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1 FAYE CHEN BARNOUW, Cal. Bar No. 168631  
2 JENNIFER M. BRENNAN, Cal. Bar No. 225473  
3 FEDERAL TRADE COMMISSION  
4 10877 Wilshire Blvd., Suite 700  
5 Los Angeles, CA 90024  
6 Telephone: (310) 824-4343  
7 Facsimile: (310) 824-4380  
8 e-mail: [fbarnouw@ftc.gov](mailto:fbarnouw@ftc.gov); [jmbrennan@ftc.gov](mailto:jmbrennan@ftc.gov)

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Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Case no. CV06-0849 SJO (OPx)

Plaintiff,

v.

STATEMENT OF UNDISPUTED  
FACTS IN SUPPORT OF FTC'S  
MOTION FOR SUMMARY  
JUDGMENT, OR IN THE  
ALTERNATIVE FOR SUMMARY  
ADJUDICATION OF ISSUES,  
AGAINST BRIAN MACGREGOR  
AND MEMBERSHIP SERVICES  
DIRECT, INC. (ALSO KNOWN AS  
CONTINUITY PARTNERS, INC.)

UNIVERSAL PREMIUM SERVICES,  
INC., a California corporation (also  
known as Premier Benefits, Inc.);  
CONSUMER REWARD NETWORK,  
INC., a California corporation; STAR  
COMMUNICATIONS LLC, a California  
limited liability company; MEMBERSHIP  
SERVICES DIRECT, INC., a Nevada  
corporation (also known as Continuity  
Partners, Inc.); CONNECT2USA, INC., a  
Nevada corporation; MERCHANT RISK  
MANAGEMENT, INC., a Nevada  
corporation; PANTEL ONE  
CORPORATION, a Nevada Corporation;  
ALL STAR ACCESS, INC., a Colorado  
Corporation; PRIME TIME VENTURES,  
INC., a Nevada Corporation; BRIAN K.  
MACGREGOR; HARIJINDER SIDHU;  
JOSEPH F. LAROSA, JR.; PRANOT  
SANGPRASIT; WILLIAM THOMAS  
HEICHERT; MICHAEL HOWARD  
CUSHING; PAUL P. TOSI; MANH D.  
CAO; MIDWEST PROPERTIES, INC.;  
and CHRISTINE MACGREGOR,

Defendants.

Hearing:  
Date: February 5, 2007  
Time: 10:00 a.m.  
Place: U.S. Courthouse  
312 N. Spring Street, Ctrm. 1600  
Los Angeles, CA

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Undisputed Fact	Evidence supporting undisputed fact
<p>1. <b>Continuity Partners</b> made material misrepresentations to consumers  <i>[Count One: FTC Act § 5(a)]</i></p>	<p>Blake pp.737-738 (Robert Heath's recorded call); Drollinger ¶ 2, p.7 (gas vouchers); Lashman ¶ 2, p.30 (\$200 gas vouchers), ¶ 3, p.30 (Continuity Partners provided fake address and phone number as its contact information); Luck ¶ 2, p.31 (gas vouchers and phone cards); MacVean ¶ 2, p.32 (\$200 gas vouchers redeemable at any gas station); Lorenzen ¶¶ 2, 3 (\$200-\$300 credit at stores like K-Mart and Home Depot)</p>
<p>2. <b>Premier Benefits</b> made material misrepresentations to consumers  <i>[Count One: FTC Act § 5(a)]</i></p>	<p>Collins ¶¶ 2-3, p.5 (free movie passes); Joslyn ¶¶ 2, 3, p.19 (\$500 gas coupons); Kanduri ¶¶ 2, 5, pp.22-23 (\$200-\$300 free gas); Mayes ¶¶ 2, 3, 6, p.34-35 (\$200 shopping spree good at any store, including Wal-Mart and Kmart); McCall ¶ 3, p.37 (\$200-\$250 shopping spree); McCall ¶¶ 3, 12, pp.64, 66 (\$500 Wal-Mart card); McCall ¶¶ 12-13, pp.38-39 (telemarketer said her order had already gone through); Miller ¶¶ 2-5 p.149-151 (\$200 shopping card and movie passes); Nasirharandi ¶¶ 2, 3, 5, p.160-161 (movie tickets); Ramirez ¶¶ 2, 7, pp.162-164 (\$200 Wal-Mart coupons); Saylor ¶¶ 2-6, 21, pp.165, 168; Zilz ¶¶ 2, 3, 13, p.186-187, 191 (\$200 Home Depot card); McGlamery p.391-393 (Doris Peterson) (telemarketer called for three days and said consumer's order already placed).</p> <p>Telemarketer failed to disclose to consumer that there is any other purpose to the call other than to authorize the shipping and handling charge for the "free" item: Some consumers were told the one-time fee would be <b>\$3.95</b> (<i>see, e.g.</i>, Drollinger ¶ 2, p.7; Joslyn ¶ 2, p.19; Mayes ¶ 4, p.34; McCall ¶ 3, p.37; Miller ¶ 2, p.149; Ramirez ¶ 2, p.162; Zilz ¶ 2, p.186). Some consumers were told the one-time fee would be <b>\$4.95</b> (<i>see, e.g.</i>, Bendezu ¶ 2, p.3; D.Fayle; Gluck ¶ 3, p.16; Koyama ¶ 3, p.25; Lafferty ¶ 2, p.28; Mellien ¶ 3, p.64; P. Morton ¶ 2, p.158 ; Shockley ¶ 2, p.177). Other consumers who were told they would be charged a one-time fee of various amounts: Collins ¶ 2, p.5 (one-time \$19 fee); Lashman ¶ 2, p.30 (\$1.95 shipping and handling fee); MacVean ¶ 2, p.32 (\$3.99 shipping and handling fee); Schmidt ¶ 2, p.172 (one-time \$4.95 C.O.D. postage fee).</p> <p>Consumers were not informed that they will be asked to authorize additional debits for various goods and services, including discount membership programs: Miller ¶ 3, p.149-150; Zilz ¶ 3, pp.186-187.</p>

Undisputed Fact	Evidence supporting undisputed fact
<p>3. <b>Consumer Reward Network</b> made material misrepresentations to consumers  <i>[Count One: FTC Act § 5(a)]</i></p>	<p>Gluck ¶ 2, p.16 (\$500 in coupons redeemable in any store); P. Morton ¶¶ 2, 8, pp.158-159 (\$500 Wal-Mart coupons); J. Morton ¶¶ 2-7, pp.156-157; K. Fayle ¶ 2, p.9; D. Fayle ¶¶ 2-4, p.13.</p>
<p>4. <b>Star Communications</b> made material misrepresentations to consumers  <i>[Count One: FTC Act § 5(a)]</i></p>	<p>Bendezu ¶¶ 2, 5, pp.3-4 (\$500 package and \$500 coupons); Koyama ¶ 3, p.25 (\$500 gift certificate); Lafferty ¶ 2, p.28 (\$500 shopping spree, \$200 entertainment coupons, plus half of her cable bill); Schmidt ¶ 2, p.172 (shopping spree); Shockley ¶ 2, p.177 (choice of four-night travel gift certificate or \$1,000 shopping spree); Vasquez ¶ 2, p.184 (\$500 coupons redeemable at gas stations or department stores); Vasquez ¶¶ 2-6, pp.184-185.</p>
<p>5. <b>All Star Access</b> made material misrepresentations to consumers  <i>[Count One: FTC Act § 5(a)]</i></p>	<p>Stahl decl. ¶ 9, pp.158-159 (12 out of 21 of the All Star Access consumer complaint letters that the FTC's Western Region office received after entry of TRO state that All Star Access misrepresented that the consumer would receive a free item).</p>
<p>6. <b>Prime Time Ventures</b> made material misrepresentations to consumers  <i>[Count One: FTC Act § 5(a)]</i></p>	<p>Stahl decl. ¶ 9, pp.158-159 (6 out of 12 of the Prime Time Ventures consumer complaint letters that the FTC's Western Region office received after entry of TRO state that Prime Time Ventures misrepresented that the consumer would receive a free item; in addition 1 complaint letter stated that Prime Time Ventures misrepresented its cancellation process).</p>
<p>7. <b>Continuity Partners</b> misrepresented a material aspect of the nature or terms of its refund and cancellation policies <i>[Count Two: FTC Act § 5(a), TSR § 310.3(a)(2)(iv)]</i></p>	<p>Continuity Partners told consumers that their refund and cancellation requests cannot be processed at that time and requiring consumers to call back repeatedly; Belman ¶ 3, pp.1-2.</p>

Undisputed Fact	Evidence supporting undisputed fact
<p>8. Premier Benefits, Consumer Reward Network, Star Communications, All Star Access, or Prime Time Ventures misrepresented a material aspect of the nature or terms of its refund and cancellation policies [Count Two: FTC Act § 5(a), TSR § 310.3(a)(2)(iv)]</p>	<p>Consumers told they would not be charged if consumer cancels during membership trial period:  <i>Premier Benefits</i>: Collins ¶ 3, p.5; Mayes ¶ 4, pp.34-35; McCall ¶¶ 5, 7, p.64, 65; Ramirez ¶ 3, p.162; Zilz ¶ 2, p.186.  <i>Consumer Reward Network</i>: Gluck ¶ 5, p.16; K.Fayle ¶ 3, p.9; Mellien ¶ 7, p.65;  <i>Star Communications</i>: Schmidt ¶ 4, p.173;</p> <p>Star Communications gave wrong telephone number to consumers  <i>Star Communications</i>: Carr ¶¶ 4, 6, 7, 26 pp.1573-1577.</p> <p>Consumers told they may not obtain a refund until they completes the verification recording:  <i>Premier Benefits</i>: McCall ¶ 13, p.39.</p> <p>consumers told that they may cancel at any time:  <i>Premier Benefits</i>: McCall ¶ 12, p.38;  <i>Consumer Reward Network</i>: Mellien ¶ 5, p.64)</p> <p>Consumers led to believe that it would not be difficult or impossible for consumers to obtain refunds of unauthorized debits: <i>Premier Benefits</i>: Zilz ¶ 2-14, pp.186-191; Collins ¶¶ 4-5, pp.5-6; Ramirez ¶ 6, p.163. <i>Consumer Reward Network</i>: K.Fayle ¶ 11, p.11</p> <p>Connect2USA knew that it did not have enough local telephone lines to support the volume of customer calls (Bouchard ¶¶ 11, 12, p.1592).</p> <p>Consumers told that their refund and cancellation requests cannot be processed at that time and requiring consumers to call back repeatedly.  <i>Continuity Partners</i>: Belman ¶ 3, pp.1-2;  <i>Consumer Reward Network</i>: Gluck ¶¶ 15-16, pp.17-18;  <i>Star Communications</i>: Lafferty ¶ 5, p.29;  <i>Premier Benefits</i>: Mayes ¶ 5, p.35; McCall ¶ 35, p.42; Ramirez ¶ 6, p.163; Zilz ¶¶ 7-13, pp.188-191.  See also Blackston p.1108 (September 29, 2005 e-mail from consumer forwarded to Connect2USA: <i>What kind of company takes so long to return money? My husband must have called at least 50 times and every time he calls the person says the exact same thing[:] "Your refund is in process, call back in 10-14 days." What is it going to take for someone in your company to expedite this? ... I am not going to go away and give up. I don't know about you, but close to \$300 is a lot of money for a family of 5 on 1 blue collar income. So on principal alone I will take the next course of action to resolve this or to get some sort of satisfaction.</i>").</p>

Undisputed Fact	Evidence supporting undisputed fact
<p>9. <b>Continuity Partners</b> misrepresented its affiliation with or endorsement or sponsorship by, a person or government entity  <i>[Count Three: FTC Act § 5(a), TSR § 310.3(a)(2)(vii)]</i></p>	<p>Drollinger ¶ 2, p.7 (Continuity Partners related to FTC); Lashman ¶ 2, p.30 (Continuity Partners related to "the government")</p>
<p>10. <b>Premier Benefits, Consumer Reward Network, Star Communications, All Star Access, or Prime Time Ventures</b> misrepresented its affiliation with or endorsement or sponsorship by, a person or government entity  <i>[Count Three: FTC Act § 5(a), TSR § 310.3(a)(2)(vii)]</i></p>	<p><i>Premier Benefits:</i> Darling p.1472 (Premier Benefits telemarketer claimed to be a "federal employee").  <i>Consumer Reward Network:</i> McCall ¶ 4, p.64 (Consumer Reward Network affiliated with a banking institution); P. Morton ¶ 2, p.158 (Consumer Reward Network affiliated with Wal-Mart);  Darling p.1472 p.1456 (consumer told by Consumer Reward Network telemarketer implied previous business relationship with the company, saying that she was receiving \$200 in coupons because she was a "good customer"), and p.1463 (Consumer Reward Network telemarketer claimed to be from Home Depot).  <i>Star Communications:</i> Koyama ¶ 2, p.25 (Star Communications partnering with VISA; \$500 gift certificates to shop at wholesalers like Wal-Mart and Sam's Club).</p>
<p>11. <b>Continuity Partners</b> caused billing information to be submitted, directly or indirectly, without the express informed consent of the customer  <i>[Count Four: FTC Act § 5(a), TSR § 310.4(a)(6)]</i></p>	<p>Belman ¶¶ 2-3, pp.1-2; Mutafyan ¶¶ 2, 3, 4; Brown ¶¶ 3, 4, 5; Lorenzen ¶¶ 2, 3, 4, 7; Zanetich ¶¶ 2, 3; Manago ¶¶ 2, 3; Gosney ¶¶ 2, 3, 4; Stahl ¶¶ 106-110</p>

Undisputed Fact	Evidence supporting undisputed fact
<p>12. <b>Premier Benefits, Consumer Reward Network, Star Communications, All Star Access, or Prime Time Ventures</b> caused billing information to be submitted, directly or indirectly, without the express informed consent of the customer            [Count Four: FTC Act § 5(a), TSR § 310.4(a)(6)]</p>	<p>Consumers charged even though they hung up on Defendants' telemarketer, refused Defendants' offer, or were specifically told they would not be charged:  <i>Consumer Reward Network</i>: Gluck ¶¶ 7-9, pp.16-17;  <i>Premier Benefits</i>: Miller ¶ 3, pp.149-150; Nasirharandi ¶ 4, p.160; Saylor ¶ 7, p.165;  <i>Star Communications</i>: Shockley ¶¶ 4-5, pp.178-179</p> <p>Company made unauthorized debits to the consumers' accounts before the purported trial period ends.  <i>Premier Benefits</i>: Collins ¶ 3, p.5; Mayes ¶ 5, p.35; McCall ¶¶ 13-14, pp.66-67; Miller ¶¶ 6, p.151; Ramirez ¶ 5, p.162-163; Zilz ¶ 13, p.191.  <i>Consumer Reward Network</i>: K.Fayle ¶¶ 2-4, pp.9-10.</p> <p>Company continued to debit consumers' bank accounts, even after consumers called to cancel their memberships.  <i>Premier Benefits</i>: Collins ¶ 3, p.5; Kanduri ¶ 3-4, pp.22-23; McCall ¶¶ 28-32, pp.41-42.</p>
<p>13. <b>Continuity Partners</b> engaged in threats, intimidation, or the use of profane or obscene language in connection with the telemarketing of goods or services            [Count Five: FTC Act § 5(a), TSR § 310.4(a)(1)]</p>	<p><i>Continuity Partners</i>: MacVean ¶ 6, p.33 (telemarketer began acting rude and raising his voice)</p>

Undisputed Fact	Evidence supporting undisputed fact
<p>14. Premier Benefits engaged in threats, intimidation, or the use of profane or obscene language in connection with the telemarketing of goods or services  <i>[Count Five: FTC Act § 5(a), TSR § 310.4(a)(1)]</i></p>	<p>Joslyn ¶ 4 p.20 (telemarketer threatened to sue consumer if she didn't answer his questions and threatened to take money out of another consumer's account if consumer did not provide bank account information); Miller ¶ 3, pp.149-150 (telemarketer threatened to post consumer's bank account information on the Internet).</p> <p>Consumers who protest are admonished that they may not cancel the order until they complete the verification recording with all "yes" answers: Kanduri ¶ 3, p.23; McCall ¶ 13, p.39; Miller ¶ 3, p.149; Zilz ¶ 3, p.186</p> <p>Sayler ¶ 2-6, p.165 (telemarketer badgered and harassed consumer to the point where she ended up agreeing to his offer simply to get him to stop calling); Miller ¶ 3, p.149 (telemarketer said consumer was being an "a**");</p> <p>Telemarketer stopped recording, came back on the line and told consumer who say "no" to the verification prompts that they must answer "yes"): Joslyn ¶ 8, p.21; Kanduri ¶ 3, pp.22-23; Mayes ¶ 3, p.34; McCall ¶ 17, p.39; Miller ¶ 3, pp.149-150; Nasirharandi ¶ 4, p.160; Zilz ¶ 3, p.186.</p> <p>McCall ¶ 13, p.39 (consumer told she could not obtain a refund until she completed the verification recording)  Sayler ¶ 2-6, p.165 (telemarketer badgered and harassed consumer to the point where she ended up agreeing to his offer simply to get him to stop calling); Miller ¶ 3, p.149 (telemarketer said consumer was being an "a**").</p>

Undisputed Fact	Evidence supporting undisputed fact
<p>15. <b>Star Communications</b> engaged in threats, intimidation, or the use of profane or obscene language in connection with the telemarketing of goods or services  <i>[Count Five: FTC Act § 5(a), TSR § 310.4(a)(1)]</i></p>	<p>Bendezu ¶ 4, p.4 (“You are not an educated person, but a stupid lady”; “you need a man to put you in your place.”); Koyama ¶ 2, p.25 (“Why did you hang up on me? Do you have something against me? Huh?”); Schmidt ¶ 2 (telemarketer threatened and swore at consumer, told consumer she was wasting the telemarketer’s time, threatened to take \$400 out of her bank account, and blamed her for letting it happen); Vasquez ¶ 6, p. 185 ([N]ow you listen to me! This is not a scam!”).</p> <p>Schmidt ¶ 4-5, pp.173-174 (telemarketer threatened consumer with \$400 cancellation charges if she refused to give affirmative responses on the verification recordings).</p> <p>Bendezu ¶ 4, p.4 (“You are not an educated person, but a stupid lady”; “you need a man to put you in your place.”); Koyama ¶ 2, p.25 (“Why did you hang up on me? Do you have something against me? Huh?”); Schmidt ¶ 2, (telemarketer threatened and swore at consumer, told consumer she was wasting the telemarketer’s time, threatened to take \$400 out of her bank account, and blamed her for letting it happen);</p> <p>Vasquez ¶ 6, p. 185 ([N]ow you listen to me! This is not a scam!”).</p>
<p>16. <b>Continuity Partners</b> initiated or caused a telemarketer to initiate an outbound telemarketing call to a person when that person previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered  <i>[Count Six: FTC Act § 5(a), TSR § 310.4(b)(1)(iii)(A)]</i></p>	<p>Continuity Partners telemarketer ignored consumers’ requests to stop calling and continued to call repeatedly:  Luck ¶ 2, p.31; MacVean ¶¶ 5, 6, p.33</p>

Undisputed Fact	Evidence supporting undisputed fact
<p>17. <b>Premier Benefits, Consumer Reward Network, or Star Communications</b> initiated or caused a telemarketer to initiate an outbound telemarketing call to a person when that person previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered            [Count Six: <i>FTC Act § 5(a), TSR § 310.4(b)(1)(iii)(A)</i>]</p>	<p>Telemarketer called back repeatedly to induce the consumer to accept the offer:  <i>Premier Benefits</i>: Joslyn ¶ 3, p.19; Mayes ¶ 2, p.34; McCall ¶¶ 12-13, pp.38-39 (telemarketer said her order had already gone through); Miller ¶ 3, p.149; Saylor ¶¶ 2-6, p.165; McGlamery p.393 (telemarketer called for three days and said consumer's order already placed)  <i>Consumer Reward Network</i>: K. Fayle ¶ 2, p.9; D. Fayle ¶¶ 2-4, p.13;</p> <p><i>Premier Benefits'</i> telemarketers called consumers back, sometimes repeatedly and even after the consumers told the telemarketer to stop calling, in order to complete the verification recording in which the consumers authorize the debits  <i>Premier Benefits</i>: Joslyn ¶ 8, p.21; Miller ¶ 3, p.149</p> <p>Telemarketers ignored consumers' requests to stop calling and called repeatedly, sometimes several times over the course of a week, or even over the course of one day:  <i>Premier Benefits</i>: Joslyn ¶¶ 3, 7, 8 pp.19-21 (consumer received at least twelve of Defendants' telemarketing calls in two days following her first request that the company stop calling); Mayes ¶ 6, p.34; Saylor ¶ 5, p.165 (consumer who told telemarketer she was not interested was called two more times that day)  <i>Star Communications</i>: Shockley ¶ 7, p.179 (repeated unwanted telemarketing calls, including at least one made after consumer stated, "I don't know what it's going to take to get you to quit calling me").</p> <p><i>Consumer Reward Network</i>: J. Morton ¶¶ 2-7, pp.156-157;  <i>Star Communications</i>: Vasquez ¶¶ 2-6, pp.184-185.</p>

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Undisputed Fact	Evidence supporting undisputed fact
<p>18. <b>Brian MacGregor</b> provided substantial assistance or support to a telemarketer or seller when knowing or consciously avoiding knowing that the telemarketer or seller was engaged in an act or practice that violates Section 310.3(a), (c), or (d), or Section 310.4 of the TSR [Count Seven: <i>FTC Act § 5(a), TSR §310.3(b)</i>]</p>	<p><i>Brian MacGregor provided substantial assistance or support to a telemarketer or seller:</i> Continuity Partners was a "seller" during the period January 1, 2004 until approximately June 30, 2004 (RFA 70). Continuity Partners engaged in "telemarketing" during that same time period (RFA 72). Consumer Reward Network was a seller (RFA 62). Pantel One Corporation was a telemarketer (RFA 128). Premier Benefits, Star Communications, All Star Access, and Prime Time Ventures were also "sellers" whose products were telemarketed by Pantel One Corporation (Smart PI ¶ 13, pp.5-6, Exh.8, pp.155-249).</p>

Undisputed Fact	Evidence supporting undisputed fact
18. (continued)	<p><i>Brian MacGregor knew or consciously avoided knowing that the telemarketer or seller was engaged in an act or practice that violates Section 310.3(a), (c), or (d), or Section 310.4 of the TSR</i></p> <p><i>Continuity Partners: Brian MacGregor knew or should have known that Continuity Partners was engaged in deceptive or abusive telemarketing practices in violation of Section 310.3(a), (c), or (d), or Section 310.4 of the TSR because: (1) on June 3, 2003, Wisconsin Attorney General obtained an AVC from Brian MacGregor in which MacGregor and his company Blitz Media Inc. "agree[d] to comply with the Federal Trade Commission's Telemarketing Sales Rule, 16 CFR 310" (Smart TRO ¶ 57, Att.32, at pp.1901-1902 (AVC attached as exhibit to Wisconsin Attorney General's Summons &amp; Complaint). (2) in October 2003, the Oregon Attorney General issued a "Notice of Unlawful Trade Practices and Proposed Resolution" to Brian MacGregor and Continuity Partners; in February 2004, MacGregor and Continuity Partners entered into an Assurance of Voluntary Compliance with the Oregon Attorney General to resolve that matter (Darling ¶ 6, p.1438, Att. 1, p.1443-1444, Att.2, p.1445-1450).</i></p> <p><i>Brian MacGregor's awareness of Premier Benefits', Consumer Reward Network's, Star Communications', All Star Access', and Prime Time Ventures' offensive business practices: Brian MacGregor reviewed customer complaint correspondence on behalf of Merchant Risk Management (RFA 119), which managed Premier Benefits, Consumer Reward Network, Star Communications, All Star Access, and Prime Time Ventures. Also, Pantel One Corporation's scripts provide stock responses for consumer complaints (Smart PI ¶13, p.6, Exh.8, pp.155-249), showing that these complaints were anticipated.</i></p> <p><i>Brian MacGregor's awareness of Premier Benefits' and Consumer Reward Network's problems with excessive chargebacks and cash flow: Stahl ¶ 16, Exh.8 (Brian MacGregor's affidavit in Intertrans case at ¶¶ 25, 33)</i></p> <p><i>Brian MacGregor's past knowledge of what kinds of telemarketing practices were violations of the TSR: As of March 2, 2004, MacGregor's attorney conceded that "MacGregor's lack of direct oversight prior to 2001 may have contributed to certain of the compliance problems that resulted from the Blitz Parties' [including Continuity Partners] activities" (Heberer ¶ 5, p.1, Exh.B, pp.32-41).</i></p>

Undisputed Fact	Evidence supporting undisputed fact
18. (continued)	<i>Substantial assistance and support:</i> Brian MacGregor admits that he worked for Connect2USA, Merchant Risk Management, Premier Benefits, Consumer Reward Network, Star Communications, Prime Time Ventures, I Connect Communications, and Pantel One Corporation as a consultant. Stahl ¶ 16, Exh.7 (transcript p.136, lines 5-10, p.137, lines 1-21). MacGregor admits that he was compensated \$250,000 for this work. <i>Id.</i> (transcript p.129, lines 18-25).
19. <b>Brian MacGregor</b> had authority to control Continuity Partners and its telemarketing campaign <i>[Injunction against individual for corporate practices]</i>	Brian MacGregor is the sole owner of Continuity Partners (MacGregor's Opposition to Preliminary Injunction, docket #41, p.4); MacGregor is sole officer and director of Continuity Partners (Smart TRO ¶ 50, p.1612, Att.25, pp.1833-1841); Stahl ¶ 16, Exh.9 (transcript of MacGregor's deposition testimony in <i>Premier Benefits v. First Regional Bank and Internet Transaction Services</i> , pp.9-10).
20. <b>Brian MacGregor</b> had authority to control Premier Benefits, Consumer Reward Network, Star Communications, All Star Access, and Prime Time Ventures, and their telemarketing campaigns <i>[Injunction against individual for corporate practices]</i>	<i>Connect2USA:</i> Brian MacGregor listed on Connect2USA's intra-office phone list (Smart PI Exh.7, p.153); <i>Merchant Risk Management:</i> Brian MacGregor was the President, Secretary, Treasurer and Director of Merchant Risk Management (Smart PI Exh.6, p.105); Brian MacGregor listed as one of Merchant Risk Management's three "executives" on Merchant Risk Management's intra-company phone list (Smart PI Exh.7, p.152); Connect2 Philippines Inc. is the owner of Merchant Risk Management (formerly known as "Fiori Enterprises, Inc.") (Smart PI Exh.6, p.136); <i>Premier Benefits:</i> Sangprasit ¶ 11 (Brian MacGregor was the person who made decisions for Premier Benefits)

Undisputed Fact	Evidence supporting undisputed fact
<p>21. <b>Brian MacGregor</b> directly participated in the telemarketing campaigns of Continuity Partners, Premier Benefits, Consumer Reward Network, Star Communications, All Star Access, and Prime Time Ventures  <i>[Injunction against individual for corporate practices]</i></p>	<p><i>Direct participation in Premier Benefits, Consumer Reward Network, Star Communications, All Star Access, and Prime Time Ventures through Connect2USA: Connect2USA was formed at Brian MacGregor's instruction (Sidhu SJ ¶ 19). Brian MacGregor considered Connect2USA to be a "d/b/a" of Continuity Partners (Smart PI ¶ 4, p.3, Exh.2, pp.40E-40H). Connect2USA operated Premier Benefits (Sangprasit ¶ 10), Consumer Reward Network (McGlamery ¶ 6, p.193; ¶ 9, p.194, Att.2, pp.247-251), Star Communications (Sangprasit ¶ 20), All Star Access (Sangprasit ¶ 39), and Prime Time Ventures (Sangprasit ¶ 50); MacGregor was the primary decision-maker directly involved in Connect2USA's business operations (Blackston p.1155, Sidhu SJ ¶ 36, Smart PI Exh.4, p.59).</i></p> <p>Stahl ¶ 16, Exh.9 (transcript of MacGregor's November 17, 2005 deposition in Premier Benefits and Consumer Reward Network v. First Regional Bank, Internet Transaction Services, et al., p.24 (description of work performed for his telemarketing company "clients"))</p>

Undisputed Fact	Evidence supporting undisputed fact
21. (continued)	<p><i>Premier Benefits</i>: Sangprasit ¶ 11 (MacGregor chose what products Premier Benefits would telemarket, chose the names for the products, created Premier Benefits' telemarketing scripts, suggested that Premier Benefits should establish a private mail box and virtual office presence in Orange, CA, decided that Premier Benefits should record fictitious business name statements in Orange County, CA, and decided which telemarketers, banks, marketing strategies, incentives and other service providers Premier Benefits would use).</p> <p><i>Consumer Reward Network</i>: Brian MacGregor admits that he worked for Consumer Reward Network as a consultant. Stahl ¶ 16, Exh.7 (transcript p.136, lines 5-10, p.137, lines 1-21). See also defendants' e-mails: Stahl decl. ¶23.f, Exh.3 (FTC 19272) (Tripathy's August 10, 2004 e-mail to MacGregor ("Subject: Fw: CRN Lead Request")) (MacGregor was kept informed on the call rooms that Consumer Reward Network used, including the start dates, number of "seats" and number of leads for the telemarketing call rooms; Stahl decl. ¶23.g.i., Exh.3 (FTC 31667) (MacGregor's March 2005 e-mail asking LaRosa to get testimonials for Premier Benefits and Consumer Reward Network web sites, have these web sites running by the end of the week, and discussing Connect2USA's website); Stahl decl. ¶23.k.i., Exh.3 (FTC 31654, FTC 31671, FTC 31670) (September and November 2004 e-mails showing that MacGregor determined what products Consumer Reward Network would market and reviewed and edited its marketing materials)</p> <p>Also, MacGregor admits that he worked for Connect2USA, Merchant Risk Management, Premier Benefits, Consumer Reward Network, Star Communications, Prime Time Ventures, I Connect Communications, and Pantel One Corporation as a consultant. Stahl ¶ 16, Exh.7 (transcript p.136, lines 5-10, p.137, lines 1-21). MacGregor admits that he was compensated \$250,000 for this work. <i>Id.</i> (transcript p.129, lines 18-25).</p>

Undisputed Fact	Evidence supporting undisputed fact
<p>22. <b>Brian MacGregor</b> had, or should have had, knowledge or awareness of <b>Continuity Partners'</b> deceptive or abusive business practices [monetary liability imposed on individual for corporate practices]</p>	<p><i>Brian MacGregor knew or consciously avoided knowing that the telemarketer or seller was engaged in an act or practice that violates Section 310.3(a), (c), or (d), or Section 310.4 of the TSR</i></p> <p><i>Continuity Partners:</i> Brian MacGregor knew or should have known that Continuity Partners was engaged in deceptive or abusive telemarketing practices in violation of Section 310.3(a), (c), or (d), or Section 310.4 of the TSR because: (1) on June 3, 2003, Wisconsin Attorney General obtained an AVC from Brian MacGregor in which MacGregor and his company Blitz Media Inc. "agree[d] to comply with the Federal Trade Commission's Telemarketing Sales Rule, 16 CFR 310" (Smart TRO ¶ 57, Att.32, at pp.1901-1902 (AVC attached as exhibit to Wisconsin Attorney General's Summons &amp; Complaint). (2) in October 2003, the Oregon Attorney General issued a "Notice of Unlawful Trade Practices and Proposed Resolution" to Brian MacGregor and Continuity Partners; in February 2004, MacGregor and Continuity Partners entered into an Assurance of Voluntary Compliance with the Oregon Attorney General to resolve that matter (Darling ¶ 6, p.1438, Att. 1, p.1443-1444, Att.2, p.1445-1450).</p> <p><i>Brian MacGregor's past knowledge of what kinds of telemarketing practices were violations of the TSR:</i> As of March 2, 2004, MacGregor's attorney conceded that "MacGregor's lack of direct oversight prior to 2001 may have contributed to certain of the compliance problems that resulted from the Blitz Parties' [including Continuity Partners] activities" (Heberer ¶ 5, p.1, Exh.B, pp.32-41).</p> <p><i>Brian MacGregor's awareness of consumer complaints:</i> MacGregor was aware of the consumer website Rip-Off Report, where consumers post complaints and share information about scam companies (Smart PI ¶ 30, Exh.23)</p>

