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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION,
STATE OF ILLINOIS,
STATE OF IOWA,
STATE OF NEVADA,
STATE OF NORTH CAROLINA,
STATE OF NORTH DAKOTA,
STATE OF OHIO, and
STATE OF VERMONT,

Plaintiffs,

v.

YOUR MONEY ACCESS, LLC, a Florida
Limited Liability Company, d/b/a Netchex Corp.,
Universal Payment Solutions, Check Recovery
Systems, Nterglobal Payment Solutions,
Subscription Services, Ltd.;

YMA COMPANY, LLC, a Florida Limited
Liability Company;

DERRELLE JANEY, individually, and as
an officer of Your Money Access, LLC; and

TARZENEIA DIXON, individually, and as an
officer of Your Money Access, LLC;

Defendants.

07 5147

Civ. No.

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE RELIEF

A TRUE COPY CERTIFIED TO FROM THE RECORD

DATE: DEC 06 2007

ATTEST: Steve Thomas

DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Plaintiffs, the Federal Trade Commission ("FTC" or "Commission"), the States of
Illinois, Iowa, Nevada, North Carolina, North Dakota, Ohio, and Vermont, by and through their
counsel and Attorneys General, for their Complaint allege as follows:

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 Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 *et seq.*,

to obtain permanent injunctive relief, disgorgement of ill-gotten gains, and other equitable relief against defendants for engaging in unfair acts or practices in connection with their processing of debits to consumer bank accounts on behalf of their client merchants. Defendants' acts and practices violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

2. Lisa Madigan, Attorney General, brings this action for and on behalf of the People of the State of Illinois, pursuant to the provisions of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §§ 505/1 *et seq.* (West 2006), and the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, and her common law authority as Attorney General to represent the People of the State of Illinois.
3. The State of Iowa, by and through its Attorney General, Tom Miller, brings this action pursuant to the Iowa Consumer Fraud Act, Iowa Code § 714.16, and the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, in order to obtain injunctive relief, restitution for consumers, civil penalties, and other equitable relief.
4. The State of Nevada, by and through the Office of the Attorney General, Catherine Cortez Masto, and its Bureau of Consumer Protection ("BCP"), John R. McGlamery, Deputy Attorney General, brings this action pursuant to the Deceptive Trade provisions of NRS Chapter 598, and the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, in order to secure permanent injunctive relief, restitution, civil penalties and other equitable relief.
5. The State of North Carolina, by and through its Attorney General, Roy Cooper, brings this action pursuant to the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.*, and the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, in order to obtain injunctive relief, restitution for consumers, civil penalties, and other equitable relief.

6. The State of North Dakota brings this action on the relation of Wayne Stenehjem, Attorney General, in the public interest pursuant to North Dakota Century Code ch. 54-12 and 15 U.S.C. § 6103, and the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, to obtain permanent injunctive relief, disgorgement of ill-gotten gains and other equitable relief against defendants for engaging in unfair acts or practices in connection with their processing of debits to consumer bank accounts on behalf of their client merchants.
7. The State of Ohio, acting by its Attorney General, Marc Dann, brings this action, pursuant to the Ohio Consumer Sales Practices Act, R.C. 1345.01 *et seq.*, and the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, to obtain injunctive relief, restitution, civil penalties, and other equitable relief.
8. The State of Vermont, by and through its Attorney General, William H. Sorrell, brings this action pursuant to the Vermont Consumer Fraud Act, Title 9 Vt. Stat. Ann. Ch. 63, and the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, in order to obtain injunctive relief, restitution for consumers, civil penalties, and other equitable relief.

JURISDICTION AND VENUE

9. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), 6103(a), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345 with respect to the federal law claims, and by 28 U.S.C. § 1367 with respect to the supplemental state law claims of the States of Illinois, Iowa, Nevada, North Carolina, Ohio, and Vermont, and by 28 U.S.C. § 1331 with respect to the claims of North Dakota.
10. Venue in this District is proper under 15 U.S.C. §§ 53(b) and 6103(e), and 28 U.S.C. § 1391(b). A substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in this District.

PLAINTIFFS

11. Plaintiff, the FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The FTC is charged, *inter alia*, with enforcement of 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 is also charged with enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101-6108. 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. 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 restitution, consumer redress, and disgorgement of ill-gotten gains. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).
12. Plaintiff the People of the State of Illinois, *as parens patriae*, by and through its attorney, Lisa Madigan, Attorney General, is authorized by 15 U.S.C. § 6103(a) to initiate federal district court proceedings to enjoin violations of and enforce compliance with the TSR, to obtain damages, restitution, and other compensation on behalf of Illinois residents, and to obtain such further and other relief as the court may deem appropriate. Plaintiff the People of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General, also brings its state law claims against the defendants under the provisions of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §§ 505/1 *et seq.* (West 2006), and her common law authority as Attorney General to represent the People of the State of Illinois. This Court has supplemental jurisdiction over plaintiff Illinois' claims under 28 U.S.C. § 1367.
13. Plaintiff State of Iowa is one of the 50 sovereign states of the United States, and by and through its Attorney General, Tom Miller, it brings this action under the Iowa Consumer

Fraud Act, Iowa Code § 714.16. Pursuant to authority found in 15 U.S.C. § 6103(a), plaintiff Iowa is also authorized to initiate federal district court proceedings to enjoin telemarketing activities that violate the TSR, and in each such case, to obtain damages, restitution, and other compensation on behalf of Iowa residents. This Court has supplemental jurisdiction over plaintiff Iowa's claims under 28 U.S.C. § 1367.

14. Plaintiff State of Nevada is one of the 50 sovereign states of the United States. Plaintiff State of Nevada, by and through the Office of the Attorney General, Catherine Cortez Masto, and its Bureau of Consumer Protection ("BCP"), John R. McGlamery, Deputy Attorney General, brings this action under the Deceptive Trade provisions of NRS Chapter 598. Pursuant to authority found in 15 U.S.C. § 6103(a), plaintiff State of Nevada is also authorized to initiate federal district court proceedings to enjoin telemarketing activities that violate the TSR, and in each such case, to obtain damages, restitution, and other compensation on behalf of Nevada residents. This Court has supplemental jurisdiction over plaintiff Nevada's state claims under 28 U.S.C. § 1367.
15. Plaintiff State of North Carolina is one of the 50 sovereign states of the United States, and by and through its Attorney General, Roy Cooper, it brings this action under the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.* Pursuant to authority found in 15 U.S.C. § 6103(a), plaintiff North Carolina is also authorized to initiate federal district court proceedings to enjoin telemarketing activities that violate the TSR, and in each such case, to obtain damages, restitution, and other compensation on behalf of North Carolina residents. This Court has supplemental jurisdiction over plaintiff North Carolina's claims under 28 U.S.C. § 1367.
16. Plaintiff State of North Dakota is one of the 50 sovereign states of the United States, and it brings this action on the relation of Wayne Stenehjem, Attorney General, in the public

interest under the North Dakota Century Code ch. 54-12 and 15 U.S.C. § 6103. Pursuant to authority found in 15 U.S.C. § 6103(a), plaintiff North Dakota is authorized to initiate federal district court proceedings to enjoin telemarketing activities that violate the TSR, and in each such case, to obtain damages, restitution, and other compensation on behalf of North Dakota residents.

