24 25 **COUNT FOUR**

26 36. In numerous instances, and without the express permission of the applicable credit
27 card system, defendants have presented to or deposited into, or caused another to present or
28 deposit into the credit card system for payment, credit card sales drafts generated by
telemarketing credit card transactions that are not the result of telemarketing credit card
transactions between the cardholder and defendants. Defendants have thereby violated Section
310.3(c)(1) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(c)(1).

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CONSUMER INJURY

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

THIS COURT'S POWER TO GRANT RELIEF

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

39. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of monies.

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

PRAYER FOR RELIEF

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

- a. Award plaintiff 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;
- b. Permanently enjoin the defendants from violating the Telemarketing Sales Rule and the FTC Act, as alleged herein;
- c. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the Telemarketing

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Sales Rule and the FTC Act, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies; and

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

Respectfully Submitted,

STEPHEN CALKINS
General Counsel

CHARLES A. HARWOOD
Regional Director

Eleanor Durham
Nadine S. Samter
George J. Zweibel

ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION