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2005 AUG -8 PM 12:34

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF TENN.

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**v.**

**NATIONAL TESTING SERVICES LLC,  
a Tennessee limited liability company,**

**EXAM PREPARATION, LLC,  
a Tennessee limited liability company,**

**FUTURE PLANNING, LLC,  
a Tennessee limited liability company, and d/b/a  
Exam Prep, LLC, and Registration Department,  
and**

**SEAN TERRANCE ASBERRY,**

**Defendants.**

Case No. 3-05 0013

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

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

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure preliminary and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for Defendants' deceptive acts or practices in connection with the selling of employment goods and services in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331(a), 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).
3. Venue in the United States District Court for the Middle District of Tennessee is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).

### THE PARTIES

4. Plaintiff Federal Trade Commission is an independent agency of the United States government created by the FTC Act, 15 U.S.C. §§ 41-58. The Commission 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 Commission, through its own attorneys, may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief, including rescission of contracts and restitution, and the disgorgement of ill-gotten gains caused by Defendants' law violations, as may be appropriate in each case. 15 U.S.C. § 53(b).

5. Defendant National Testing Services LLC, ("NTS") is a Tennessee limited liability company with its principal place of business listed as 2512 Murfreesboro Road, Nashville, Tennessee 37217. Defendant NTS also has used a mailing address of P.O. Box 618, Antioch, Tennessee 37013, and has conducted business from 325 Rural Hill Road, Antioch, Tennessee 37013. Defendant NTS transacts or has transacted business in this district.

6. Defendant Exam Preparation, LLC, ("Exam Prep") is a Tennessee limited liability company with its principal place of business listed as 2929 Old Franklin Road, Apt. 603, Antioch, Tennessee 37013. Defendant Exam Prep also has used a mailing address of P.O. Box

615, Antioch, Tennessee 37013, and has conducted business from 325 Rural Hill Road, Antioch, Tennessee 37013. Defendant Exam Prep transacts or has transacted business in this district.

7. Defendant Future Planning, LLC, d/b/a Exam Prep, LLC, and Registration Department, ("Future Planning") is a Tennessee limited liability company with its principal place of business listed as 531 Metroplex Drive, Suite 120A, Nashville, Tennessee 37211. Defendant Future Planning also has used a mailing address of P.O. Box 715, Antioch, Tennessee 37013, and has conducted business from 325 Rural Hill Road, Antioch, Tennessee 37013. Defendant Future Planning transacts or has transacted business in this district.

8. Defendant Sean Terrance Asberry is the owner and manager of Defendants Exam Prep, NTS, and Future Planning. Individually or in concert with others, he directs, controls, formulates or participates in the acts and practices set forth herein. He resides, transacts, or has transacted business in this district.

### COMMERCE

9. The acts and practices of Defendants, alleged in this Complaint, are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### DEFENDANTS' BUSINESS PRACTICES

10. Since at least 2002, Defendants have conducted a nationwide advertising scheme to sell purported employment goods and services to consumers residing throughout the United States.

11. Defendants place classified advertisements in the employment sections of local newspapers or community gazettes located throughout the United States. The advertisements announce that the solicitor is now hiring for postal jobs with wages ranging from, e.g., \$17.50-

\$59.00/hr, full federal benefits and paid training. The advertisements invite readers to call a toll free number for more information. The following are illustrative of the advertisements placed by

Defendants:

**\$ ATTENTION \$ Now Hiring**

**2002, 2003 postal jobs**

\$13.21-28.16/hour

Full federal benefits. Paid training

No Experience Necessary!

Green Card OK. Call Now

1-866-898-2195 ext 102

**\$ Announcement \$**

**Hiring For**

**2003 Postal Jobs**

\$15.20-\$39.00/Hour

\* Full Federal Benefits

\*Paid Training and Vacations

\*No Experience necessary

\*Green card Okay!