17. Plaintiff State of Ohio is one of the 50 sovereign states of the United States, and by and through its Attorney General, Marc Dann, it brings this action under the Ohio Consumer Sales Practices Act, R.C. 1345.01 *et seq.* Pursuant to authority found in 15 U.S.C. § 6103(a), plaintiff State of Ohio is also authorized to initiate federal district court proceedings to enjoin telemarketing activities that violate the TSR, and in each such case, to obtain damages, restitution, and other compensation on behalf of Ohio residents. This Court has supplemental jurisdiction over plaintiff Ohio's claims under 28 U.S.C. § 1367.
18. Plaintiff State of Vermont is one of the 50 sovereign states of the United States and, by and through its Attorney General, William H. Sorrell, it brings this action under the Vermont Consumer Fraud Act, Title 9 Vt. Stat. Ann. Ch. 63. Pursuant to authority found in 15 U.S.C. § 6103(a), plaintiff State of Vermont is also authorized to initiate federal district court proceedings to enjoin telemarketing activities that violate the TSR, and in each such case, to obtain damages, restitution, and other compensation on behalf of Vermont residents. This Court has supplemental jurisdiction over plaintiff Vermont's claims under 28 U.S.C. § 1367.

DEFENDANTS

19. Defendant Your Money Access, LLC ("Your Money Access") is a Florida limited liability company headquartered at 4185 West Lake Mary Boulevard, Suite 177, Lake Mary, Florida 32746. Your Money Access does or has done business using the brand

names Netchex Corp., Universal Payment Solutions, Check Recovery Systems, Nterglobal Payment Solutions, and Subscription Services, Ltd, and has operated offices located at 1021 Neshaminy Valley Drive, Bensalem, Pennsylvania 19020 and at 1035 Greenwood Boulevard, Lake Mary, Florida 32746. Your Money Access transacts or has transacted business in this District.

20. Defendant YMA Company, LLC (“YMA Company”) is a Florida limited liability company also headquartered at 4185 West Lake Mary Boulevard, Suite 177, Lake Mary, Florida 32746. YMA Company was formed in March 2004, and it is a wholly-owned subsidiary of Your Money Access. YMA Company transacts or has transacted business in this District.
21. From at least November 2003 through on or about December 1, 2006, Your Money Access, directly or through YMA Company, processed millions of dollars in debit transactions to consumer bank accounts on behalf of its client merchants. Your Money Access and YMA Company are collectively referred to hereinafter as “YMA.”
22. Defendant Derrelle Janey (“Janey”) was the President of Your Money Access. Individually or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth herein. He transacts or has transacted business in this District.
23. Defendant Tarzeneia Dixon was the Chief Executive Officer of Your Money Access. Individually or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices set forth herein. She transacts or has transacted business in this District.
24. Your Money Access, YMA Company, Janey, and Dixon are hereinafter referred to collectively as “defendants.”

COMMERCE

25. The acts and practices of defendants alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

BACKGROUND

26. Since at least November 2003 through on or about December 1, 2006, defendants, through YMA, offered payment processing services to hundreds of client merchants. YMA acted as a "third-party payment processor" (hereinafter referred to as a "payment processor"). It contracted with client merchants to receive consumers' bank account information, processed debits to the consumers' bank accounts, and transferred the funds from the consumers' bank accounts to its client merchants' accounts.
27. As described more fully below, many of YMA's client merchants have engaged in the practice of unauthorized debiting of consumers' bank accounts, either as a result of deceptive sales pitches or in the absence of any sales pitch whatsoever. In numerous cases, YMA's client merchants engaged in deceptive telemarketing, direct mail, or Internet-based schemes. These schemes are designed to extract money from consumer bank accounts by inducing consumers, through misrepresentations and omissions in connection with the marketing of products or services, to provide the client merchant with the consumer's personal bank account information. Armed with the consumer's bank routing and account numbers, the fraudulent merchant then transmitted the account information to YMA, which processed the debits to the consumer's bank accounts.
28. By providing its client merchants access to the United States' banking system and the means to extract money from consumers' bank accounts, YMA played a critical role in its clients' fraudulent and deceptive schemes.
29. Between June 23, 2004 and March 31, 2006, YMA processed on behalf of its client

merchants more than \$200 million in debits and attempted debits to consumers' bank accounts. Of these attempted debits, more than \$69 million were ultimately returned or rejected by consumers or consumers' banks for various reasons, evidencing the lack of consumer authorization.

30. YMA used the consumer's bank account information to process debits to the consumer's bank account through one of two different payment mechanisms: (1) an Automated Clearing House ("ACH") debit; or (2) a remotely created check (also sometimes known as a "bank draft" or "demand draft").
31. An ACH debit refers to an electronic withdrawal of funds from a consumer's account through the Automated Clearing House Network ("ACH Network"), a nationwide interbank electronic clearing house. ACH transactions are subject to the rules of a private self-regulatory association known as NACHA - The Electronic Payments Association ("NACHA"). NACHA represents more than 12,000 financial institutions through direct memberships and a network of regional payment associations. Among other things, NACHA develops operating rules for the ACH Network and issues to all participants in the ACH Network guidelines on risk management practices, which include the need to detect and monitor signs of fraud in the ACH Network.
32. When processing ACH transactions, YMA initiated electronic debits to consumer bank accounts through the ACH Network, received funds from the consumer bank accounts, and then transferred these funds to its client merchant's account.
33. By contrast, a remotely created check ("RCC") is an unsigned paper check. In place of the actual signature of the account holder, the RCC generally bears a statement such as "Authorized by Account Holder," "Signature Not Required," "Authorized by Drawee," or words to similar effect.