Undisputed Fact	Evidence supporting undisputed fact
<p>23. <b>Brian MacGregor</b> had, or should have had, knowledge or awareness of <b>Premier Benefits', Consumer Reward Network's, Star Communications', All Star Access', and Prime Time Ventures'</b> deceptive or abusive business practices [monetary liability imposed on individual for corporate practices]</p>	<p><i>Brian MacGregor's awareness of Premier Benefits', Consumer Reward Network's, Star Communications', All Star Access', and Prime Time Ventures' offensive business practices:</i> Brian MacGregor reviewed customer complaint correspondence on behalf of Merchant Risk Management (RFA 119), which managed Premier Benefits, Consumer Reward Network, Star Communications, All Star Access, and Prime Time Ventures. Also, Pantel One Corporation's scripts provide stock responses for consumer complaints (Smart PI ¶13, p.6, Exh.8, pp.155-249), showing that these complaints were anticipated.</p> <p><i>Brian MacGregor's awareness of Premier Benefits' and Consumer Reward Network's problems with excessive chargebacks and cash flow:</i> Stahl ¶ 16, Exh.8 (Brian MacGregor's affidavit in Intertrans case at ¶¶ 25, 33)</p> <p><i>Brian MacGregor's past knowledge of what kinds of telemarketing practices were violations of the TSR:</i> As of March 2, 2004, MacGregor's attorney conceded that "MacGregor's lack of direct oversight prior to 2001 may have contributed to certain of the compliance problems that resulted from the Blitz Parties' [including Continuity Partners] activities" (Heberer ¶ 5, p.1, Exh.B, pp.32-41).</p> <p><i>Brian MacGregor's awareness of consumer complaints:</i> MacGregor was aware of the consumer website Rip-Off Report, where consumers post complaints and share information about scam companies (Smart PI ¶ 30, Exh.23)</p>
<p>24. The <b>gross direct monetary loss</b> that consumers have suffered due to <b>Continuity Partners'</b> deceptive and abusive telemarketing practices is <b>\$37,927,874.91</b> [consumer injury for equitable monetary relief calculations]</p>	<p>The gross amount that Continuity Partners took from consumers was \$37,927,874.91 (Stahl ¶ 116(e)).</p>

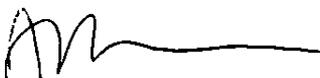
Undisputed Fact	Evidence supporting undisputed fact
<p>25. The <b>net direct monetary loss</b> that consumers have suffered due to <b>Continuity Partners'</b> deceptive and abusive telemarketing practices is \$30,576,809.75  <i>[consumer injury for equitable monetary relief calculations]</i></p>	<p>The net amount (gross amount minus chargebacks, consumer initiated returns, and company-generated refunds) that Continuity Partners took from consumers was \$30,576,809.75 (Stahl ¶ 116(f)).</p>
<p>26. The <b>gross direct monetary loss</b> that consumers have suffered due to the deceptive and abusive telemarketing practices of <b>Continuity Partners, Premier Benefits, Consumer Reward Network, Star Communications, All Star Access, and Prime Time Ventures</b> is \$109,553,256.46  <i>[consumer injury for equitable monetary relief calculations]</i></p>	<p>The gross amount that Continuity Partners, Premier Benefits, Consumer Reward Network, Star Communications, All Star Access, and Prime Time Ventures took from consumers was \$109,553,256.46 (Stahl ¶ 116(c)).</p>

Undisputed Fact	Evidence supporting undisputed fact
<p>27. The net direct monetary loss that consumers have suffered due to the deceptive and abusive telemarketing practices of Continuity Partners, Premier Benefits, Consumer Reward Network, Star Communications, All Star Access, and Prime Time Ventures is \$63,043,765 [consumer injury for equitable monetary relief calculations]</p>	<p>The net amount (gross amount minus chargebacks, consumer initiated returns, and company-generated refunds) that Continuity Partners, Premier Benefits, Consumer Reward Network, Star Communications, All Star Access, and Prime Time Ventures took from consumers was \$63,043,765 (Stahl ¶ 116(d)).</p>

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Respectfully submitted,

WILLIAM BLUMENTHAL  
General Counsel

  
 FAYE CHEN BARNOUW  
 JENNIFER M. BRENNAN  
 Federal Trade Commission  
 10877 Wilshire Blvd., Suite 700  
 Los Angeles, CA 90024  
 Telephone: (310) 824-4343  
 Facsimile: (310) 824-4380

Attorneys for Plaintiff