**For More Info Call**

**1-866-303-7737**

ext. 5006

7 days a week

**ANNOUNCEMENT**

**NOW HIRING For 2004**

Postal Jobs \$17.50-\$59.00/hr

Paid Training. Full Benefits

No Exp. Nec. Green Card OK

Call 1-866-895-3696 Ext. 957

**HIRING FOR 2004**

Postal Positions \$14.80-\$36.00/hr

\*Federal Hire w/Full Benefits \*No

Experience Necessary \*Green Card

OK 1-866-317-0558x 375

12. When consumers call the toll free number, Defendants first question consumers about their age, education, citizenship, ability to pass a drug screen and criminal background

check, and then tell consumers that they are "qualified." Defendants then describe to consumers that positions, e.g., sorters, clerks, and carrier positions, are currently available and are in the geographic area where consumers live. Defendants describe to consumers a range of average hourly wages paid for these positions and state that the positions come with full federal benefits, training, paid vacations and holidays. Defendants explain that consumers must pass a postal employment test before they can be hired and that they will assist consumers in passing the test. Defendants tell consumers that if they achieve a passing score or a score of 90 or above they will receive immediate job placement. Defendants also tell consumers they will send consumers study materials which will cover the exact information on the examination, including twelve practice exams and a copy of the actual exam. Likewise, Defendants explain that as long as consumers study the materials, consumers should have no problem passing the examination. In addition, Defendants tell consumers that the examinations are held regularly and that consumers will receive a telephone number and employment directory, so that consumers can schedule an examination appointment when they are ready to take the examination.

13. Defendants tell consumers that in order to receive the materials about the postal employment examination they must pay an administration fee of approximately \$100.00. Defendants represent that the administration fee is fully refundable, but do not disclose all material terms and conditions of their refund policy.

14. In return for their money, consumers receive a written guarantee, guaranteeing that the user will be successful using the Defendants' materials, an application for employment, and a booklet entitled "Exam Prep Guide." The "Exam Prep Guide" includes a history of the United States Postal Service, general job and benefit descriptions, examination instructions and

two "mock exams." The materials do not contain twelve practice exams and a copy of the actual exam as promised. Nor do the materials provide information regarding actual job openings that currently are available with the United States Postal Service either locally or nationally.

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

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

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

#### **COUNT I**

17. Defendants represent, expressly or by implication, that they are connected with or endorsed by the United States Postal Service.

18. In truth and in fact, Defendants are not connected with or endorsed by the United States Postal Service.

19. Therefore, the representations set forth in paragraph 17 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **COUNT II**

20. Defendants represent, expressly or by implication, that postal positions are currently available in the geographic areas where Defendants' advertisements appear.

21. In truth and in fact, in numerous instances, postal positions are not currently available in the geographic areas where Defendants' advertisements appear.

22. Therefore, the representations set forth in paragraph 20 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 III

23. Defendants represent, expressly or by implication, that consumers who use Defendants' materials are more likely to pass the postal employment examination than consumers who do not use Defendants' materials.

24. In truth and in fact, consumers who use Defendants' materials are not more likely to pass the postal employment examination than consumers who do not use Defendants' materials.

25. Therefore, the representations set forth in paragraph 23 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### COUNT IV

26. Defendants represent, expressly or by implication, that consumers who receive a passing score or a score of 90 or above on the postal employment examination are assured employment with the United States Postal Service.

27. In truth and in fact, consumers who receive a passing score or a score of 90 or above are not assured employment with the United States Postal Service.

28. Therefore, the representations set forth in paragraph 26 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**COUNT V**

29. Defendants represent, expressly or by implication, that the fee paid to Defendants to receive their materials is fully refundable.

30. In truth and in fact, in many instances, the fee paid to Defendants to receive their materials is not fully refundable.

31. Therefore, the representations set forth in paragraph 29 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).

**CONSUMER INJURY**

32. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of Defendants' violations of the FTC Act as set forth above. In addition, the Defendants have been unjustly enriched as a result of their unlawful acts and 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**

33. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains, to prevent and remedy injury caused by Defendants' law violations.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's equitable powers, requests that this Court:

(1) Award Plaintiff such preliminary and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions, including an order freezing each Defendant's assets, and the appointment of an equity receiver;

(2) Permanently enjoin Defendants from violating Section 5(a) of the FTC Act as alleged herein, including committing such violations in connection with the advertising, offering for sale, or other promotion of employment goods or services;

(3) Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of Section 5(a) of the FTC Act, including, but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains by the Defendants; and

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

Dated: 8/8, 2005

Respectfully submitted,

WILLIAM BLUMENTHAL  
General Counsel



Valerie M. Verduce  
Attorney for Plaintiff  
Federal Trade Commission

225 Peachtree Street, Suite 1500  
Atlanta, Georgia 30303

[vverduce@ftc.gov](mailto:vverduce@ftc.gov)  
(404) 656-1355 (telephone)  
(404) 656-1370 (facsimile)