34. YMA used the consumers' bank routing and account numbers provided by its clients to prepare RCCs drawn on consumers' accounts. In some cases, the RCCs were made payable directly to YMA, and in other cases they were made payable directly to YMA's client merchant.
35. YMA deposited the RCCs into a YMA or client merchant bank account. Banks treat RCCs like ordinary signed checks, and they thus caused RCCs to be submitted to the consumers' banks for payment from the consumers' accounts.
36. In numerous instances, after YMA debited consumers' accounts using either an ACH or RCC debit, its client merchants: (1) failed to deliver the promised products or services, or (2) sent consumers relatively worthless items, such as a package containing information on how to obtain the very product or service that the client merchants initially promised consumers.
37. In exchange for processing every attempted ACH or RCC debit to a consumer bank account, YMA charged its clients a "processing fee." In addition, YMA charged its clients a much higher fee ("return fee") for processing every transaction that was returned through the banking system. These return fees formed a substantial source of income for YMA.
38. A returned transaction refers to a transaction refused or reversed by the consumer's bank due to any number of reasons, such as an invalid bank account number, a closed or nonexisting bank account, or the consumer's notice to his or her bank that the debit was unauthorized.
39. A large number of returned debit transactions associated with a single merchant, regardless of whether through ACH or RCC debits, commonly indicates a problem with the transactions between the merchant and its customers.

40. Specifically, a high “return rate” (the percentage of attempted debits that are returned out of the total number of attempted debits) for a specific merchant commonly indicates the lack of consumer authorization, either where the consumer never authorizes the debit, or where the consumer authorizes the debit, but the authorization is based on deceptive misrepresentations or omissions about the offer that is the subject of the transaction.
41. For ACH transactions, NACHA has rules that set forth more than 60 different “return reason codes” that consumers’ banks must use to classify the reason they are returning ACH transactions. 2006 ACH Rules, pp. OR 92 - 98. For example, the current return reason code R10 stands for “customer advises not authorized.”
42. NACHA publishes on a quarterly basis detailed statistics on average return rates experienced by the ACH network as a whole (“industry average return rates”). These statistics include both the total return rates (the percentage of all ACH transactions that are returned out of the total number of attempted debits, regardless of the return reason provided by the consumers’ banks), as well as return rates for specific return reasons (the percentage of ACH transactions that are returned for identified reasons under certain return reason codes, such as “R02” —“account closed,” out of the total number of attempted debits).
43. NACHA’s statistics on industry average return rates include not only return rates for all ACH transactions (averaged across all types of ACH transactions), but also for certain specific types of ACH transactions, such as “PPD” transactions (“pre-arranged payment and deposit entry”), “WEB” transactions (internet-initiated transactions), and “TEL” transactions (one-time telephone-initiated transactions to consumers with whom the merchant has an existing relationship). These detailed industry average return rates provide multiple baseline measures with which to compare and monitor individual

merchant return rates.

44. For example, out of the four quarters in 2005, the highest quarterly industry average total return rate for all ACH transactions was 1.37 percent, for PPD transactions was 2.96 percent, and for WEB transactions was 1.95 percent. During the same time period, for the specific return code R10 (customer advises not authorized), the highest quarterly industry average return rate for all ACH transactions was 0.02 percent, for PPD transactions was 0.04 percent, and for WEB transactions was 0.07 percent. NACHA Risk Management News, Winter 2006, Volume 2, Issue 1; NACHA Risk Management News, December 2005, Volume 1, Issue 6.
45. NACHA rules and guidelines emphasize the responsibility of all ACH participants, including payment processors such as YMA, to monitor merchant return rates and other suspicious activity to detect and prevent fraud in the ACH network. With respect to “TEL” transactions, the NACHA rules and guidelines specifically direct ACH participants to strive to ensure that a merchant’s “unauthorized” return rate remains at or below the industry return rate for non-TEL consumer debits, such as PPD transactions, which currently averages 0.10%. 2006 ACH Rules at P. OG 216. The return rate for “unauthorized” entries (referred to by NACHA as the “unauthorized return rate”) commonly refers to the combined return rate of return codes R07 (authorization revoked by customer) and R10 (customer advises not authorized).
46. Returned transactions that are the result of the lack of consumer authorization often are returned by consumers’ banks for reasons other than return codes R07 and R10 (which are used by banks when a consumer has explicitly informed his or her bank that a debit was not authorized). For example, an unauthorized debit can be returned by the consumer’s bank if the consumer’s bank account has insufficient funds (return code

R01), if the bank account is “closed” (return code R02) or does not exist (return code R03), or if the bank account number is invalid (return code R04).

47. In contrast to ACH transactions, there is no entity within the banking industry, such as NACHA, that collects industry average return rate statistics for RCCs. RCCs are not coded or tracked separately from regular bank checks through the check-clearing system.
48. However, with respect to bank checks (which include RCCs and other types of checks), the Federal Reserve Board has published a Payments Study, in which it estimates that the average total return rate for bank checks was approximately 0.6 percent in 2000, and 0.5 percent in 2003. 2004 Federal Reserve Board Payments Study, December 15, 2004, p. 6.
49. Unlike the ACH network, in the check world there are no industry average return rate statistics available for specific return reasons, such as “invalid” bank account numbers or “unauthorized” transactions. Also, unlike the ACH network, the return of checks (including both RCCs and other types of checks) is not subject to a uniform national body of rules governing the classification or coding of the reason for the returned transaction. Substantial variation exists in the return classifications employed by different banks to characterize the return reason for checks. Some of the return reason classifications used for checks are similar to those used by the ACH Network, while others are not.
50. Despite the absence of a uniform classification system used by banks to characterize the return reason for bank checks (which includes RCCs), banks and payment processors can monitor merchant return rates and other signs of suspicious activity to detect and prevent fraud through the banking system. For example, they can monitor the total return rates of their clients’ RCC transactions, analyze the percentage of returned RCCs that are returned for specific reasons, compare their clients’ return rates to industry average return rates for

other existing comparable payment mechanisms, and watch closely for other signs of suspicious or fraudulent merchant activity.

YMA'S BUSINESS PRACTICES

51. Defendants, through YMA, offered payment processing services to hundreds of client merchants from at least November 2003 through on or about approximately December 1, 2006.
52. On or around June 23, 2004, Your Money Access, acting through its wholly owned subsidiary, YMA Company, purchased three companies that previously operated a payment processing business located in Newtown, Pennsylvania. These three companies, Universal Payment Solutions, Netchex Corp., and Check Recovery Systems, Inc. (hereinafter referred to collectively as the "Newtown Companies"), were under common ownership, management and control.
53. Prior to YMA's acquisition, the Newtown Companies had processed payments for a large number of fraudulent client merchants. Many of the Newtown Companies' client merchants generated high total return rates – often in excess of 40 percent, 50 percent, and even 70 percent. In addition, the merchant files of these Newtown Companies' client merchants contained numerous signs of deceptive activity, such as sales scripts that contained representations about the merchant's product or service that were facially false or highly likely to be false.
54. The founder and operator of the Newtown Companies, Donald Hellinger ("Hellinger"), had a history of operating illegal fraud schemes. In July 1995, Hellinger settled FTC allegations that he had engaged in the deceptive promotion of credit cards and other products via "900 numbers." FTC v. Interactive Marketing Concepts, Inc., et al., Civ. No. 95-cv-3554 (D.N.J. July 28, 1995). Moreover, prior to YMA's acquisition of the

Newtown Companies in June 2004, a number of the Newtown Companies' client merchants had been sued for consumer fraud. See, e.g., FTC v. Sun Spectrum Communications Organization, et al., No. 03-81105-CIV (S.D. Fla. 2003) (settlement permanently enjoined Sun Spectrum and its principals from engaging in telemarketing of credit products and services and ordered judgment of \$9,066,434 in equitable relief); FTC v. Capital Choice Consumer Credit, Inc., et al., No. 02-21050-CIV (S.D. Fla. 2002) (final post-trial judgment ordered establishment of consumer redress fund of \$36,716,000 and permanently enjoined defendants from participating in sale or marketing of credit cards and debiting consumer bank accounts without prior written authorization); and FTC v. Diversified Marketing Services, et al., Civ. No. 96-388 M (W.D. Okla. 1996) (settlement provided \$1.5 million in consumer redress and permanently enjoined defendants from charging consumer credit cards or bank accounts without consent).

55. Notwithstanding the signs of deceptive or unauthorized debiting activity contained in the Newtown Companies' client merchant files and reflected in the high return rates generated by these client merchants, after its acquisition of the Newtown Companies, YMA continued to process for a large number of the Newtown Companies' former client merchants.
56. For example, prior to YMA's purchase of the Newtown Companies in June 2004, the Newtown Companies had processed for a company named "A.I.G. Limited," whose principal was Ken Gomes. During a three-month period, between February 11, 2004 and May 21, 2004, the Newtown Companies processed on behalf of this company more than \$3,142,000 in RCC transactions, with a return rate of 55 percent. Despite this return rate, YMA continued processing for Ken Gomes for more than 13 months after its purchase of the Newtown Companies. Between June 23, 2004 and August 2005, YMA processed on

behalf of Gomes's multiple and constantly changing business names, more than \$13.5 million dollars in attempted RCC transactions, with a return rate of 49 percent.

57. After its acquisition of the Newtown Companies, YMA accepted and processed on behalf of numerous new client merchants (that had not been former clients of the Newtown Companies). Many of these new clients generated similar levels of return rates as the Newtown Companies' former client merchants, and they had sales scripts that were strikingly similar to those used by the Newtown Companies' former client merchants. In all, on behalf of both YMA's new clients and the Newtown Companies' former clients, between June 23, 2004 and March 31, 2006, YMA processed a total of more than \$200 million in debits and attempted debits. Most of YMA's clients during this time period were new clients that had not been previously processed by the Newtown Companies.

A. **Unauthorized Debiting**

58. Prior to processing debits on behalf of its clients, defendants received information and documentation strongly indicating that their clients were engaged in unauthorized debiting practices. Since at least its June 2004 acquisition of the Newtown Companies, YMA purportedly employed procedures to screen new merchants (that had not been previously processed by the Newtown Companies), prior to accepting them as clients. These purported screening procedures require potential clients to submit an application that includes certain information and documentation regarding the applicant's identity, location, type of business, and sales practices, including copies of the sales scripts used to market the product or service and, when appropriate, copies of the product (or "fulfillment package") sold to consumers. YMA then purportedly reviewed the application materials before approving or rejecting the applicant. Despite its own purported screening procedures, YMA routinely failed to implement these procedures or

ignored their results.

59. In many cases, prospective merchant clients failed to provide YMA rudimentary information about their identity or business practices, submitted incomplete merchant application forms, and failed to provide any supporting documentation at all, such as copies of sales scripts or fulfillment packages allegedly used by these merchants. YMA nonetheless approved these merchants for processing.
60. As described below, YMA agreed to process for a number of allegedly different clients whose files indicated the deceptive marketing of the same types of schemes over and over again, using similar or virtually identical sales scripts. These schemes include: government grant services, discount medical and prescription benefits programs, credit repair and credit restoration services, identity theft prevention services, telemarketing fraud prevention services, credit cards, and other discount “benefits” packages.
61. The applications prospective merchant clients submitted to YMA contain numerous signs of deceptive activity. Among other things, a large number of these applications: include sales scripts with representations about the purported product or service for sale that are facially false or highly likely to be false; and include sales scripts and other supporting documentation that contain contradictions or glaring inconsistencies in the representations about the nature, conditions, terms, characteristics, or price of the product or service purportedly provided. The merchant files also contain numerous other indications of the deceptive nature of the applicant’s businesses. Some demonstrative examples are detailed below.
62. In numerous instances, YMA agreed to process for merchants whose application materials include sales scripts that contain statements regarding the product or service that are facially false or highly likely to be false. For example, several allegedly

different merchants submitted sales scripts that include the same facially false representations regarding an anti-telemarketing fraud protection device called "EZ Hangup Device." Among other things, these scripts promise consumers that their telephone numbers will be placed on the Do Not Call list for ten years, and that they will never receive another telemarketing call again. The FTC administers the National Do Not Call Registry, which, at the time the representations were made, provided for a five-year registration period. No consumer telephone number could be placed on the National Do Not Call Registry for ten years. Moreover, registration on the National Do Not Call Registry does not guarantee that a consumer will never receive another telemarketing call again. Despite the falsity of the representations contained in these sales scripts, YMA accepted as clients several merchants who were marketing the "EZ Hangup Device." Between November 2005 and March 2006, YMA processed on behalf of these client merchants a total of more than \$993,000 in RCC transactions, with return rates ranging from 65 to 77 percent.

63. Typically, when merchants who engaged in telemarketing applied to YMA, they submitted both a sales script, reflecting the initial sales pitch, and a "verification script," used by the merchant to tape record the consumer after the initial sales pitch, purportedly "authorizing" the debit to his or her account. In numerous instances, YMA agreed to process for merchants who submitted sales scripts and verification scripts that contained glaringly inconsistent or contradictory representations about the product or service being marketed. For example, the sales script of YMA client "JAS Planning, Inc." informs the consumer:

[Y]our name has come up on a list of individuals who qualify for a New Federal Government Grant up to \$25,000 . . . [and you are] eligible for a minimum of 5K in non refundable federal grant money, We are

so confident you will receive a minimum of 5K over the next 8 months, that as a special bonus for signing up today you will also receive as a bonus a certificate for \$500 in emergency cash and a gift certificate for a \$1000 catalog shopping spree absolutely free . . .

By contrast, the verification script for the same client states:

You do understand that this is all public information and American Grant Information is simply providing you with a guide to assist you in finding the correct grant for you . . . correct?

Despite the differences between the representations made in the sales script and the verification script, YMA's merchant file for this client does not contain copies of the product allegedly being offered, including copies of the "certificate for \$500 in emergency cash" or the \$1000 gift certificate for a "catalog shopping spree" allegedly provided as special free bonuses. YMA accepted and processed on behalf of JAS Planning, between September 2004 and June 2005, more than \$5,333,000 in attempted RCC transactions, with a return rate of 67 percent.

64. In numerous instances, YMA accepted for processing merchants whose applications indicated the use of multiple and constantly changing fictitious company and product names, often for the sale of the same alleged underlying product type. The use of multiple and constantly changing company and product names often indicates the attempt of such merchants to conceal their true identities from consumers (or law enforcement agencies). For example, between June 2004 and March 2005, YMA processed more than \$2.6 million in attempted RCC transactions for a client known as "Consumer Grants USA," with a return rate of 63 percent. YMA created multiple separate merchant accounts for this client, through which it processed on behalf of this client's multiple and constantly changing business names.
65. In numerous instances, YMA accepted as clients "new" companies whose principals or

related personnel were associated with past YMA clients who had engaged in unauthorized debiting or other illegal sales practices. For example:

- A. YMA processed on behalf of Dortel Marketing Inc., a company operating out of Quebec, Canada, more than \$274,000 in attempted RCC transactions between January 21, 2005 and April 18, 2005. During this time, the president of Dortel was Paul McKeefrey. The sales script of Dortel included dubious representations regarding the company's ability to protect consumers from unauthorized charges to their bank accounts by fraudulent operators. Dortel generated a return rate of 82 percent. Despite these signs of Dortel's fraudulent activity, YMA accepted as a new client another company controlled by Paul McKeefrey called Power Tamer Enterprises. YMA processed on behalf Power Tamer Enterprises from March 2, 2006 through March 27, 2006, more than \$90,675 in RCC transactions, with a return rate of 72 percent.
- B. Similarly, when YMA purchased the Newtown Companies in June 2004, the Newtown Companies were processing for a client named 9106-3511 Quebec, Inc., doing business as "First Star Consultants." At the time of YMA's purchase, the sales script showed the merchant was selling advance-fee credit cards, in direct violation of the FTC's Telemarketing Sales Rule, which specifically prohibits, *inter alia*, the promise of an extension of credit or loan in exchange for an advance-fee payment. 16 C.F.R. § 310.4(a)(4). Despite evidence that this client was violating the TSR, YMA processed on behalf of this client, between June 23, 2004 and July 28, 2005, more than \$894,907 in RCC transactions, with a return rate in excess of 29 percent.

66. On April 11, 2005, after receiving numerous inquiries from law enforcement agencies

regarding its practices and those of its clients, YMA published a revised "Risk Management Policy," in which it announced that it would cease processing for certain types of products due to the "increased risks associated with" these types of products. These prohibited products include: (1) credit cards; (2) debt consolidation/debt negotiation services; (3) credit repair and credit restoration services; (4) government grants; (5) discount prescription programs; and (6) other "benefits" packages.

67. Notwithstanding its revised policy, YMA continued processing for clients whose application materials indicated the sale of a prohibited product and who had been accepted for processing prior to April 11, 2005. For example, YMA continued processing ACH transactions for a client named "Free Medicine Direct," a company engaged in selling discount prescription benefits, for more than four months after April 11, 2005. Not only was Free Medicine Direct engaged in selling a product prohibited by YMA's revised policy, but Free Medicine Direct's sales script included dubious representations that the consumer had been pre-approved for a free prescription medicine program, under which he or she would receive "free" prescription medicines.
68. Moreover, YMA continued to accept, long after April 11, 2005, a large number of new clients that purported to sell the types of products prohibited by its April 11, 2005 revised "Risk Management Policy" and that submitted suspiciously similar or virtually identical sales scripts to market these types of products. For example:
 - A. For the time period between October 2005 and March 2006 alone, YMA accepted and processed for at least 19 allegedly different new clients offering government grants. Among those 19 clients, 12 indicated they were selling the same product, "Government Grant Information Guide." YMA processed on behalf of these 19 clients a total of more than \$5,950,057 in RCC transactions, with an average total

return rate in excess of 58 percent.

- B. Between October 2005 and March 2006, YMA accepted and processed for eight allegedly different new clients selling discount prescription benefits plans.

During this time period, YMA processed on behalf of these eight clients a total of more than \$1,679,538 in RCC transactions, with an average total return rate in excess of 54 percent.

- C. Between October 2005 and March 2006, YMA accepted and processed for nine allegedly different new clients selling benefits packages, which included identity theft and telemarketing fraud protection services. During this time period, YMA processed on behalf of these nine clients a total of more than \$2,552,478 in RCC transactions, with an average total return rate in excess of 74 percent.

B. YMA's Clients' High Return Rates

69. As part of its purported screening procedures, YMA required prospective clients to state their past or projected return rate on their application materials. YMA's merchant files indicate that YMA's clients expected and, in fact, generated high return rates. In numerous instances, YMA agreed to process for merchants whose application materials include projected total return rates as high as 20 percent, 50 percent, and in some cases, 80 percent. High return rates indicate lack of consumer authorization for the consumer's account to be debited.

70. After accepting for processing clients whose applications contained alarmingly high projected return rates and other signs of likely fraud, YMA regularly monitored such clients' actual return rates. This further confirmed that these clients were engaged in unauthorized debiting practices. For example:

- A. YMA client United Capital Solutions, doing business as Charterwest Marketing

and as American Security Network, projected in its application materials a return rate of 50 percent. It also indicated that it was engaged in the marketing of a benefits package, which included, among other things, identity theft and telemarketing fraud protection services. YMA processed on behalf of this client, between November 8, 2005 and December 2005, more than \$128,570 in attempted RCC transactions, with a return rate of 83 percent.

B. YMA client 6367160 Canada Inc., doing business as Borden Merchant Services, projected in its application materials a return rate of 40 to 50 percent. It also indicated that it was engaged in the marketing of, among other things, "national grant services" and identity theft and telemarketing fraud protection services.

YMA processed on behalf of this client, between January 9 and March 14, 2006, \$1,207,688 in attempted RCC transactions, with a return rate in excess of 75 percent.

C. YMA client Sports Marketing, doing business as 1st Credit Services, projected in its application materials a return rate of 50 percent. It also indicated that it was engaged in the marketing of a "benefit program for credit services," which included, among other things, a "debt reduction kit." YMA processed on behalf of this client, between November 14, 2005 and January 9, 2006, more than \$467,000 in attempted RCC transactions, with a return rate in excess of 80 percent.

71. Six different YMA clients that marketed government grant packages presented application materials indicating high projected return rates. Five of these six clients exceeded their projections:

A. American Grant Seekers projected a return rate of 45 percent; its actual return rate

reached 59 percent;

- B. Elite Grant Solutions projected a return rate of 60 percent; its actual return rate reached 41 percent;
- C. Komplex Marketing projected a return rate of 40 percent; its actual return rate reached a whopping 82 percent;
- D. Magnum Marketing projected a return rate of 35 percent; its actual return rate reached 52 percent;
- E. Always Associates projected a return rate of 40 percent; its actual return rate reached 62 percent;
- F. American Grant Solutions projected a return rate of 50 percent; its actual return rate reached 49 percent.

Despite these alarmingly high projected and actual return rates, YMA accepted and processed for these clients during different periods between November 2005 and March 2006. Together these clients generated approximately \$2,484,613 in RCC transactions.

72. YMA often continued processing for the same client long after it knew that the client had a history of generating high return rates. For example, YMA processed on behalf of T&T Consulting, a company located in Quebec, Canada, from February 9, 2005 through June 24, 2005, more than \$439,000 in attempted RCC transactions, with a return rate in excess of 69 percent. Despite this return rate, YMA resumed processing for T&T Consulting four months later. In just one week, from October 24, 2005 to November 1, 2005, YMA processed another \$43,947 in attempted RCC transactions, with a return rate of 87 percent. Approximately one week after that, YMA again resumed processing for T&T Consulting, between November 10, 2005 and March 21, 2006, an additional \$388,268 in RCC transactions, with a return rate of 74 percent.

C. Defendants' Monitoring of Client Return Rates

73. In order to bill its client merchants, YMA closely monitored on a regular and frequent

basis its clients' total return rates for both ACH and RCC transactions, as well as the specific return reasons for its clients' returned transactions. Therefore, YMA was intimately aware of its clients' total return rates and the specific reasons for their returned transactions.

74. Despite YMA's knowledge of its clients' total return rates, YMA adopted an internal company "risk management" policy of monitoring only its clients' "unauthorized" return rates. With respect to its ACH transactions, YMA adopted a "2.5 percent" unauthorized return rate benchmark. This benchmark is 25 times the ACH industry "unauthorized" return rate of 0.10 percent advocated by NACHA in its ACH rules and guidelines (referred to in Paragraph 45 above).
75. With respect to its RCC transactions, YMA adopted a 15 percent unauthorized return rate benchmark. YMA's internal benchmark for RCC transactions is six times higher than its own internal benchmark for ACH transactions, which in turn is 25 times the industry "unauthorized" return rate advocated by NACHA.
76. More than 24 percent of YMA's ACH clients and more than 52 percent of YMA's RCC clients generated return rates that exceeded YMA's own unreasonably high internal benchmarks for monitoring.
77. A large number of YMA's ACH clients generated return rates indicating the lack of consumer authorization. Between June 23, 2004 and March 31, 2006, YMA attempted to debit on behalf of its ACH clients more than \$100 million in ACH transactions from consumers' bank accounts. Regardless of which ACH industry return rate measure is used (whether total return rates, "unauthorized" return rates, or return rates under certain other return codes), the vast majority of YMA's ACH clients generated rates far in excess of the average ACH industry return rate.

78. For example, out of the eight quarters in 2004 and 2005, the highest average quarterly industry total return rate (for all ACH transactions) was 1.41 percent, as published by NACHA. When measured against this industry total return rate, more than 80 percent of YMA's ACH clients' accounts generated total return rates that were double to 70 times the ACH industry return rate.
79. YMA closely monitored the specific reasons provided by the consumers' banks for each client merchants' returned transactions. A large number of YMA's ACH clients each had 40 percent or more of their returned transactions coded for any one of the following three reasons: R02 ("account closed"); R03 ("no account/unable to locate account"); and R04 ("invalid account number"). Consumers who in fact authorize merchants to debit their accounts, or who initially authorize merchants to debit their accounts but later notify their banks that the debits were not authorized, typically do not provide such merchants, in such a large number of instances, numbers for bank accounts that are closed, nonexistent, or invalid. It is possible, therefore, that these YMA clients were attempting to debit consumers' accounts using pre-acquired account information without ever having interacted with the consumers. For example:
- A. YMA processed more than \$1,510,000 in ACH transactions for a period of almost 13 months, between June 23, 2004 and July 2005, with a total return rate in excess of 44 percent for First Liberty/Meds4Less, a YMA ACH client that marketed discount medical benefits that would purportedly save consumers "up to 90%" in prescription costs. Of the total number of returned transactions generated by this client, more than 43 percent were due to the combined return codes R02, R03, and R04.
 - B. Similarly, on behalf of another ACH client called KCS, YMA processed more

than \$384,800 in ACH transactions, with a total return rate in excess of 60 percent. Of the total number of returned transactions generated by this client, more than 87 percent were due to the combined return codes R02, R03, and R04.

80. Between June 23, 2004 and March 31, 2006, YMA attempted to debit on behalf of its RCC clients more than \$100 million in RCC transactions. Of these attempted RCC debits, more than \$58 million were ultimately returned by consumers or consumers' banks for various reasons. In numerous cases, YMA's individual RCC clients generated return rates of 50 percent, 60 percent, or even 80 percent.
81. When measured against the 0.50 percent estimated average industry return rate for bank checks in 2003, more than 95 percent of YMA's RCC clients' accounts generated return rates that were double to 188 times the industry return rate. More than half of YMA's RCC clients generated total return rates that were more than 100 times the industry return rate.
82. Despite the signs that their clients were engaged in unauthorized debiting practices, defendants continued to debit the bank accounts of consumers on behalf of their numerous merchant clients.
83. Defendants have caused consumers substantial monetary loss by causing funds to be debited from the consumers' bank accounts without the consumers' authorization and by causing consumers other related harm, such as incurring the costs of closing accounts, paying over-draft fees, bouncing checks, opening new accounts, and ordering new checks. Such consumers could not reasonably have avoided this injury.
84. The harm caused by defendants' practices was not outweighed by countervailing benefits to consumers or competition.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

85. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair” or “deceptive” acts and practices in or affecting commerce. Under Section 5(n) of the FTC Act, an act or practice is “unfair” if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or to competition. 15 U.S.C. § 45(n).

COUNT I

(By Plaintiff Federal Trade Commission)

86. Defendants’ acts or practices in processing debit transactions to consumers’ bank accounts, as described above in Paragraphs 51-84, have caused or are likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and that is not outweighed by countervailing benefits to consumers or competition.
87. Therefore, defendants’ acts or practices are unfair and violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FTC’S TELEMARKETING SALES RULE

88. 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, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule, 16 C.F.R. Part 310, which became effective on December 31, 1995. On December 18, 2002, the FTC promulgated amendments to the TSR. The amendments became effective on March 31, 2003.
89. The TSR prohibits telemarketers and sellers from making a false or misleading statement to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).
90. The TSR also prohibits telemarketers and sellers from, among other things, requesting or

receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit. 16 C.F.R. § 310.4(a)(4). Such conduct constitutes an abusive telemarketing act or practice and a violation of the TSR.

91. The TSR also prohibits a person from providing “substantial assistance or support” to any seller or telemarketer when that person “knows or consciously avoids knowing” that the telemarketer is engaged in acts or practices that violate 16 C.F.R. §§ 310.3(a) or 310.4 of the Rule. 16 C.F.R. § 310.3(b). Such conduct constitutes a deceptive telemarketing act or practice and a violation of the TSR.
92. 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), violations of the TSR constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
93. Defendants have processed debit transactions and provided related services on behalf of persons who are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in Sections 310.2(r), (t), and (u) of the TSR as promulgated in 1995, renumbered but unchanged as Sections 310.2(z), (bb), and (cc) of the TSR as amended in 2003.

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT II

(By Each Plaintiff)

Assisting and Facilitating Telemarketing Sales Rule Violations

94. In numerous instances, in connection with processing debit transactions for sellers or telemarketers, defendants have provided substantial assistance or support to sellers or telemarketers who defendants knew or consciously avoided knowing:
- a. induced consumers to pay for goods and services through the use of false or misleading statements, in violation of Section 310.3(a)(4) of the TSR; or
 - b. falsely represented that after paying an advance fee, consumers are guaranteed or highly likely to receive a credit card or obtain a loan, in violation of Section 310.4(a)(4) of the TSR.
95. Defendants' acts or practices alleged in Paragraph 94 constitute deceptive telemarketing acts or practices in violation of Section 310.3(b) of the TSR, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

(By Plaintiff State of Illinois)

96. Section 2 of the Illinois Consumer Fraud Act, 815 ILCS §§ 505/1 *et seq*, prohibits "Unfair methods of competition and unfair or deceptive acts or practices." An "unfair practice" means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by countervailing benefits to consumers or competition.
97. Defendants' acts or practices in processing debit transactions to consumers' bank accounts, as described above in Paragraphs 51-84, have caused or are likely to cause

substantial injury to consumers that is not reasonably avoidable by consumers themselves and that is not outweighed by countervailing benefits to consumers or competition.

98. Therefore, defendants' acts or practices are unfair and violate Section 2 of the Illinois Consumer Fraud Act, 815 ILCS §§ 505/1 *et seq.*

COUNT IV

(By Plaintiff State of Iowa)

99. Subsection 2(a) of the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2005), prohibits an "unfair practice." Under Iowa Code § 714.16(1)(n), "unfair practice" means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by countervailing benefits to consumers or competition.
100. Defendants' acts or practices in processing debit transactions to consumers' bank accounts, as described above in Paragraphs 51-84, have caused or are likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and that is not outweighed by countervailing benefits to consumers or competition.
101. Therefore, defendants' acts or practices are unfair and violate the Iowa Consumer Fraud Act, Iowa Code § 714.16.

COUNT V

(By Plaintiff State of Nevada)

102. NRS 598.0923 indicates that it is a deceptive trade practice for a person to fail to disclose a material fact in connection with the sale or lease of goods or services or to violate a state or federal statute or regulation relating to the sale or lease of goods or services.
103. Defendants' acts or practices in processing debit transactions to consumers' bank accounts, as described above in Paragraphs 51-84, are unfair and violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) as described above.

104. Therefore, defendants' acts or practices violate Nevada's Deceptive Trade Act, section NRS 598.0923.

COUNT VI

(By Plaintiff State of North Carolina)

105. Defendants' acts or practices in processing debit transactions to consumers' bank accounts, as described above in Paragraphs 51-84, have caused or are likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and that is not outweighed by countervailing benefits to consumers or competition.
106. Therefore, defendants' acts or practices are unfair and violate the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*

COUNT VII

(By Plaintiff State of Ohio)

107. Defendants' acts or practices in processing debit transactions to consumers' bank accounts, as described above in Paragraphs 51-84, are unfair and violate the Telemarketing Sales Rule, Section 310.3(b) of the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*
108. Ohio courts have previously determined that a violation of any regulation within the Telemarketing Sales Rule (16 C.F.R. Section 310) by a supplier is a distinct and separate unfair and deceptive act in violation of the Ohio Consumer Sales Practices Act, O.R.C. 1345.01 *et seq.* Defendants committed said violations after such decisions were available for public inspection.
109. Therefore, defendants' acts or practices are unfair or deceptive, in violation of the Ohio Consumer Sales Practices Act, O. R.C. 1345.01 *et seq.*

COUNT VIII

(By Plaintiff State of Vermont)

110. Section 2453(a) of title 9 Vt. Stat. Annot. Prohibits “unfair” acts. Under section 2453(a), an act or practice is “unfair” if, among other things, it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or to competition.
111. Defendants’ acts or practices in processing debit transactions to consumers’ bank accounts, as described above in Paragraphs 51-84, have caused or are likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and that is not outweighed by countervailing benefits to consumers or competition.
112. Therefore, defendants’ acts or practices are unfair and violate the Vermont Consumer Fraud Act, 9 Vt. Stat. Annot. Ch. 63.

CONSUMER INJURY

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

THIS COURT'S POWER TO GRANT RELIEF

114. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary equitable relief, including consumer redress, disgorgement, and restitution, to prevent and remedy violations of any provision of law enforced by the Commission.
115. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary

to redress injury to consumers or other persons resulting from defendants' violations of the TSR, including the rescission and reformation of contracts and the refund of monies.

116. Pursuant to 15 U.S.C. § 6103(a), each of the plaintiff States of Illinois, Iowa, Nevada, North Carolina, North Dakota, Ohio, and Vermont, is authorized to enforce the Telemarketing Sales Rule by bringing a civil action in this Court, and this Court is empowered to grant damages, restitution, or other compensation on behalf of residents of each such State, or to obtain such further and other relief as the Court may deem appropriate.
117. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow plaintiff, the State of Illinois, to enforce its state law claims under the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §§ 505/1 *et seq.* (West 2004), against defendants in this Court. To ensure compliance and to remedy violations of the Illinois Unfair and Deceptive Trade Practices Act, Section 7 of the Consumer Fraud Act, 815 ILCS § 505/7, authorizes this Court to restrain by preliminary or permanent injunction, any method, act or practice declared by the Act to be unlawful. In addition, this Court is authorized, in its discretion, to exercise all powers necessary, including but not limited to: appointment of a receiver; termination of the right of foreign corporations to do business in the State of Illinois; and restitution. In addition to the remedies provided herein, the Attorney General may request the Court to impose a civil penalty not to exceed \$50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the Court finds the method, act or practice to have been entered into with intent to defraud, the Court has the authority to impose a civil penalty in a sum not to exceed \$50,000 per violation.
118. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow plaintiff,

the State of Iowa, to enforce its state law claims under the Iowa Consumer Fraud Act, Iowa Code § 714.16, against defendants in this Court. The Iowa Consumer Fraud Act, Iowa Code § 714.16, empowers this Court to grant injunctive and other equitable relief, including disgorgement, consumer redress, reimbursement of state's costs, and civil penalties, to prevent and remedy violations of that Act.

119. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow plaintiff, the State of Nevada, to enforce its state law claims under the Deceptive Trade provisions of NRS Chapter 598, against defendants in this Court. The Nevada Deceptive Trade Practices Act; Nevada Revised Statutes section 598.0963(3), empowers this Court to grant injunctive and other equitable relief to prevent and remedy violations of that Act. Pursuant to NRS 598.0999(2), in any action brought pursuant to the provisions of NRS 598.0903 to 598.099, if this Court finds that a person has willfully engaged in a deceptive trade practice, the Attorney General may recover a civil penalty not to exceed \$5,000 for each violation and, in addition to any other relief or reimbursement, the Court may award reasonable attorney's fees and costs.
120. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow plaintiff, the State of North Carolina, to enforce its state law claims under the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.*, against defendants in this Court. To ensure compliance and to remedy violations of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-14 authorizes the court to enter temporary restraining orders and preliminary and permanent injunctions. N.C. Gen. Stat. § 75-15.1 empowers the court to cancel any contract and order the restoration of any money or property obtained by a defendant as a result of any violation. Under N.C. Gen. Stat. § 75-15.2, a court may award the State of North

Carolina civil penalties of up to \$5,000 for each violation. N.C. Gen. Stat. § 75-16.1 authorizes an award of attorneys fees to the prevailing party.

121. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow plaintiff, the State of Ohio, to enforce its state law claims under the Ohio Consumer Sales Practices Act, R.C. 1345.01 *et seq.*, against defendants in this Court. The Ohio Consumer Sales Practices Act, R.C. 1345.07, empowers this Court to issue declaratory judgments, temporary restraining orders and preliminary and permanent injunctions to restrain or prevent violations of the Act. The Court may also make appropriate orders, including appointment of a referee or receiver, for sequestration of assets, to reimburse consumers found to have been damaged, to carry out a transaction in accordance with a consumer's reasonable expectations, to strike or limit the application of unconscionable clauses of contracts so as to avoid an unconscionable result, or to grant other appropriate relief, including imposing a civil penalty of not more than twenty five thousand dollars.
122. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow plaintiff, the State of Vermont, to enforce its state law claims under the Vermont Consumer Fraud Act, Title 9 Vt. Stat. Ann. Ch. 63, against defendants in this Court. In response to unfair or deceptive acts or practices, the Vermont Consumer Fraud Act, 9 V.S.A. § 2458, authorizes the State of Vermont, through its Attorney General, to seek temporary restraining orders and preliminary and permanent injunctions, civil penalties of not more than \$10,000 for each violation, consumer restitution, and reimbursement of fees and expenses.

PRAYER FOR RELIEF

123. WHEREFORE, plaintiff the Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing

Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers; plaintiff State of Illinois pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and the Court's own equitable powers; plaintiff State of Iowa pursuant to the Iowa Consumer Fraud Act, Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and the Court's own equitable powers; plaintiff State of Nevada pursuant to the Deceptive Trade Practices Act, Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and the Court's own equitable powers; plaintiff State of North Carolina pursuant to the North Carolina Unfair and Deceptive Trade Practices Act, Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and the Court's own equitable powers; plaintiff State of North Dakota pursuant to Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), the Telemarketing Sales Rule, and the Court's own equitable powers; plaintiff State of Ohio pursuant to the Ohio Consumer Sales Practices Act, R.C. 1345.01 *et seq.*, Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and the Court's own equitable powers; and plaintiff State of Vermont pursuant to the Vermont Consumer Fraud Act, Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and 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;
- B. Enter a permanent injunction to prevent future violations by defendants of the FTC Act, the Telemarketing Act and the Telemarketing Sales Rule, the Illinois Consumer Fraud and Deceptive Business Practices Act, the Iowa Consumer Fraud Act, the Nevada Deceptive Trade Practices Act, the North Carolina Unfair and Deceptive Trade Practices Act, the Ohio Consumer Sales Practices Act, and the

Vermont Consumer Fraud Act, as alleged herein;

- C. Award such relief as the Court finds necessary and appropriate, including but not limited to the refund of monies paid and the disgorgement of ill-gotten gains by defendants;
- D. Award plaintiffs the costs of bringing this action, civil penalties under applicable state claims, and such other and additional equitable relief as the Court may determine to be just and proper.

Dated: Dec 5, 2007

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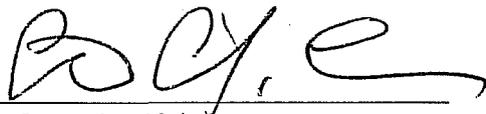
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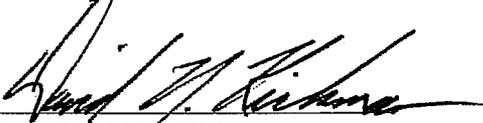
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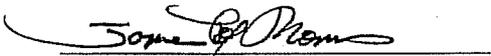
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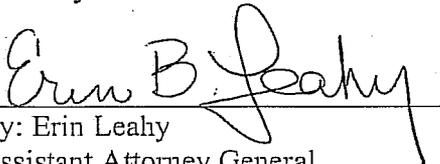
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